

Memorandum

This memo serves to provide a broad overview of the forest management program administered by the Department of Conservation and Recreation.

A. PARKS, RESERVATIONS AND FORESTS

As a general matter, DCR is comprised of three operational divisions: the division of state parks and recreation, the division of urban parks and recreation, and the division of water supply protection. G. L. c. 21, § 1¹. The division of urban parks and recreation has control over the state parks, forests, parkways, waterways, rinks, pools, beaches and other recreational lands and facilities of DCR within the urban parks district that is comprised of thirty-six municipalities within the Greater Boston area. G. L. c. 21, § 1². Similarly, the division of state parks and recreation has control over the state parks, forests, parkways, waterways, rinks, pools, beaches and other recreational lands and facilities outside of the geographic area defined as the urban parks district. G. L. c. 21, § 1, c. 92, § 33, and c. 132A, § 3.

2. Forestry

a. Bureaus of Forest Fire Control, Forestry and Recreation

Within the division of state parks and recreation are the bureaus of forest fire control, forestry and recreation. G. L. c. 132A, § 1C.³ The bureau of forestry, with the commissioner's approval, is charged with performing such duties concerning forest management practices, reforestation, development of forest or wooded areas under DCR's control and improving such wooded areas for income production. G. L. c. 132A § 1F.⁴ The bureau of forestry is also responsible for those other duties formerly vested in

¹ The commissioner is charged with the care, maintenance, planning, construction and operation of (1) state parks, state forest recreation areas and state reservations owned by the commonwealth outside the urban parks district, G. L. c. 132A, §§ 2 and 2A; and (2) state reservations, parkways and boulevards owned by the commonwealth within the urban parks district. G. L. c. 92, § 33. Similarly, DCR, through its Division of Water Supply, has been conferred with all the general power and authority over the property of the watershed system "so far as the same may be exercised consistently with the purposes for which the watershed system is maintained." G. L. c. 92A½, § 19.

² The urban parks district is comprised of the following communities: Arlington, Belmont, Boston, Braintree, Brookline, Cambridge, Canton, Chelsea, Dedham, Dover, Everett, Hingham, Hull, Lynn, Malden, Medford, Melrose, Milton, Nahant, Needham, Newton, Quincy, Revere, Saugus, Somerville, Stoneham, Swampscott, Wakefield, Waltham, Watertown, Wellesley, Weston, Westwood, Weymouth, Winchester and Winthrop. G. L. c. 92, § 33.

³ While the existing language of G. L. c. 132A, § 1C, identifies the Division of Forests and Parks, St. 2003, c. 41 makes clear that reference to the former Division of Forests and Parks within DEM shall currently be construed to mean the Division of State Parks and Recreation within DCR.

⁴ G. L. c. 132A, § 1F provides that the bureau of forestry is responsible for management, reforestation and development of forests and wooded areas under DCR's control for their improvement and for sustainable income production. Section 1F provides:

The bureau of forestry shall, under the supervision of the director, with the approval of the commissioner perform such duties as respects forest management practices, reforestation,

the division of forestry within the Department of Environmental Management's (DEM) and assumed the duties of shade tree management and pest control found under G. L., c. 132, § 1A.

b. Sale of Timber Products, Forest Cutting and Licensing

The legislature has historically recognized the value of maintaining, protecting and rehabilitating forest lands for the purpose of conserving water, preventing floods and soil erosion and improving the conditions for wildlife and recreation, protecting and improving air and water quality and providing forest products for public use. G. L. c. 132, § 40. The legislature has also authorized the commissioner the authority to sell timber products from lands under DCR's control, provided that all receipts shall be paid into the state treasury. G. L. c. 132, § 34A. The Bureau of Forestry and other DCR staff work closely to prepare Forest Resource Management Plans, for submission and adoption by the Stewardship Council, to ensure sustainable forestry practices on public forest lands of DCR. G. L. c. 21, § 2F

