New Hampshire Fish and Game Department

11 Hazen Drive, Concord, NH 03301-6500
Headquarters: (603) 271-3421
Website: www.WildNH.com

TDD Access: Relay NH 1-800-735-2964
Fax: (603) 271-1438
Email: info@wildlife.nh.gov

Scott R. Mason
Executive Director

0 SEP20'23 PM 1:14 RCV

mac

47

July 5, 2023

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

Requested Action

Pursuant to RSA 212:10-b, authorize the New Hampshire Fish and Game Department (NHFGD) to amend a wildlife habitat improvement agreement with Mac's Happy Acres, LLC for the management of 17.5 acres of agricultural land on the Lebanon Wildlife Management Area (WMA) in the Town of Lebanon. The amendment will add 14.5 acres of agricultural land on the Cornish WMA in the Town of Cornish, effective upon Governor and Council approval through December 31, 2032. No funding is involved.

Explanation

The New Hampshire Fish and Game Department owns a 24.5-acre parcel in Lebanon containing 17.5 acres of agricultural fields and a 29-acre parcel in Cornish containing 14.5 acres of agricultural fields. The wildlife management objectives for these lands include maintaining certain agricultural crops primarily for migratory waterfowl but also for the benefit of white-tailed deer, turkey, and other wildlife. To achieve these goals, the Department proposes to continue to allow Mac's Happy Acres, LLC to annually plant and harvest hay and grain crops through December 31, 2032. In return, Mac's Happy Acres, LLC will leave a portion of the grain crop unharvested for wildlife food in addition to compensating the department $175/acre for the Cornish Parcel only. Mac's Happy Acres has farmed Lebanon WMA for nearly 30 years and was the highest bidder of three bids for the Cornish WMA, whose previous lessee has retired.

Respectfully submitted,

Scott R. Mason
Executive Director

Kathy Ann LaBonte
Chief, Business Division

Lebanon and Cornish
Wildlife Management Areas

FARM AGREEMENT

This agreement made this ___ day of _____, 2023 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, 11Hazen Drive, Concord New Hampshire 03301 and MAC'S HAPPY ACRES, LLC (hereinafter referred to as the "FARMER") of 259 River Road, Plainfield NH 03781 (together, the "Parties").

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

WHEREAS, the DEPARTMENT owns certain properties known as the Lebanon Wildlife Management Area in the Town of Lebanon, more specifically identified as tax map 185, lot 1 (the "Lebanon Property"); the DEPARTMENT owns certain properties known as the Cornish Wildlife Management Area in the Town of Cornish, more specifically identified as tax map 2, lot 2 (the "Cornish Property") (together, the "Properties");

WHEREAS, the wildlife management objectives for the Properties include maintaining habitat for migratory waterfowl, bear, turkey, wetland birds, and other wildlife; and

WHEREAS, MAC'S HAPPY ACRES LLC has the knowledge, skills and equipment necessary to effectively harvest and maintain a grain or forage crop at the Properties.

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

1. Grant of Authority to FARMER

a. The DEPARTMENT hereby allows the FARMER to enter the Lebanon Property for the purpose of utilizing approximately 17.5 acres of field land (see figure 1) for planting and harvesting a hay or grain crop (e.g., corn, barley, oats, millet, rye, etc.) each year from the date of this agreement through December 31, 2032. Crop rotation is encouraged to promote soil health.

b. The DEPARTMENT hereby allows the FARMER to enter the Cornish Property for the purpose of utilizing approximately 14.5 acres of field land (see figure 2) for planting and harvesting a hay or grain crop (e.g., corn, barley, oats, millet, rye, etc.) each year from the date of this agreement through December 31, 2032. Crop rotation is encouraged to promote soil health

2. Scope of Access and Farming Conditions

a. If planted to grain crops, the FARMER agrees to leave a combined minimum of 1.5-acres of unharvested crop on the Lebanon Property and/or theCornish Property for use by migrating waterfowl and other wildlife. The unharvested rows should be tended (e.g., limed, fertilized, etc.) the same as the remainder of the crop to ensure good forage production for wildlife.

b. If planted to grass at either the Lebanon Property or the Cornish Property, the FARMER agrees to abide by one of two cutting options. The first option allows the farmer to complete the first cut, and all

associated management including raking, bailing and spreading of manure, no later than May 31st with a second cutting allowable 65 days after the first. The second option allows the first harvest to occur on or after July 15th.

