

OUTCOME-BASED FORESTRY AGREEMENT 2023-1

This agreement (“Agreement”) by and between the **MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY, BUREAU OF PARKS AND LANDS**, (the “Participant”) and the **MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY, MAINE FOREST SERVICE** (the “MFS”) is entered into pursuant to 12 M.R.S. §8003(3)(Q) and in accordance with MFS Forest Policy and Management Division procedures.

Whereas, the Maine Legislature has defined outcome-based forestry as “a science-based, voluntary process to achieve agreed-upon economic, environmental and social outcomes in the State’s forests, as an alternative to prescriptive regulation, demonstrating measurable progress towards achieving statewide sustainability goals and allowing landowners to use creativity and flexibility to achieve objectives, while providing for the conservation of public trust resources and the public values of forests:”, 12 M.R.S. §8868(2-B); and

Whereas, in its 1999 State of the Forest report, the MFS stated that the state “reached the limits of what a command-and-control regulatory framework has to offer [with respect to regulation of forest practices]. Command and control regulation has many limitations and may result in unintended consequences, such as forest fragmentation and premature harvesting to recover equity in a forest investment. The Maine Forest Service believes that the state should begin to focus more on outcome-based forestry regulation, on the premise that this approach will do more to promote, stimulate and reward excellent forest management yet still provide a baseline of regulatory protection for critical public resources;” and

Whereas, the Maine Legislature has endorsed outcome-based forestry and directed MFS to pursue outcome-based forestry agreements consistent with legislative direction; and

Whereas, upon review of information supplied by and activities conducted on land of the Participant, the panel of technical experts advising MFS on outcome-based forestry finds that the Participant has demonstrated that its forest management practices are protecting public values for the long term; and,

Whereas outcome-based forestry is intended to be a long-term approach to ensuring the sustainable management of Maine’s forests;

Now therefore, the Participant and MFS agree as follows:

1. **Authority:** Pursuant to 12 M.R.S. Chapters 801 and 805, subchapter 3-A, the MFS has regulatory authority over the activities described herein.
2. **Partner to this Agreement:** The Participant is a landowner and involved in forest management in the State of Maine. The Participant’s primary office is located in Augusta, Maine.

3. **Location:** The Participant manages approximately 640,000 forested acres in the state of Maine.
4. **Application of the Agreement & Forest Management Plan:** This Agreement applies to all forest management activities on lands in Maine managed by the participant (the "Property"). The Bureau of Parks and Lands Integrated Resource Policy dated December 18, 2000, as amended March 7, 2007, and supporting unit management plans are incorporated in this Agreement by reference, as they will guide the Participant in its activities on the Property. The Participant's Integrated Resource Policy outlines policies by which it will manage the Property and target harvest levels by species group. The Integrated Resource Policy and supporting unit management plans will be updated and revised from time to time at the discretion of the Participant's Director to reflect substantive changes.
5. **Interpretation of this Agreement:** In the context of this Agreement, the use of terms including, but not limited to, "maximize," "minimize," and "optimize," and other similar terms are understood to mean that the Participant will take reasonable measures to achieve the specific outcomes identified.
6. **Panel of Technical Experts:** As required by 12 M.R.S. §8869(3-A); the Governor of Maine has established a panel of technical experts (the "Panel") to work with the Director of the MFS to implement, monitor and assess the results of outcome-based forestry agreements. The makeup of the Panel may change from time to time at the discretion of the Governor of Maine. Present membership on the Panel includes:
 - a. Michael Dann, Forester
 - b. Barry Burgason, Certified Wildlife Biologist
 - c. Maxwell L. McCormack, Jr., Forester, Research Professor Emeritus of Forest Resources, University of Maine
 - d. Kyle Burdick, Forester, Vice President, Baskahegan Company
 - e. Keith Kanoti, Forester, University Forest Manager, University of Maine
 - f. David Struble, Forester, State Entomologist (retired), Maine Forest Service
 - g. Peter Triandafillou, Forester, Vice President of Woodlands (retired), Huber Resources.

7. **Desired Outcomes of Outcome-based Forestry:**

- a. Achievement of the state's forest sustainability goals and outcomes for soil productivity; water quality, wetlands and riparian zones; timber supply and quality; aesthetic impacts of timber harvesting; biological diversity; public accountability; economic and social considerations; and forest health (see Appendix 1).
- b. Optimize the timber volume that can be sustainably harvested to best match market conditions and balance sustainability and other management restrictions by relying on a variety of management techniques and silvicultural treatments.
- c. Apply traditional and innovative forest management techniques that respect natural conditions without limiting management activities in adjacent stands.
- d. Improve timber growth, sustain forest health, and reduce mortality through active forest management which maintains or improves regeneration success and growth of desirable species and reduces the forest's susceptibility to disease, insect infestations, and damage caused by fire, wind, and other factors.
- e. Enhance the quality and value of the forest through effective implementation of forest management designed to increase growth rates and improve standing timber value.
- f. Maintain or improve wildlife habitat for species present on the Participant's timberlands.
- g. Provide opportunities to enhance economic development in the Participant's area of operations, consistent with the Participant's own economic success, including but not limited to direct and indirect employment, forest products sales, and recreational opportunities.