DCR is also charged with regulating forest cutting practices. The director of forests and parks, subject to the approval of the commissioner and recommendations of the state forestry committee, is charged with adopting forest cutting practices and guidelines for all forested lands. Before beginning cutting operations (with certain exceptions), land owners must prepare a cutting plan and notify abutters of record, the appropriate DCR regional office and the local conservation commission. G. L. c. 132, §§ 42-44. Commercial timber harvesters must obtain a license to perform commercial harvesting from DCR's director of the division of forests and parks. G. L. c. 132, § 46.

c. Forest Classification

Upon application of the landowner, parcels of land containing at least ten acres and used for forest production in accordance with a ten year forest management plan, as certified by the state forester, are entitled to classification as forest land for local property tax purposes. Such classification entitles the owner to a reduced real estate tax calculated on the basis of the land's value for forest production purposes only. G.L. c. 61, §§ 1 – 3.

development of forest or wooded areas under the control of the department, making them in perpetuity income producing and improving such wooded areas. It shall be responsible for such other duties as are now vested in the division of forestry by the general laws or any special laws and shall be responsible for shade tree management, arboricultural service and insect suppression of public nuisances as defined in section eleven of chapter one hundred and thirty-two, subject to the approval of the director and, notwithstanding the provisions of any general or special law to the contrary, the bureau may require all tree spraying or other treatment performed by other departments, agencies or political subdivisions to be carried out under its direction. The bureau may promulgate rules and regulations to carry out its duties and powers. It shall assume the responsibilities of section one A of chapter one hundred and thirty-two and shall be responsible for such other duties as are not otherwise vested in the division of forestry; provided, however, that all personnel of the forest, fire, shade tree and pest control units in their respective collective bargaining units at the time of this consolidation to the bureau of forestry shall remain in their respective collective bargaining units.



d. Forest Education

The director of the division of state parks and recreation is required to offer a course of instruction in the art and science of forestry to the students of the University of Massachusetts. G. L. c. 132, § 1. Similarly, Mount Wachusett Community College is authorized to establish a Forest and Wood Products Education and Development Center for the purposes of promoting and educating students and professionals in the effective management of public and private forests, including the use of biomass as a renewable energy resource. G. L. c. 132, § 51.

e. Fire Prevention and Suppression, State Fire Warden, Local Assistance, Arrest

The Chief Fire Warden (a/k/a State Fire Warden), appointed under G.L., c. 132A, § 1C, shall aid and advise the local forest wardens and their deputies in preventing and extinguishing forest fires and in enforcing the laws relative thereto. The chief fire warden shall report annually to the forester [the director of DSPR] upon his work and upon the forest fires occurring in the commonwealth. G. L. c. 48, § 28. The director of the division of state parks and recreation may determine that the fire hazard is such as to require the use of forest fire patrols in any town, and all forest lands therein shall be closed to all persons except the owners, tenants and authorized agents. In such cases, the chief fire warden, local forest warden, deputies or any environmental police officer may arrest without a warrant any person found within the forest land of another without authorization if such person refuses to leave such forest lands. G. L., c. 48, § 28C.

f. Fire Slash Law

Every owner or any person or entity holding rights or interest in land or timber rights, except electric, telephone and telegraph companies, who cuts or permits the cutting of brush, wood or timber on lands which border upon woodland of another, or upon a highway or railroad location, or upon any forest or woods road to which the public has authorized access, shall dispose of the slash caused by such cutting in accordance with G.L. c. 48, §§ 16 and 16A.

Other Statutory Provisions are attached hereto as Exhibit A.

EXHIBIT A

The following is a list of legislative enactments concerning the Commonwealth's forestry practices:

Article 97 of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts:

The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

G.L. c. 21, Section 2F: Management guidelines for sustainable forestry practices on public and private forest lands. The directors of the divisions of state parks and recreation and urban parks and recreation shall work in cooperation with the director of the division of fisheries and wildlife within the department of fish and game to establish coordinated management guidelines for sustainable forestry practices on public forest lands within the departments of conservation and recreation and on private forest lands. Said guidelines for public forest lands shall include agreements on equipment, personnel transfers, operational costs, and assignment of specific management responsibilities.

The commissioner of conservation and recreation shall submit management plans to the stewardship council for the council's adoption with respect to all reservations, parks, and forests under the management of the department, regardless of whether such reservations, parks, or forests lie within the urban parks district or outside the urban parks district. Said management plans shall include guidelines for the operation and land stewardship of the aforementioned reservations, parks and forests, shall provide for the protection and stewardship of natural and cultural resources and shall ensure consistency between recreation, resource protection, and sustainable forest management. The commissioner shall seek and consider public input in the development of management plans, and shall make draft plans available for a public review and comment period through notice in the Environmental Monitor. Within thirty days of the adoption of such management plans, as amended from time to time, the commissioner shall file a copy of such plans as adopted by the council with the state secretary and the joint committee on natural resources and agriculture of the general court.

The commissioner of conservation and recreation shall be responsible for implementing said management plans, with due regard for the above requirement.

G. L. Chapter 21, Section 2G. Oversight strategy plans. The stewardship council shall develop an oversight strategy of park management plans, capital planning and policy development. Such oversight strategies will be published annually and after a 30 day public comment period will be finalized and submitted to the Secretary of Environmental

Affairs. Such oversight plans must be prepared and submitted 45 days prior to the submission to the legislature of the governor's annual budget.

G. L. Chapter 92A1/2, WATERSHED MANAGEMENT

Section 16. Periodic watershed management plans. The commissioner shall at least once every 5 years, adopt after public hearing one or more periodic watershed management plans for the watershed system, which shall have been prepared with the participation of a professionally qualified forester and the appropriate watershed advisory committee. Any watershed management plan shall provide for, but need not be limited to, forestry, water yield enhancement and recreational activities. All forestry activities shall be subject to sections 40 to 46, inclusive, of chapter 132.

Section 20, Contracts and consultants. The division [of water supply protection] shall not contract for services exclusive of contracts pursuant to any general or special act relating to forest cutting practices and for consultants performing only those services for the division which regular employees of the division are unable to perform, to accomplish any of its duties nor shall it enter into any interagency agreement for such purpose. Only officers and employees of the division shall perform its duties.

G.L. Chapter 132. FORESTRY

Section 1. Director of the division of forests and parks; duties. The director of the division of [state parks and recreation], in this chapter called the forester, in the department of [conservation and recreation], in this chapter called the department, shall promote the perpetuation, extension and proper management of the public and private forest lands of the commonwealth; shall give such a course of instruction to the students of the University of Massachusetts on the art and science of forestry as may be arranged by the trustees of the university and the forester; and shall perform such other duties as may be imposed upon him by the governor.

Section 4. Annual report of commissioner of natural resources [sic]. The commissioner [of DCR] shall make annual reports of the acts of the forester and of the acts of the chief superintendent, which latter report shall include a statement of all sums expended from the funds of the commonwealth for the suppression of pests declared in section eleven to be public nuisances in the several cities and towns. The report relative to the acts of the forester shall include the account of all money invested in each state forest and of the annual income and expense thereof, and the report of the state fire warden required by section twenty-eight of chapter forty-eight.

Section 6. Demonstrations in proper forestry practices; distribution of trees; co-operation with federal government; federal funds; employment of technical foresters. The forester may demonstrate to owners of woodland, at a fee not to exceed the actual cost of the service, the proper methods of planting, weeding, selective cutting, pruning, thinning and other silvicultural practices for the establishment, improvement or regeneration of the forests. In connection with the distribution of trees under section

nine, and in the distribution of trees for reforestation in water supply lands, town forests and other publicly-owned areas, the forester may withhold sale or distribution thereof until the land to be planted has been examined by him or his agent and approved for such planting. He may co-operate with the federal government in carrying out the purposes of this section and may accept on behalf of the commonwealth, and expend for such purposes, such federal funds as may be made available therefor. He may employ temporarily such technical foresters as he deems necessary to discharge his duties under this section and the employment of such persons shall not be subject to chapter thirty-one.

Section 30. Forest fire observation towers; erection and operation. The commissioner, with the approval of the stewardship council may acquire for the commonwealth, by purchase or otherwise, and hold, or, with the approval of the governor and council, may take in fee by eminent domain under chapter seventy-nine, any woodland or land suitable for timber cultivation within the commonwealth or any land necessary for the erection and operation of forest fire observation towers. The average cost of land so purchased, other than land purchased for the erection and operation of forest fire observation towers, shall not exceed five dollars an acre.

Section 31. Control and management of state forests; regulations. Lands acquired under section thirty or thirty-three [of Chapter 132] shall be known as state forests, and shall be under the control and management of the forester. Lands acquired by purchase for experiment and illustration in forest management and for reforestation under the provisions of chapter four hundred and seventy-eight of the acts of nineteen hundred and eight and amendments thereof, or of the corresponding provisions of later laws . . . shall also be known as state forests and shall be under the control and management of the forester to the same extent as if acquired under section thirty. He shall reforest and develop such lands, and may, subject to the approval of the commissioner, make all reasonable regulations which in his opinion will tend to increase the public enjoyment and benefit therefrom and to protect and conserve the water supplies of the commonwealth.

Section 34. Rules and regulations relative to use of state forests; enforcement. The commissioner may make rules and regulations relative to hunting and fishing or other uses of any such land, provided that such rules and regulations shall be consistent with all laws in relation to the protection of fish, birds and quadrupeds. Whoever violates any provision of any such rule or regulation shall be punished by a fine of not more than twenty-five dollars.

Chapter 132: Sections 40 – 45: Forest Cutting Practices Act

Section 40. Declaration of policy of commonwealth. It is hereby declared that the public welfare requires the rehabilitation, maintenance, and protection of forest lands for the purpose of conserving water, preventing floods and soil erosion, improving the conditions for wildlife and recreation, protecting and improving air and water quality, and

providing a continuing and increasing supply of forest products for public consumption, farm use, and for the woodusing industries of the commonwealth.

Therefore, it is hereby declared to be the policy of the commonwealth that all lands devoted to forest growth shall be kept in such condition as shall not jeopardize the public interests, and that the policy of the commonwealth shall further be one of cooperation with the landowners and other agencies interested in forestry practices for the proper and profitable management of all forest lands in the interest of the owner, the public and the users of forest products.

Section 41. State Forestry Committee; members; forest cutting practices and guidelines. The governor shall appoint a state forestry committee, to consist of eight members representing, respectively: forest land owners; primary woodusing industries; licensed timber harvesters; consulting foresters; environmental organizations; water supply agencies; fisheries and wildlife; and one member representing the public at large. The commissioner of the department of conservation and recreation, hereinafter referred to as the commissioner, shall be an ex officio member of the committee and shall vote only in case of a tie.

In the initial appointments of said committee members, three shall be appointed for a one year term, three for a two year term, and two for a three year term. Thereafter, as the term of a committee member expires, his successor, with like qualifications as his predecessor, shall be appointed for a term of three years. Said committee shall select its own chairman. The members of said committee shall serve without pay, but shall be reimbursed for actual traveling expenses within the commonwealth, when approved by said commissioner.

The state forestry committee, with recommendations of such other advisory committees as the commissioner in his discretion may appoint, shall prepare tentative minimum forest cutting practices and guidelines. Before recommending any forest practices, said committee shall hold hearings, with due notice being given, in conformance with chapter thirty A, in at least three places conveniently located throughout the commonwealth. Said committee may thereafter recommend such practices or modifications thereof and submit them to the commissioner. Said commissioner shall . . . thereupon adopt the practices and place them in effect, by posting in all city and town halls in the region affected and by publication in at least one daily newspaper in every county affected. Such approved practices may be amended at any time by said committee in the same manner, on its own motion or upon the petition of not less than twenty-five forest owners or licensed timber harvesters of the commonwealth or upon petition of any person authorized under section four of chapter thirty A.

Section 42. Notice of proposed cutting of forest products; final work order; report to commissioner; appeals. Every owner of land who proposes to cut forest products on land devoted to forest purposes, or to cause such products to be cut, except as provided in section forty-four, shall send by certified mail or hand deliver written notice of his intention to begin any cutting operation to the abutters of record on file with the assessors

of the town in which the land lies, and whose closest boundary is within two hundred feet of the edge of the cutting area, at least ten days prior to operations; and shall send by certified mail or hand deliver, written notice of his intention to begin any cutting operation, and his proposed cutting operation, and his proposed cutting plan, including information as may be necessary to describe such proposed activity, to the director or his agent at the appropriate regional office and to the conservation commission of the town in which the land lies at least ten days prior to operations; and in the case of classified forest land, the owner shall provide a reasonable estimate on the stumpage value of the forest products to be cut and properly paint or blaze any boundaries located within fifty feet of the cutting area.

No work may commence until a final work order, with a designated file number, is issued to the landowner by said director or his agent except as hereinafter provided.

The licensed timber harvester shall have a copy of the final work order on the site whenever work is done, for inspection by the director or his agent, who shall give final approval or disapproval to the operation and report in writing to said director the nature of the operation, its extent, the amount of product cut, and such other information as said director may require.

In the event that the director, or his agent, does not act on the notice of intent within the designated ten days from day of receipt of the notice, work may commence, except in wetland areas as defined in section forty of chapter one hundred and thirty-one, in conformity with the submitted plan, provided the licensed timber harvester shall have a copy of the submitted plan on the site of the operation whenever work is done.

An applicant landowner or licensed timber harvester who is aggrieved by any decision of the director or his agent may appeal said decision within ten days of receipt of the decision to the director or his designee who shall act as hearing officer and will hold an informal hearing within ten days and render his written decision to said aggrieved party within five days of the hearing. An applicant landowner or licensed timber harvester further aggrieved by the decision of the director may appeal said decision within thirty days to the superior court.

Section 43. Failure to give notice. Whoever, not being exempt from section forty-two and forty-three under the provisions of section forty-four, fails to give notice and a written plan, to said director or his agent as provided by said section forty-two, or whoever, either as land or stumpage owner or independent contractor fails to follow the plan of operations approved or not disapproved by said director or his agent shall be punished by a fine of not more than one hundred dollars for each acre of land on which cutting occurred in violation of, or in the absence of, said plan and final work order except as provided by section forty-two. The director or his agent is hereby authorized to issue a stop order to shut down immediately any operation that fails to meet the law or regulations until such deficiency is corrected to the satisfaction of the director's agent, or if not corrected, until the director holds a hearing relative to revocation of the harvester's license as provided in section forty-six.

Section 44. Exempted cuttings. The provisions of sections forty-two and forty-three shall not apply to (1) cutting by an owner or tenant of any forest product for his own noncommercial use; (2) cutting or sale of such products by any owner to an amount not exceeding twenty-five thousand board feet or fifty cords on any parcel of land at any one time; (3) cutting for clearance or maintenance on rights of way pertaining to public utilities and public highways; (4) clearing land for building or for purposes of cultivation or (5) maintenance cutting in pastures.

Section 46. License to harvest forest products. No person, firm or corporation engaged in the business of harvesting timber or other forest products for hire or profit shall cut such products on land devoted to forest purposes and for purposes not exempted by section forty-four without first obtaining a license to do so from the director who is hereby authorized to issue such licenses, and to withhold or revoke such licenses after hearing for failure to comply with sections forty-two to forty-six, inclusive. Applicants shall demonstrate general familiarity with the laws of the commonwealth that concern timber harvesting and provide the director such reasonable information as he may require concerning the amount and type of forest products cut by him during the previous year. The fee for the issuance of such license, which shall expire on June thirtieth of each year, shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven for the filing thereof. Each licensed timber harvester shall, upon request, be provided with a copy of current laws and regulations concerning timber harvesting in the commonwealth.

Whoever violates any provision of this section shall be punished by a fine of not more than five hundred dollars for each violation. The superior court shall have jurisdiction in equity to enforce the provisions of sections forty-two to forty-six, inclusive, and remedy any violations thereof.

Section 48. Violations; penalty. No person shall hold himself out as a forester and engage in the practice of forestry in the commonwealth unless he is licensed in accordance with section forty-nine.

A person who violates the provisions of this section or who fraudulently obtains or attempts to obtain such license or continues to practice forestry after suspension, expiration or revocation of his license, shall be punished by a fine of not less than five hundred nor more than one thousand dollars for each such violation. The superior court shall have jurisdiction to enforce the provisions of this section and to remedy any violation thereof.

Section 49. Licenses; revocation; suspension; fees. The director of the division of state parks and recreation shall promulgate rules and regulations hereunder, and shall issue licenses to persons to engage in the practice of forestry in accordance with such rules and regulations. Said director may revoke or suspend such license, if after hearing, he determines that any licensed forester has engaged in fraud, negligence, incompetence or misconduct in the practice of forestry. Licenses issued by said director shall expire annually on the anniversary date of the license granted for said forester. The fee for the issuance of such license shall be determined annually by the secretary of administration

under the provisions of section three B of chapter seven, and such fees shall defray the entire cost of the administration of sections forty-seven to fifty, inclusive.

STATE RECREATION AREAS OUTSIDE THE URBAN PARKS DISTRICT

Chapter 132A: Section 2A. Long-term programs; powers of commissioner. The commissioner is hereby authorized and directed to establish a long-term program of state parks, state forest recreation areas and state reservations, and for such purpose may improve areas now under the control of the department of conservation and recreation and acquire adequate land and water areas for said facilities and approaches thereto. The commissioner may accept from other public or private organizations existing areas in public use.

Section 2C. Planning, construction and maintenance. The planning, construction, operation and maintenance of the facilities acquired or developed under section two A shall be under the jurisdiction of the commissioner. In the preparation of plans of said facilities, the commissioner shall have the advice and assistance of the department of highways, the department of public health and the department of commerce.

Section 7. Rules and regulations; concessions; powers and duties of forest supervisors, park superintendents and laborers. The commissioner, in consultation with the director of the division, may make rules and regulations for the government and use of all property under the control of the division, including all roads and highways wholly or in part within the boundaries of such property, including rules and regulations relative to hunting and fishing, except in great ponds not inconsistent with the laws protecting fish, birds and mammals. Such rules and regulations may also provide for the payment of fees and other charges for the parking of vehicles and for the enjoyment of other special privileges within the territory under such control. The commissioner shall cause such rules and regulations to be posted in the territory to which they apply. The sworn certificate of the director of the division that the same have so been posted shall be prima facie evidence thereof. Violation of such a rule or regulation shall be punished by a fine not exceeding twenty dollars. The commissioner may grant concessions for the sale of refreshments and other articles and the furnishing of services within any such territory.

Forest supervisors, park superintendents and laborers employed by the division, while employed in state forests, state parks or reservations, including roads and highways, shall, within the limits of said forests, parks or reservations, except great ponds, have and exercise all the powers and duties of constables, except service of civil process, and of police officers, if so authorized in writing by the commissioner.

The enforcement officers of the office of law enforcement shall, within the limits of such forests, parks or reservations, including roads and highways, except great ponds, have

and exercise all the powers and duties of constables and of police officers except service of civil process.