c. The FARMER agrees to assist the DEPARMENT with property maintenance on the Lebanon Property including repairing potholes on the main access road and picking up debris left by visitors.

d. The FARMER agrees to pay the DEPARTMENT $175/ acre for access and use of the Cornish Property.

e. 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 FARMER agrees to adhere to the Integrated Pest Management (IPM) policy outlined in Exhibit B. The FARMER agrees to adhere to updates or amendments to the IPM plan within two growing seasons of being notified of the change.

b. The FARMER agrees to fill out and submit an "Annual Report Form for NHFG Agricultural Lease" each year at the end of the farming season for each property. Either the FARMER or a DEPARTMENT representative may request an in-person meeting to be held at the properties.

c. A "protective" vegetated buffer (sumac, brush, etc.) of at least 50 feet shall be left between any planted area and surface-water wetlands or specially marked areas, unless otherwise designated by the Department representative.

d. The DEPARTMENT reserves the right to increase public parking capacity on the Cornish Property, which may encroach on the available agricultural acreage.

e. The use of bio-solids or similar materials is specifically prohibited.

f. The FARMER may amend field soils with a fertilizer/lime combination, manure, DES certified ash as allowed under administrative rule Env-Sw 1700, or other suitable substitute per the recommendations of the University of New Hampshire Cooperative Extension and with approval by the DEPARTMENT.

g. 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.

h. There shall be no pasturing of livestock or stockpiling of manure, compost, or other similar material.

i. The FARMER shall regularly check areas prone to soil erosion within the designated areas or along access to them and stabilize those areas immediately.

j. The FARMER may prune or cut trees encroaching into farmed fields as agreed upon by the DEPARTMENT representative.

4. Period of Use

This agreement shall become effective upon the date of execution by the parties and approval by the Governor and the Executive Council and shall terminate on December 31, 2032, unless terminated sooner pursuant to Part 5.

5. Termination

The DEPARTMENT may terminate this agreement, in whole or in part, for any reason, upon written notice to FARMER, provided that any such termination will not be effective until completion of the next harvest of any crops planted prior to notice of termination. The right to terminate includes the right to reduce the area under this agreement. Any notice of termination shall specify the dates by which FARMER must harvest crops, remove property, and conduct any required remediation of the Property.

6. Taxes

The FARMER shall pay all properly assessed real or personal property taxes on the properties subject to this agreement no later than the due date assessed by the town. Failure of the FARMER to pay the duly assessed personal or property taxes shall be good cause to terminate this agreement.

7. Public Use

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

8. Liability and Safety

a. The FARMER shall indemnify the DEPARTMENT and hold the DEPARTMENT harmless from and against any and all injuries to persons (including the FARMER or his or her 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 FARMER shall obtain and maintain, and require any subcontractor to 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. Such certificate of insurance shall be incorporated by reference into this Agreement.

c. The DEPARTMENT shall not be liable or responsible in any way for property damage, including but not limited to any fire damage, caused as a result of activities by the FARMER hereby permitted.

d. The DEPARTMENT shall not be liable or responsible for destruction of agricultural crops, equipment, or machinery resulting from any cause.

9. Inspection of Premises

The FARMER agrees that the DEPARTMENT or its duly authorized agent, at any time, may examine and inspect any and all properties included in this Agreement.

10. Non-conformance Termination:

The FARMER shall comply with all applicable State and local laws, zoning ordinances, rules and regulations in connection with the exercise of terms under this Agreement. Non-conformance shall be grounds for termination of this agreement by the DEPARTMENT.

11. Transferability

This agreement is not transferable.

12. Compliance by Farmer with the Laws and Regulations: Equal Employment Opportunity

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

During the term of this Agreement, the FARMER 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 FARMER 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 FARMER further agree 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.

13. Personnel.

The performance of services shall be carried out by the FARMER or his/her employees. 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.

To the extent the FARMER is subject to the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*"), FARMER shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the FARMER proposes to undertake pursuant to this Agreement. The DEPARTMENT shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for FARMER, or any subcontractor or employee of FARMER, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of this Agreement. FARMER shall provide DEPARTMENT with a certificate documenting coverage for any application Workers' Compensation coverage.

The FARMER 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.

14. Farmer's Relations with the State

In the performance of this agreement the FARMER is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the FARMER nor his/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

The FARMER 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.