8. **Exemptions from certain requirements of 12 M.R.S. §8869 and §8883-8, MFS Chapter 20 Rule, Forest Regeneration and Clearcutting Standards, and MFS Chapter 26 Rule, Forest Operations Notification Standards:** Provided that the Participant satisfies the outcomes and the commitments set forth in Section 7 and Section 10, respectively, of this Agreement, the Participant is exempt from the following requirements of law and rule:

- a. Chapter 10 Rule Sections 4.A. and 5. However, the Participant will not create clearcuts larger than 250 acres without securing express written approval from the MFS.

- b. 12 M.R.S. §8869 (2-A) and Chapter 20 Rule Sections 4.B.1 and 4.C.2. (clearcut separation zones).
 - c. 12 M.R.S. §8869 (3) and Chapter 20 Rule Section 4.C.1. (forest management plans for individual clearcuts larger than 20 acres).
 - d. 12 M.R.S. §8883-B (1) and Chapter 20 Rule Section 4.C.1.d and Chapter 26 Rule Section 3.B. (prior notification, submission of harvest plans to the MFS for individual clearcuts larger than 75 acres).
9. **Modifications to certain requirements of 12 M.R.S. §8883-B and MFS Chapter 26 Rule, Forest Operations Notification Standards:** The Participant may operate subject to the following modifications of law and rule:
- a. Chapter 26 Rule, Section 3. The Participant must file one harvest notification per township harvested per two years. The Participant is not required to file harvest notification amendments with the MFS. However, the Participant is required to internally maintain adequate documentation of harvest activities, by township or management unit, to permit harvest inspections by the MFS and to facilitate the work of the panel.
10. **Statutory and regulatory amendments:** MFS will communicate promptly any amendments to laws or rules that affect the operation of this agreement.
11. **Participant commitments:** The Participant agrees to and commits to the following as good faith demonstrations of its commitment to practice forestry in a manner that provides at least the equivalent forest and environmental protection provided by existing rules and any applicable local regulations:
- a. The Participant shall provide sufficient data to enable the panel to monitor progress toward achievement of the state's sustainability goals and outcomes (see Appendix 1).
 - b. The Participant must maintain certification status with a nationally recognized sustainable forest management certification program.
 - c. A member(s) of the panel or a mutually agreeable designee(s) shall be permitted to observe in any independent third-party certification review of the Participant's forest management practices, and provide their observations to the panel.
 - d. The Participant must list the Director of the MFS as a stakeholder to be contacted for any third-party forest certification audit. The Director of the MFS

will provide input to the independent third-party regarding the Participant's forest management practices on behalf of the panel and provide input to the Participant's Situational Advisory Committee.

- e. Per the understanding reached with the Legislature's Agriculture, Conservation and Forestry Committee during its deliberations on LD 1847, which was enacted as Public Law 2013, Chapter 542, An Act to Clarify Outcome-Based Forestry, the Participant shall invite, annually, members of the Committee to review the Participant's operations and management in the field upon request of the Committee. This invitation shall be sent to the committee analyst, copy to the MFS Director between January 1st and March 31st.
- f. The Participant will provide documentation of attainment of the desired outcomes described in Section 7 of this Agreement using the metrics outlined in Section g below.
- g. The Participant will annually report to the MFS information about its harvest management and silvicultural metrics including, but not limited to:

STATUS/TREND METRICS

- i. Acreage and changes in forest inventory by major standing group: spruce-fir, cedar, hardwood, poplar, other softwood, and white pine.
- ii. Acreage of forest type by species group and development stage distribution (acres by development stage within each broad cover type class by management unit). Development stages to be reported are: regeneration, sapling, poletimber, and sawtimber.
- iii. Acres of currently designated clearcut separation zones, organized by management unit and timeout year.
- iv. Acres and changes in silvicultural investments, including, but not limited to, planting, precommercial thinning and competition control, organized by individual township.
- v. Road density (percent of acreage of ownership by management unit).

PLANNING METRICS

- vi. Estimated harvest acreage summarized for the coming five-year period by silvicultural prescription. For example: overstory removal, commercial thinning, shelterwood, clearcut, seed tree, and selection

- vii. A specific annual plan that describes the planned harvest acreage for the upcoming year in each township, or management unit, by prescription, with clearcuts exceeding 250 acres individually mapped, identified and approved by the Panel. The harvesting plan must be keyed to forest type maps.

ACCOMPLISHMENT METRICS

- viii. Annual harvest summary for the previous fiscal year, provided within 60 days of year-end, specifically:

1. Summary of the area harvested by prescription (actual versus planned);
2. Total Volume harvested by species group; and
3. Average overstory removal and clearcut harvest sizes.

Harvest outcomes must be keyed to forest type maps. Information will be made available for sites visited by the Panel. The Participant will continue to provide information on acres harvested by harvest type, by township, as required on "Confidential Report of Timber Harvest." Harvest summary should also be compared to predicted growth for the period.

- ix. Annual regeneration report for clearcuts:

1. Acres planted by species and site class; and
2. Acres closed out as naturally regenerated.

Regeneration report must be organized by individual township. Where available, information will be provided for sites where the Panel conducts field verifications.

- h. The Participant must provide a copy or copies of its policies addressing wildlife habitat features including, but not limited to, smooth-barked beech trees and stands, late successional forest, snags, and vernal pools.
- i. A Maine Licensed Forester in the employ of the Participant must review and approve the landowner's Forest Management Plan.
- j. The Participant must document the presence of available working knowledge in specific silvicultural technologies that involve the use of pesticides.

- k. Harvests will be laid out with consideration for aesthetics in areas of moderate and higher visual sensitivity as determined by the Participant. The Participant's forest management staff will be proficient in managing and receiving periodic training for aesthetics.
- l. The Participant will prepare an annual report regarding its efforts and any active management undertaken to maintain and protect important wildlife habitat.
- m. The Participant will prepare an annual report on its efforts to support economic development in its area of operations.
- n. The Participant will submit annually to the expert panel a summary (e.g. in a table) of its pesticide application treatments for the previous year, which shall include the following information:
 - i. Total acres and number of spray blocks by prescription
 - ii. Information for each prescription shall include:
 - 1. Silvicultural objective (such as site preparation or release)
 - 2. Target species
 - 3. Natural or planted
 - 4. Type of application (aerial or ground)
 - 5. Product name
 - 6. Active ingredient
 - 7. Pounds of active ingredient per acre treated
 - 8. Total spray volume applied per acre treated
 - 9. Adjuvant added to spray mix (if any)
- o. The Participant must provide a copy or copies of its policies that address climate change adaptation and mitigation strategies, including identifying climate change risks to forests and forest operations and identifying management opportunities that enhance forest climate resilience.
- p. The Participant must identify any public information or claims regarding forest carbon budgeting for the ownership, as well as any private sale of carbon credits.

- q. The Participant will accommodate other reasonable requests for information made by the MFS and the Panel as mutually agreed upon.
12. **Reimbursement:** The Participant will pay for reasonable expenditures incurred by MFS and the panel that result from its participation in outcome-based forestry, including, but not limited to, mileage reimbursement, meals, and lodging.
13. **Duration of this Agreement:** This agreement takes effect on 06 December 2023 and terminates on 05 December 2028. It is renewable at any time by mutual, written agreement between the MFS and the Participant.
14. **Sale and Purchase of Lands:**
- a. The Participant will be permitted to add any lands their ownership group purchases to this agreement, provided that the Participant promptly include those same additional lands in its forest certification program and its management strategy and plans, and provided the Participant manages the lands to the same standards as the rest of its ownership. Similarly, this agreement does not prohibit the Participant from selling some or its entire ownership group lands to an unaffiliated third party.
 - b. Any lands sold would immediately, upon transaction close, be removed from governance under this agreement and would be required to fully comply with all forest practice regulations for all subsequent activity. Any remaining lands managed by the Participant would continue to be governed by this agreement provided the lands remain credibly third-party certified and managed according to the strategy outlined in the management plan.
 - c. The Participant must notify the MFS of any sales or purchase of land covered under this section within 30 days of closing.
15. **Amendments:** Entire Agreement: This Agreement may be amended at any time by mutual, written consent of the parties. This agreement constitutes the entire agreement between or among the parties hereto with respect to the subject matter hereof, and supersedes all prior oral or written expressions, agreements, or understandings with respect thereto.
16. **Termination of this agreement:** This Agreement may be terminated prior to the expiration of the term:
- a. By mutual agreement of the parties.


- b. By the Participant, effective upon at least ninety (90) days prior to written notice to the MFS.
- c. By the MFS effective upon at least ninety (90) days prior written notice to the Participant in the event that the Participant has materially breached any provision of this agreement and has failed to cure such breach to the reasonable satisfaction of the MFS within such ninety (90) day period or, in the event that such a cure cannot reasonable be effectuated within such ninety (90) day period, such longer period as may reasonably be required, provided that the Participant continues to diligently pursue such cure.
- d. The Parties agree and acknowledge that the termination of this Agreement shall result only in the prospective loss to the Participant and the Property of the exemptions set forth in Section 8 hereof, and that any actions, omissions, conditions or circumstances arising or prevailing prior to such termination or expiration shall be covered by the exemptions provided pursuant to Section 8 hereof.

17. **Official Record:** This agreement shall not be effective nor become part of the official record unless and until it is signed by the Director of the Maine Forest Service.

(Signatures on next page)

IN WITNESS WHEREOF, the parties hereto have executed this Outcome-based Forestry Agreement consisting of thirteen (13) pages, including the appendix.

Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands

By: 
Andy Cutko

Date: 12/21/23

Director, Bureau of Parks and Lands

Department of Agriculture, Conservation and Forestry, Maine Forest Service

By: 
Patty Cormier

Date: 12/21/23

Director, Maine Forest Service

APPENDIX. State of Maine Criteria, Goals, and Outcomes of Forest Sustainability.

- I. **Criterion 1: Soil productivity**
 - a. **Goal: Maintain site productivity**
 - b. **Outcome: Site productivity will be maintained or improved, and the area in roads and yards will be minimized.**

- II. **Criterion 2: Water quality, wetlands and riparian zones**
 - a. **Goal: Maintain or improve the chemical, physical, and biological integrity of aquatic systems in forested areas and riparian forests.**
 - b. **Outcomes: Forest management in shoreland areas that protects water quality and aquatic and riparian forest biodiversity.**

- III. **Criterion 3: Timber supply and quality**
 - a. **Goal: Improve the quantity and quality of future timber supply when appropriate.**
 - b. **Outcome: The management strategy and harvest levels for the lands will increase the quality and quantity of the forest resource as appropriate in the medium and long term (20-50 years).**

- IV. **Criterion 4: Aesthetic impacts of timber harvesting**
 - a. **Goal: Minimize adverse visual impacts of timber harvesting.**
 - b. **Outcome:**
 - 1. **The landowner will minimize visual impacts of harvests, roads, landings, and other management activities.**
 - 2. **The landowner's planning staff is trained in and applies principles of visual quality management.**
 - 3. **The landowner identifies areas with high and moderate visual sensitivity and takes appropriate measures to avoid significant visual impacts whenever necessary.**

- V. **Criterion 5: Biological diversity**
 - a. **Goal: Maintain biological diversity with healthy population of native flora and fauna, forest communities and ecosystems.**
 - b. **Outcome:**

1. Management addresses the habitat needs of the full range of species present.
2. Maintain or manage for acreage in the late successional (LS) condition through management and protection.
3. Maintain a reasonable component of standing dead trees, live cull trees, and down logs across the landscape (not necessarily on every acre).
4. High conservation Value Forests are properly identified, and values are protected on the ownership.
5. Rare, threatened, and endangered species habitats are properly identified, and the land is managed to protect the habitats and occurrences of rare, threatened, and endangered species.
6. Important plant communities are properly identified, and the land is managed to protect important plant communities.
7. Deer wintering areas are properly identified and managed to maintain or improve their value as winter cover for deer.

VI. Criterion 6: Public accountability

- a. Goal: Demonstrate sustainable forestry and build public confidence that forest management is protecting public values for the long-term.
- b. Outcome:
 1. A Licensed Forester within the company will review and approve the landowner's Forest Management Plan.
 2. The landowner will employ Licensed Foresters who are actively involved in the management, planning, and supervision of operations on the land.
 3. All timber harvesting contractors will employ at least one person possessing Certified Logging Professional or Qualified Logging Professional certifications or an equivalent of.

VII. Criterion 7: Economic considerations

- a. Goal: Optimize benefits to the local and regional economy while also achieving the goals specified for the other criteria, to the extent allowed by market conditions
- b. Outcome: The landowner's management activities support as vibrant and diverse a forest products industry as practicable including loggers, truckers, and production facilities.

VIII. Criterion 8: Social considerations

- a. Goal: The landowner supports the communities surrounding their lands and operations and, except where special circumstances dictate otherwise, the landowner continues to provide historic and traditional recreational opportunities that do not conflict with the landowner's objectives or values.
- b. Outcome: The landowner provides opportunities for appropriate historic and traditional recreational uses that do not conflict with the landowner's values or objectives.

IX. Criterion 9: Forest health

- a. Goal: The forest is healthy and vigorous with no serious insect infestations or disease outbreaks.
- b. Outcome: The landowner does what is prudent and practicable to monitor for, and prevent and control, insects, disease, and fire consistent with good practice in the industry and assists MFS in forest health monitoring programs on the ownership.

