

## OUTCOME-BASED FORESTRY AGREEMENT #2023-1

This agreement ("Agreement") by and between IRVING WOODLANDS LLC (the "Participant"), the 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 has "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 the 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 the 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 St. John Plantation, Maine.
3. **Location:** The Participant manages approximately 1.28 million acres in the state of Maine.
4. **Application of this agreement; forest management plan:** This agreement applies to all forest management activities on lands owned by Allagash Timberlands, LP, Aroostook Timberlands, LLC, and Maine Woodlands Realty (as described in the Forest Management Plan) that are managed by the Participant in Maine (the "Property"). The J.D. Irving Northern Maine Woodlands 2017-2042 Forest Management Plan dated October 2018 (the "Forest Management Plan") is incorporated in this agreement by reference, as it will guide the Participant on its activities on the Property. The Participant's

Forest Management Plan has outlined targets for opening size, age class distribution, and harvest levels by silvicultural prescription. The Forest Management Plan will be updated and revised from time to time at the discretion of the Participant's Chief Forester to reflect substantive changes.

At the panel's request, the Forest Management Plan will address the following additional topics:

- A. 80-year forecast of harvest levels for spruce-fir and hardwood by economic zone;
  - B. 100-year forecast of spruce/fir harvest levels by forest stand type;
  - C. 100-year forecast of harvest area contributing to annual harvest by broad species groups; and,
  - D. Current and projected acreages by forest type over the planning period.
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 landowner 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 Maine Forest Service 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 is:
- A. Michael Dann, Forester;
  - B. Kyle Burdick, VP, Baskahegan Company
  - C. Barry Burgason, Certified Wildlife Biologist;
  - D. Maxwell L. McCormack, Jr., Research Professor Emeritus of Forest Resources, University of Maine;
  - E. Peter Triandafillou, retired VP Woodlands, Huber Resources.
  - F. Keith Kanoti, Manager, University Forest, University of Maine.
  - G. David B. Struble, retired State Entomologist, Maine Forest Service.
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).
  - B. Improve timber quality and quantity through active forest management while reducing the forest's susceptibility to disease, insect infestations and damage caused by fire, wind and climate change.
  - C. Increase reforestation success, growth rates, and/or timber quality on site-specific areas and on a landscape basis, using a variety of forest management techniques

that may include but are not limited to the establishment of planted areas, vegetation management, matching species to site, tree improvement techniques, fertilization, and pre-commercial and commercial thinning.

- D. Implement a credible program to maintain and protect adequate critical deer wintering habitat. The Participant shall confer with the Department of Inland Fisheries and Wildlife during the preparation and any necessary implementation of the program.
- E. 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.
- F. Continued certification to the standards of a nationally recognized sustainable forest management certification program.

8. **Exemptions from certain requirements of 12 M.R.S. §8869 and §8883-B, MFS**

**Chapter 20 Rule, Forest Regeneration and Clearcutting Standards, and MFS**

**Chapter 26 Rule, Forest Operations Notification Standards:** Provided that the Participant satisfies the conditions 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 20 Rule Sections 4.A. and 5. 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. §8883-8 (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 maintain internally adequate documentation of harvest activities by township to permit harvest inspections by the MFS and to facilitate 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).
- 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 any independent third-party certification review of the Participant's forest management practices and to provide their observations on the review 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 Forest Research 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 annually invite 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 1<sup>st</sup> and March 31<sup>st</sup>.
- F. The Participant will provide evidence of attainment of the desired outcomes described in Section 7 of this agreement through the use of 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:
  1. Trends in silvicultural investments, including, but not limited to precommercial thinning and competition control, organized by Forest Operations Notification number or where commercial harvesting has not taken place in a township, by individual township.
  2. Estimates of harvest acreage summarized for the coming five-year period by silvicultural prescription, including overstory removal, commercial thinning, shelterwood, and clearcut.
  3. A more specific annual harvesting plan that describes the planned acreage for harvest for the upcoming year in each township by prescription, with clearcuts exceeding 250 acres individually mapped and identified.
  4. Annual harvest summary for the previous year, provided within 60 days of year end, a summary of the area harvested over the previous year by prescription (actual versus plan) and total volumes. 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 the "Confidential Report of Timber Harvest."
5. Annual regeneration report for clearcuts. Acres planted by species and site class, organized by Forest Operations Notification number or where commercial harvesting has not occurred in a township, by individual township. Where available, information will be provided for sites where the panel conducts field verifications.
  6. Road density (miles per acre of ownership by township).
  7. Harvest opening size distribution (acres by opening size class for each harvest prescription by township).
  8. Development stage distribution (acres by development stage within each broad cover type class by township). Development stages to be reported are: regeneration, sapling, young, immature, mature, and overmature.
  9. Broad stand type distribution by economic zone. Stand types to be reported are softwood, mixed wood, hardwood, precommercial thinning, planted stands, young natural regeneration, and non-forest.
- H. The Participant will prepare and submit a report of the average clearcut size and total clearcut areas on an annual basis.
  - I. The Participant will 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.
  - J. A Maine Licensed Forester in the employ of the Participant will review and approve the landowner's Forest Management Plan.
  - K. The Participant will measure regeneration success on clearcuts, the results of which shall be made available for inspection by the MFS and the panel. In cases where regeneration is found to be inadequate, the Participant will implement a reforestation strategy in a timely fashion.
  - L. Harvests will be laid out with consideration for visual 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 receive periodic training for visual aesthetics.
  - M. The Participant will prepare an annual report regarding its efforts and any active management undertaken to maintain and protect critical deer wintering habitat.
  - 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:
    1. Total acres and number of spray blocks by prescription
    2. Information for each prescription shall include:
      - i. Silvicultural objective (such as site preparation or release)
      - ii. Target species

- iii. Natural or planted
  - iv. Type of application (aerial or ground)
  - v. Product name
  - vi. Active ingredient
  - vii. Pounds of active ingredient per acre treated
  - viii. Total spray volume applied per acre treated
  - ix. 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. 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 includes 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
- B. does not prohibit the Participant from selling some or its entire ownership group lands to an unaffiliated third party.
- C. Any lands sold would immediately upon transaction closing be removed from governance under this agreement and would be required to fully comply with all forest practices 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.
- D. The Participant must notify the MFS of any sales or purchases of land covered under this section within 30 days of closing.

**13. Anti-trust:**

- A. All meetings will be conducted in compliance with state and federal anti-trust laws and regulations.
- B. Panel members will recuse themselves from participating in meetings or other panel activities when necessary to assure compliance.

**14. Confidentiality:**

- A. The parties recognize that portions of documents and other information that the Participant may be required, or may elect, to provide or make available to the MFS or the panel (irrespective of the form or manner in which such information is provided or made available) pursuant to or in connection with this agreement may

contain information that constitutes a trade secret (as defined in 10 M.R.S. §1542 (4)) or proprietary information (as defined in 12 M.R.S. §8869 (13)), the public disclosure of which, or the use of which, other than for the express purposes set forth in this agreement could result in competitive harm and/or economic loss to the Participant or its subsidiaries and affiliates.

- B. The parties also recognize that pursuant to the Maine Freedom of Access Act ("FOAA"), the MFS, as a division of an agency of the state of Maine, has an obligation to make records in its possession available to members of the public, except in limited and defined circumstances. 1 M.R.S. §402 (3) and §408-A. Some of those exceptions may apply to documents and other information provided or made available by the Participant to the MFS or the panel.
- C. Specifically, 1 M.R.S. §402(3)(A) exempts from disclosure "[r]ecords that have been designated confidential by statute." Two statutes may apply to information the Participant provides or makes available pursuant to this agreement and may exempt some information from disclosure under the FOAA.

- D. 10 M.R.S. §1542(4) designates certain information as trade secrets and not subject to disclosure by governmental subdivisions or agencies. Maine statute defines a trade secret as follows:

1. "Trade secret" means information, including, but not limited to, a formula, pattern, compilation, program, device, method, technique or process, that:
  - i. Derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means.
2. by other persons who can obtain economic value from its disclosure or use; and
  - i. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

- E. In addition, 12 M.R.S. §8869 (13) provides:

Confidential information. Information provided to the bureau<sup>1</sup> voluntarily or to fulfill reporting requirements for the purposes of establishing and monitoring outcome-based forestry areas, as created pursuant to section 8003, subsection 3, paragraph Q, is public unless the person to whom the information belongs or pertains requests that it be designated as confidential, and the bureau has determined it contains proprietary information. For the purposes of this subsection, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the person submitting the information and would make available information not otherwise publicly available. The bureau, working with the landowner and the panel of technical experts appointed under subsection 3-A, may publish reports as long as those reports do not reveal confidential information.

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<sup>1</sup> "Bureau of Forestry" and "bureau" are statutory references to the Maine Forest Service.