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 at the addresses set forth above.

18. 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 Executive Council of the State of New Hampshire.-

19. 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.

20. 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.

21. 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 duplicate)

The State of New Hampshire, acting through its Fish and Game Department on this day 20th of July, 2023.

Scott R. Mason, Executive Director

STATE OF NEW HAMPSHIRE
COUNTY OF Merrimack

Personally appeared before me on this 20th day of July, 2023 Scott R. Mason, 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.

Tanya L. Haskell
Notary Public/Justice of the Peace [seal]
My Commission Expires: 10/21/25

TANYA L. HASKELL
STATE OF
-MY-
COMMISSION
EXPIRES
OCTOBER 21,
2025
NEW HAMPSHIRE
NOTARY PUBLIC

Mac's Happy Acres.
[name of farmer]

STATE OF NEW HAMPSHIRE
COUNTY OF Sullivan

Jeffrey McNamara
I, hereby certify that [name(s)] personally appeared before me on this 16 day of June, 2023 and acknowledged the foregoing Agricultural Agreement.

MICHELLE MARSH
STATE OF
-MY-
COMMISSION
EXPIRES
JUNE 15, 2027
NEW HAMPSHIRE
NOTARY PUBLIC

Michelle Marsh
Notary Public/Justice of the Peace [seal]
My Commission Expires: 6-16-2027

Nathan McNamara
[name of farmer if more than one]

STATE OF NEW HAMPSHIRE
COUNTY OF Sullivan

Nathan McNamara
I, hereby certify that [name(s)] personally appeared before me on this 16 day of June, 2023 and acknowledged the foregoing Agricultural Agreement.

MICHELLE MARSH
STATE OF
-MY-
COMMISSION
EXPIRES
JUNE 15, 2027
NEW HAMPSHIRE
NOTARY PUBLIC

Michelle Marsh
Notary Public/Justice of the Peace [seal]
My Commission Expires: 6-16-2027

APPROVALS:

Approved by the Department of Justice as to form, substance, and execution on this 13th day of September, 2023;

Assistant Attorney General

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 Lease.

Mac's Happy Acres, LLC
259 River Road
Plainfield, NH 03781

LLC Certification of Authority

I, Jeffrey McNamara, hereby certify that I am a Member of Mac's Happy Acres, LLC, a limited liability company under RSA 304-C and that Nathan McNamara is also a Member of Mac's Happy acres, LLC and that I certify that he/she is authorized to bind the LLC.

I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that I currently occupy the position indicated and that I have full authority to bind the LLC.

Signed: _____ Signed: _____

Date: 6/16/2023 Date: 6/16/2023

State of New Hampshire, County of Sullivan

On this the 16 day of June 2023, before me Michelle Marsh, the undersigned officer, personally appeared Jeffrey + Nathan McNamara known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.

MICHELLE MARSH
STATE OF NEW HAMPSHIRE
MY COMMISSION EXPIRES JUNE 15, 2027
NOTARY PUBLIC

Michelle Marsh

State of New Hampshire

Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that MAC'S HAPPY ACRES LLC is a New Hampshire Limited Liability Company registered to transact business in New Hampshire on January 12, 2022. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: **889378**

Certificate Number: **0006217640**

IN TESTIMONY WHEREOF,
I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 27th day of April A.D. 2023.

David M. Scanlan
Secretary of State

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 06/13/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
ANDREW J JELLIE
PO BOX 365
CHARLESTOWN, NH 03603

CONTACT NAME:
PHONE (A/C, No, Ext): 603-826-4830 FAX (A/C, No): 603-826-4514
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : FARM FAMILY CASUALTY INS., CO.	
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
MACS HAPPY ACRES LLC
259 RIVER RD
PLAINFIELD, NH 03781

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	COMMERCIAL GENERAL LIABILITY	X		2801G3027	01/18/2023	01/18/2024	EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE / OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
	X SPECIAL FARM						MED EXP (Any one person)	$ 5,000
	PACKAGE						PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	POLICY / PRO-JECT / LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N	N/A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

FARMING

NH FISH & GAME DEPARTMENT IS LISTED AS ADDITIONAL INSURED.

CERTIFICATE HOLDER

NH FISH AND GAME DEPARTMENT
11 HAZEN DR
CONCORD, NH 03301

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Andy Jellie/JA

© 1988-2014 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD