



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
MAINE FOREST SERVICE
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PAUL R. LePAGE
GOVERNOR

To: Foresters who have worked on Vinalhaven properties
From: Maine Forest Service
Date: 14 December 2016
RE: Review of Tree Growth Tax Law properties on Vinalhaven

Dear Forester:

As you are aware, the Maine Forest Service (MFS) conducted a review of properties enrolled in the Tree Growth Tax Law program (TGTL) on Vinalhaven in 2016. This letter is to update you on our findings, broadly as well as specifically in relation to the role of foresters who work with landowners enrolled in the TGTL.

Please note, the purpose of this letter is to provide a general overview of the Tree Growth Tax Law. It is not intended to provide legal advice for specific situations. If you have any questions about your legal obligations, you should consult with a qualified attorney.

When we began our review earlier this year, there were 28 parcels enrolled in TGTL. During the course of our review of forest management plans, 11 parcels either were transferred to the Open Space program or withdrawn from TGTL. Our field review in September addressed the remaining 17 parcels.

Our key finding is that of the 17 parcels currently enrolled in TGTL on Vinalhaven, MFS believes that the owners of 10 parcels should give serious consideration to transferring their parcels to the Open Space program or withdrawing from TGTL. We are concerned that a lack of active, commercial forest management activity on these parcels, as demonstrated in Tree Growth documentation and in the field, indicates that the landowners' objectives may not be consistent with the program's requirement for enrolled forest land to be used "primarily for growth of trees to be harvested for commercial use."

As you are aware, forest management on Vinalhaven, as with other islands and coastal areas, presents an array of challenges in terms of historical land use (past farming and resulting forest structure and composition); forest conditions (especially poor soils, insects and diseases, abiotic factors including high winds, ice, and salt spray); and economic conditions (lack of island markets for wood, transportation costs to markets off-island). Nonetheless, landowners enrolled in TGTL can and should make a good-faith effort to "regenerate, improve, and harvest timber" as the program requires.

We understand that licensed foresters take very seriously their professional obligation to serve their clients and protect their interests. Also, foresters who write forest management plans for landowners are not always asked to participate in implementation of the plans, including harvesting. However, our review strongly indicates that licensed foresters are

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sometimes misapplying, miscommunicating, and/or in some cases fundamentally misconstruing the letter and/or intent of the Tree Growth Tax Law's requirements.

We found examples of each of the following issues in the Forest Management Plans we reviewed and in our subsequent field review:

1. Timber objectives must clearly be primary, as the TGTL requires. We found instances where a landowner's property ownership objectives cited multiple objectives with no indication that timber production was the primary objective. In other instances, timber was identified as the primary objective property-wide, but one or more stand descriptions and/or prescriptions at the stand or sub-stand level stated that objectives for smaller areas were primarily aesthetic, recreation, or wildlife-related.
 - All forested acres enrolled in TGTL must share the primary objective of the growth and harvest of commercial forest products. Acres and areas where harvesting will be excluded or severely restricted to accomplish non-timber objectives should not be enrolled in Tree Growth.
2. Forested acres must be capable of producing forest products. In stand descriptions and in our field review, we found stands which were described as too rocky or too wet to grow timber products which were included in Tree Growth acreages. In the field we observed rocky balds with minimal soil or exposed ledge, as well as scrub-shrub swamps with wet soils, neither of which are capable of growing more than scattered small trees, and indeed are sensitive areas where harvesting equipment would likely damage fragile soils and unique vegetation (Where one plan suggested harvest of ornamental materials, Christmas tree, or wreath greens in such areas, there was no evidence of any such utilization.).
 - All forested acres enrolled in TGTL must be capable of growing commercial forest products. Nonproductive forest acres should be excluded.
3. Forested acres enrolled should be accessible for harvesting. We found instances of Tree Growth acres with extremely broken, rocky terrain and steep cliffs where it would be impossible for any type of machinery, draft animal, or other equipment to operate to extract forest products. We also found instances of very small areas surrounding residences, driveways and/or shorefronts where equipment similarly could not operate safely, but which were enrolled in Tree Growth.
 - Forested acres with inoperable/inaccessible terrain should be excluded from Tree Growth.
4. Forest management recommendations should clearly identify and describe harvest and other management activities and opportunities. We found numerous examples where prescriptions failed to specify, or failed entirely to identify, "activities to regenerate, harvest, and improve" forest stands as Tree Growth requires. We also found particular field conditions with significance for management decisions which were not identified or addressed. The nature of these situations spans a range of issues:
 - Stands which had or were described as having deteriorating forest health, and, currently or prospectively, widespread mortality, breakage or windthrow. However there was little or no mention of recommendations to salvage, remediate or improve these stands, or of lost timber volumes (e.g. of balsam fir or spruce, in some cases significant volumes).
 - Fully stocked stands with mature or at-risk timber, merchantable volumes and opportunities for stand improvement, yet with a "no-harvest" recommendation.

- Stand descriptions which identified as desirable long-term shifts in species composition and structure (e.g. from balsam fir to spruce and hardwoods), but did not provide any recommendations to achieve them.
 - Stand prescriptions for very light, small-scale harvests, with little indication of their severe operational and economic constraints (as evidenced in some instances by their non-implementation), how they might be accomplished in spite of those constraints, or alternative approaches.
 - Stand prescriptions which included vague, non-specific language that harvesting should be “considered” or undertaken “if desired.”
 - Stand prescriptions where no or only very broad timeframes for activities were identified.
 - Stands which had some cutting (of declining/dead fir) but wood was left on the ground.
 - Stands where regeneration of trees was clearly compromised by ferns and/or deer browse, without any indication of efforts to enhance regeneration (e.g. through planting and/or competition control).
 - Forest recommendations by licensed foresters should provide direct, specific, actionable information to accomplish timber management objectives, including proactive and timely measures to address regeneration, stand improvement, and harvesting of merchantable products. Failure to provide such recommendations can in some cases lead to poor implementation of silvicultural practices, or give landowners the false impression that custodial, reactive removal or clean-up of a few trees for aesthetic or recreational purposes meets the intent of Tree Growth. Even more, it can inaccurately lead landowners to conclude that doing nothing even over multiple planning cycles in declining, stagnant, or inadequately regenerated stands, is acceptable forest management.
5. Forest Management Plans must be certified by a licensed forester as having been followed, as well as updated, every ten years. We saw examples where past plans had been recertified by a licensed forester, despite little evidence in documentation or in the field that the previous plans’ recommendations had been accomplished. We saw examples of “updates” to forest management plans that consisted largely of a restatement of the previous plan’s unimplemented recommendations; or of an explanation of missed opportunities due to failure to implement and subsequent mortality; or (in one case) of a series of brief notes referencing the previous plan.
- Foresters recertifying an existing or expiring Forest Management Plan must assure themselves that its recommendations have been substantially followed, including if there has been a change in ownership. Plans with non-specific recommendations as addressed above present a particular challenge for a forester ethically to certify that a plan’s recommendations have been followed, potentially putting the landowner/client at risk.
 - Foresters updating an existing Forest Management Plan should provide a cohesive, identifiable document that:
 - identifies the new planning period,
 - incorporates relevant information from a previous plan directly, not primarily by reference,
 - documents accomplishments of past recommendations,

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- identifies current conditions, and,
- provides specific recommendations for the new planning period.

6. Timber harvesting of commercial forest products requires that a Forest Operations Notification (FON) be submitted to the Maine Forest Service. In a few cases, we reviewed plans that indicated a harvest had taken place during the previous planning period, and/or we found evidence of harvesting during our field review, yet there was no FON on file. Such notifications are required if commercial forest products are harvested, even if no money changes hands, or if the landowner pays the logger a service fee. In addition, the FON and the subsequent, required Landowner Report of Timber Harvesting provide important documentation of the landowner's efforts to follow their Forest Management Plans.

- A Forest Operations Notification must be filed with Maine Forest Service for all timber harvesting which yields commercial forest products.

Private, licensed foresters play an important role in assisting landowners in making informed decisions about their woodlands. Forest management on Vinalhaven clearly presents numerous challenges. The cumulative effect of these challenges has been to constrain opportunities for forest management and especially timber management. Where proactive, engaged landowners have been able to identify and successfully implement a long-term strategy to grow and harvest forest products on eligible forest acres, with the assistance of their foresters, Tree Growth is an appropriate program. Where landowners are unable or unwilling to commit to such efforts, their forested lands would more appropriately be reclassified or transferred to the Open Space program. While landowners clearly are the primary decision makers about their participation in Tree Growth, licensed foresters in their role as advisors and educators to their clients need to be very clear about the program's requirements.

Foresters also play a key role more broadly in recommending forest practices to their clients. The Tree Growth Tax Law does not dictate the timing, frequency, method, volume or value of forest harvests, instead leaving these management decisions to landowners and the licensed foresters who serve them. Nonetheless, harvesting recommendations should provide sufficient information for landowners to take action as described above. In addition, since Tree Growth's purpose is specifically to encourage such activity, two further considerations apply. First, where the management and harvesting of commercial forest products is planned that goes outside the norms of existing markets (especially for non-timber forest products), conventional/available equipment, or current technology, such management and harvest approaches should be demonstrated as being practicable as soon as possible (e.g. within one planning cycle, i.e. ten years). Second, forest harvesting should occur at a scale, in terms of volume and value, commensurate with the acres enrolled. Harvest scheduling should include all enrolled acres within reasonable timeframes, rather than perpetually deferring harvesting on some acres.

Please let us know if you have any questions regarding this review. We appreciate your attention to the issues raised in this letter.

Sincerely,



Doug Denico
Director, Maine Forest Service