

MAINE STATE LEGISLATURE

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Department of Attorney General

MEMORANDUM

CHIEF RANGER ✓ Cms

NATURALIST ✓

FORESTER ✓

BUSINESS MGR. ✓ GML

OTHER ✓

FILE ✓

To: Glenn Manuel
Kenneth Stratton
James E. Tierney

From: Paul Stern, Assistant Attorney General *B*

Date: October 1, 1985

Subject: Austin Carey Tree Farm Forestry Demonstration

The Authority has inquired whether a proposed forestry demonstration project involving a biomass harvesting operation is permissible on the Austin Carey Tree Farm in view of the restrictions in the deed to the Maine Forest Authority. It is my opinion that the demonstration project, as proposed, does fall within the parameters of the deed.

The Austin Carey Tree Farm, so-called, is a 200 acre parcel of land located in the Town of Harpswell. The parcel was received by the Maine Forest Authority by means of two deeds. The first, dated December 20, 1973, is from Virginia Hamilton Bailey and Patricia Hamilton Bousfield, which conveyed to the Maine Forest Authority a 5/6 in common and undivided interest. In this deed, the following restriction is present:

The fractional interest in the above-described property is being conveyed to the State of Maine (Maine Forest Authority) on condition that the land be used for a demonstration forest, wildlife management area or for other educational and scientific uses and this condition shall run with the land for a period of ninety-nine years from the date of this instrument. (Emphasis added.)

Clearly, therefore, it was the intent of the grantors to permit, indeed encourage, forestry demonstration activities on this parcel of land.

In a subsequent deed dated March 26, 1974, Virginia Hamilton Bailey conveyed to the Maine Forest Service the remaining 1/6 in common and undivided interest remaining in the Austin Carey parcel. The conveyance was without the restriction set out above in the 1973 deed.

The demonstration project proposed on the Austin Carey lot is described in a proposal which is attached hereto. The proposal, as written, calls for two phases: first, a biomass harvest demonstration scheduled for October 11 and 12, 1985 in a 33 acre area that is crosshatched on Map #1, which is attached to the proposal; and, second, a harvesting and thinning operation. The biomass operation, as written, also calls for a five acre area to be sprayed with herbicides and hand-planted in the summer of 1986. I have discussed the proposal with Kim Kolman, who has informed me that herbicide use is no longer part of the proposal, and the second phase is not being presented for approval to the Authority at this time. Mr. Kolman intends to study this second phase more thoroughly and, thereafter, report his findings and recommendations to the Authority. The biomass harvesting demonstration would be conducted under the supervision of the Department of Conservation, and the harvesting itself would be done by Howard's Pulp and Logging, Box 112, Curtis Road, Freeport, Maine 04032 (865-3290).

Biomass harvesting is a forestry method that is relatively new and, many hope, growing in acceptance and use. Use of the Austin Carey Tree Farm to demonstrate this forestry method, and its related technologies, in my opinion, is exactly the type of activity permitted by the covenants in the 1973 deed.

There is a question as to the location on the ground of the western boundary line abutting the lots, shown in red on Map #1. Since the biomass project will not be near this line, there should be no problem with this project.^{1/}

^{1/} There is a claim to a "town" road coming off of the right-of-way and going to the north. This is an issue that does not need to be resolved in the context of your consideration of this demonstration project. However, "down the road," it will be necessary for the Authority to consider it.

The Authority should consider a Release and Hold Harmless Agreement between the Department of Conservation and the Authority. It is my understanding that a large group of people, including school children, will be at this demonstration. Therefore, it is wise to assure the Authority will not be held liable for injury to any of them. The enclosed draft Agreement would protect the Authority while, at the same time, grant permission to the Department of Conservation to conduct the project. I recommend it to you.

If you have any questions, please call on me.

PS:msg
Enclosures

cc: Irvin C. Caverly, Director
Kim Kolman, Bureau of Forestry

A PROPOSAL FOR MANAGEMENT OF AUSTIN CARY TREE FARM

THE ISSUE:

The Austin Cary Tree Farm has value for scientific forest management, forest/water interrelation studies and recreation. This 200 acre ocean front property has stands of mixed growth, white pine plantations and old-field white pine stands. Two saltwater marshes are on the property and drain into Doughty's Cove.

Great potential exists for forestry demonstration within this tree farm. Its location, four miles south of Brunswick, and its proximity to the local school, offer excellent exposure. Some thinning and harvest cutting is necessary within the lot.

METHODS:

This fall a biomass harvest demonstration can be conducted in the area just north of the high school lot. This would be conducted under the supervision of the Department of Conservation and contracted out. The 33-acre location (see map #1) would show all phases of biomass harvesting systems, and would be a part of a statewide system of demonstration forests.

The second phase would be integrated harvest and thinning conducted in a thirty-five acre part of the lot and would be to the west of Doughty's Cove (see Map #2).

An estimate of volume harvested and potential income from these endeavors is:

35 Acre Cut (Map #2)

white pine	100 cords	300,000 bfm	\$24,000-\$30,000
red oak		20,000 bfm	\$ 3,000
hardwood	150 cords		\$ 1,050
spruce-fir	70 cords		\$ 850

33 Acre Cut (Map #1)

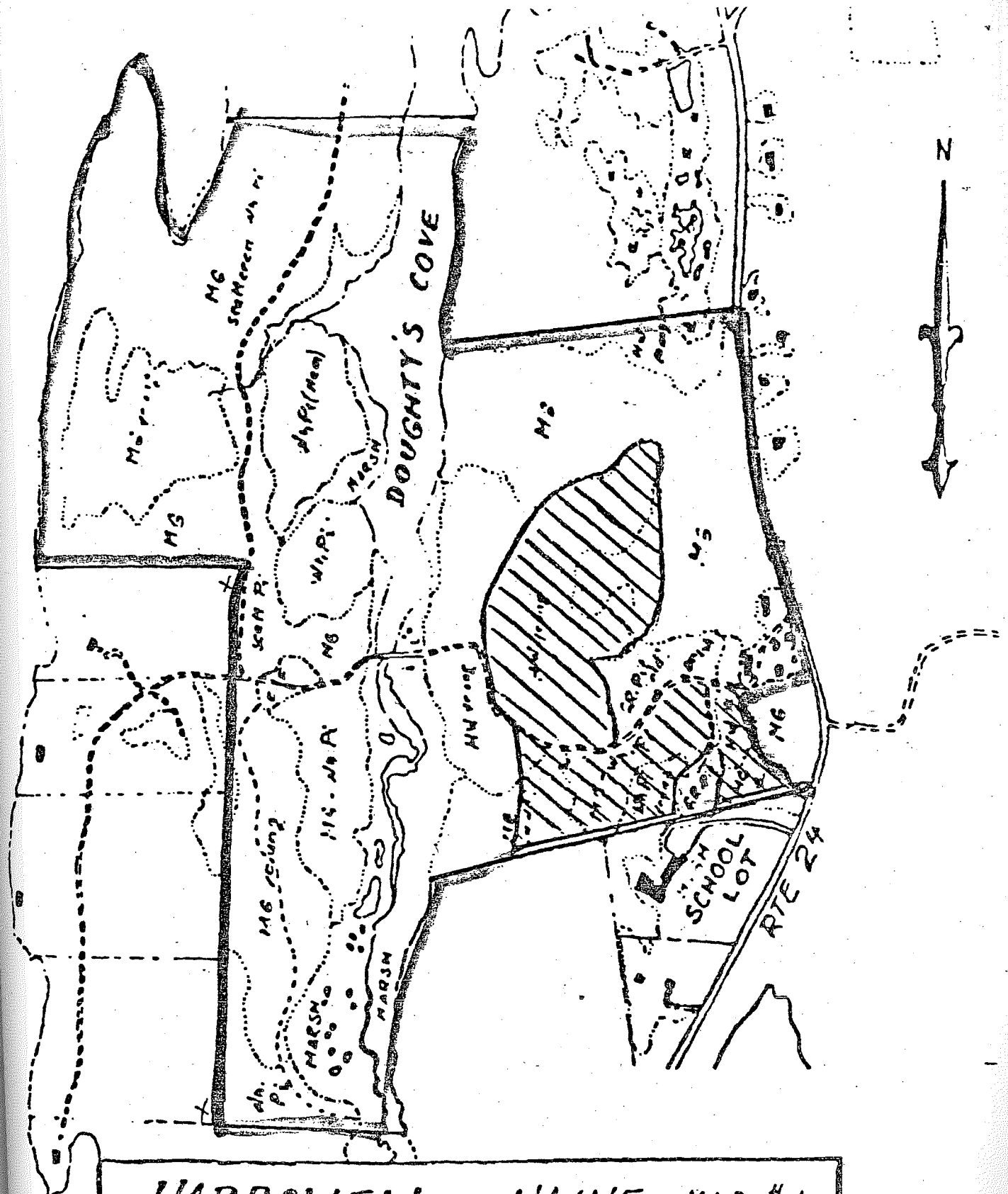
softwood	400 tons chips	15 cords	20,000 bfm	\$3,100
hardwood	650 tons chips	30 cords	20,000 bfm	\$3,650

Estimated range of income \$34,620-\$40,620

The biomass cutting will be mostly thinnings. An area of five acres will show species conversion. This area will be cleared and a new forest of pine planted. To complete the task, the 5 acres will be treated with a herbicide in June of 1986 and hand planted to pine the following August.

An estimate of cost for species conversion is:

planting stock	(8/86)	\$300
hand planting	(8/86)	\$225
herbicide spray treatment	(6/86)	<u>\$345</u>
		\$870



AGREEMENT

WHEREAS, the State of Maine Department of Conservation wishes to conduct a forestry demonstration project, in particular relating to biomass harvesting techniques, on the Austin Carey Tree Farm, in Harpswell, Maine, to occur on October 11 and 12, 1985;

WHEREAS, such a project falls within the conditions of the deed dated December 20, 1973, from Virginia Hamilton Bailey and Patricia Hamilton Bousfield to the Maine Forest Authority, which conditions the conveyance on the land being used for, inter alia, a demonstration forest; and

WHEREAS, the Baxter State Park Authority, which now has supervision and control over the Austin Carey Tree Farm, finds the proposed Department of Conservation project conforms with the purposes of the Austin Carey Tree Farm;

NOW, WHEREFORE, for good and valuable consideration extended by both parties, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Baxter State Park Authority grants a revokable license to the Department of Conservation to conduct a biomass harvesting demonstration on a 33 acre parcel of land, set forth in the crosshatched area on the map attached hereto as Exhibit A and incorporated herein, which demonstration will show all

phases of biomass harvesting systems. The demonstration project may occur during the daylight hours of October 11 and 12, 1985. A designated representative of the Baxter State Park Authority may be present during the demonstration, and shall have the authority to revoke this license and immediately cease any or all activities hereunder at any time.

2. The Department of Conservation shall have full responsibility and supervision for the biomass demonstration project to occur on the Austin Carey Tree Farm on October 11 and 12, 1985. The Department of Conservation releases, acquits, and forever discharges the Baxter State Park and the Baxter State Park Authority, and their employees, officers, agents, members, trustees, contractors, and representatives, of and from any and all actions, causes of action, claims or demands for damages, costs, expenses, loss of services, contribution, indemnification, interest or any other claims whatsoever under whatever theory relating to or in any way arising out of the use of the Austin Carey Tree Farm pursuant to this license. Further, the Department of Conservation hereby covenants not to sue the Baxter State Park or the Baxter State Park Authority, or their officers, agents, trustees, employees, officials, contractors, members or representatives, for any claims relating to or in any way arising out of the use of the Austin Carey Tree Farm pursuant to this license.

3. The Department of Conservation, further, covenants and agrees to indemnify, defend and save and hold harmless the Baxter State Park and the Baxter State Park Authority, and their officers, employees, trustees, agencies, members, representatives and contractors, of and from any and all actions, causes of action, claims or demands for damages, costs, expenses (including attorney's fees and court costs), loss of services, contribution, indemnification, interest and any other claims whatsoever under whatever theory in any way relating to or arising out of the use of the Austin Carey Tree Farm pursuant to this license.

The undersigned further state that they have carefully read the foregoing and note the contents thereof and execute the same.

Dated this _____ day of October, 1985.

WITNESS:

DEPARTMENT OF CONSERVATION

By: _____
Richard B. Anderson
Its Commissioner

BAXTER STATE PARK AUTHORITY

By: _____
Its