- F. Therefore, if the Participant believes that information it is providing to the MFS or the panel "voluntarily or to fulfill reporting requirements for the purposes of establishing and monitoring outcome-based forest policy areas," is "proprietary information" as defined in 12 M.R.S. §8869 (13), it must request that the information be designated as confidential by the MFS. If the MFS determines that the information being provided contains "proprietary information," the MFS will designate that information as confidential. The MFS will notify the Participant whether the information has been designated as confidential or not within a reasonable period of time.
  - G. Notwithstanding the foregoing, the parties agree and acknowledge that the information listed or described on Schedule A to this Agreement shall be treated as having been designated by the MFS as proprietary and confidential without the requirement of a review on a case-by-case basis.
  - H. If the MFS receives a request for information under the FOAA that it has designated as confidential, it will notify the Participant of that request within a reasonable amount of time. The MFS will also notify the Participant if it plans to disclose the information or deny the request.
  - I. The Participant may require any panel member participating in the forest management certification audit to sign a confidentiality agreement. This agreement must be similar in scope and content to any confidentiality agreement required by the Participant of the auditor and/or any other participants in the audit. Information designated hereunder as confidential or proprietary shall not be made available to any panel member who has not executed such a confidentiality agreement.
  - J. The parties recognize that the final determination about whether information is exempt from disclosure under the FOAA rests exclusively with Maine's courts. The parties also recognize that the MFS is bound by any decision rendered by a Maine court and that the MFS will comply with any final decision issued by a Maine court. The MFS reserves the right to appeal a decision issued by a Maine court if it determines in good faith that the decision contains an erroneous interpretation of the FOAA. 10 M.R.S. §1542(4) or 12 M.R.S. §8869 (13). The Participant also remains free to exercise its legal rights, including any appeal rights it might have, regarding any decision issued by a Maine court.
15. **Representations and Warranties:** The MFS hereby represents and warrants to the Participant that as contemplated by 12 MRS §8003 (3)(Q), after giving effect to this agreement, the MFS will not have designated more than six (6) outcome-based forestry agreement areas.
16. **Reimbursement:** The Participant will pay for reasonable expenditures incurred by MFS and the panel that result from its participation in the Participant's outcome-based forestry program, including but not limited to, mileage reimbursement, meals, and lodging.
17. **Duration of this agreement:** This agreement takes effect on 01 December 2023 and terminates on 30 November 2028. It is renewable at any time by mutual, written agreement between the MFS and the Participant.



18. **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 any and all prior oral or written expressions, agreements or understandings with respect thereto.

19. **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 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 cure cannot reasonably 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.

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 the modifications set forth in Section 9 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 and the modifications provided pursuant to Section 9 hereof.

20. **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.

IN WITNESS WHEREOF, the parties hereto have executed this Outcome-based Forestry Agreement consisting of 13 pages, including Schedule A and the Appendix.

Irving Woodlands LLC



By:   
James D. Irving  
Co-Chief Executive Officer  
J.D. Irving, Limited

Date: Dec. 20 2023

Maine Department of Agriculture, Conservation & Forestry, Maine Forest Service

By:   
Patty Cormier  
Director, Maine Forest Service

Date: 12/21/2023

## **Schedule A List of Proprietary and Confidential Information**

The Participant has requested and the Director of the Maine Forest Service has determined that the following information which may be provided to the Panel is either considered confidential or proprietary information and must not be further circulated.

1. Annual Reporting Metrics that are currently provided to the MFS in the landowner reports of timber harvesting activities (confidential under 12 M.R.S. §8885 (4)).  
Exception: Annual reporting on trends in silvicultural investments is not confidential by agreement of the Participant.
2. Maine management plan information that is not part of the annual Irving Woodlands Public Summary, such as:
  - a. Information regarding quantity and quality of the timber resource;
  - b. Information regarding sustainable and planned harvest levels; and,
  - c. Information regarding forest inventory and/or cover type and/or area distribution (confidential under 36 M.R.S. §579),
3. Employee or contractor, supplier or customer lists or employee or contractor specific information (proprietary information).
4. Pay rate and/or cost information (proprietary information).

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

- 1. 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\*
- 2. 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 protects water quality and aquatic and riparian forest biodiversity.
- 3. 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).
- 4. Criterion 4: Aesthetic impacts of timber harvesting**
  - a. Goal: Minimize adverse visual impacts of timber harvesting.
  - b. Outcomes:
    1. The landowner will minimize visual impacts of harvests, roads, landings and other management activities.
    2. The landowner's planning staff are trained in and apply 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.
- 5. Criterion 5: Biological diversity**
  - a. Goal: Maintain biological diversity with healthy populations of native flora and fauna, forest communities and ecosystems.
  - b. Outcomes:
    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.

6. 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. Outcomes:

1. The landowner will maintain independent 3<sup>rd</sup> party certification with a nationally recognized sustainable forestry management certification system without major, unresolved non-conformances on managed lands.
2. A Licensed Forester within the company will review and approve the landowner's Forest Management Plan.
3. The landowner will employ Licensed Foresters who are actively involved in the management, planning and supervision of operations on the land.
4. All timber harvesting contractors will employ at least one person possessing Certified Logging Professional or Qualified Logging Professional certifications or the equivalent.

7. 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 is practicable, including loggers, truckers, and production facilities.

8. 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.

**9. 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.