

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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December 23, 2011

VIA EMAIL & U.S. MAIL

John M. Cornish, Esquire
Choate, Hall & Stewart, LLP
Two International Place
Boston, MA 02110

Re: Neil Tillotson Trust – Purchase and Sale Agreement with the Society for the Protection of
New Hampshire Forests

Dear John:

Our office reviewed the Purchase and Sale Agreement between the Tillotson Corporation (“Corporation”), and the Society for the Protection of New Hampshire Forests (“Society”) for the transfer of the conservation restrictions over approximately 5,800 acres of land recently sold to Balsams View, LLC (“BV”), as well as for a separate right of way for hydroelectric transmission lines over a portion of the same land, forwarded to our office via correspondence dated December 16, 2011. The Corporation is wholly owned by the Neil Tillotson Trust (“Trust”), which is in the process of distributing all of its assets to charitable entities as directed by the terms of the Trust instrument. The proposed sale to the Society comes after the successful sale of the Balsams Hotel and the related property to BV earlier this month.

The Trust’s efforts, through the Corporation, to sell the Balsams and surrounding property have been underway for a considerable period of time. The Trust had long-standing discussions with the Society concerning a donation of the conservation restrictions over the Balsams property should it sell. Earlier this fall, the Corporation received an offer from Renewable Properties, Inc. (“RPI”), an affiliate of Northern Pass Transmission, LLC, for the sale of the right of way for hydroelectric transmission lines over a portion of the property for \$2 million.¹ The Society subsequently contacted the Corporation about purchasing both the

¹ The offer was increased to \$2.2 million on December 8, 2011, and was further increased on December 23, 2011. The offer remains open until January 20, 2011. We also understand that RPI would make an additional \$200,000

conservation easement and the right of way for a below market value rate. The Corporation entered into negotiations with the Society, resulting in the proposed transfer of both the conservation easement and right of way for the price of \$850,000. The Corporation values the conservation restrictions alone at approximately \$1.5 million. The fair market value of the right of way is at least \$2.2 million. As such, under the agreement with the Society, the Corporation would be transferring assets to the Society worth more than \$3.7 million for \$850,000.² The Trustees have determined that a transfer to the Society is consistent with the purpose and terms of the Trust, and that it is in the best interest of the environment and economy of the North Country.

Under RSA 7:19 – 7:32 and the common law of the State of New Hampshire, the Attorney General, through his Director of Charitable Trusts, is given authority to supervise, enforce, and administer charitable trusts, including this Trust. Further, in accordance with the Coos County Probate Court's Order, dated January 2, 2003 ("Order"), the Special Trustees of the Trust are required to report to the Director on a semi-annual basis regarding their actions. In reviewing the actions of the Trustees, this office seeks to ensure that the Trustees have acted within the scope of their discretion. While we do not substitute our judgment for that of the Trustees, we will not permit the Trustees to abuse their discretion under the Trust and Order.

The transaction at issue involves the transfer of an asset of the Corporation, and ultimately the Trust, to another non-profit entity. As noted in our December 2, 2011 letter concerning the sale of the Balsams to BV, the deal with BV permitted the Corporation to retain the right-of-way, which the Trust could sell or donate. Given the value of the assets and the proposed sales price, the proposed deal with the Society involves a below market value transfer, which, in essence, is a partial sale and partial donation of the assets. Our review and analysis of this transaction focuses on our understanding of the settlor's intent in creating the trust (i.e. the trust's purpose), and our determination of what is in the best interest of the trust, by ensuring that the trust's assets are being used for the intended charitable purpose.

As noted above, the Trust must distribute its assets to other charitable entities. The conservation easement and right of way are assets of the Corporation, and ultimately the Trust, and the Society is a 501(c)(3) charitable entity. Land conservation and preservation are clearly purposes of the Trust and consistent with the terms of the Order. The Society is organized for land conservation purposes. As such, we conclude that a transfer of Trust assets, in the form of the conservation easement and right of way, to the Society is consistent with the intended charitable purposes of the Trust. Furthermore, the Trustees' conclusion that this transfer is in the best interest of the environment and economy of the North Country is within their discretion and appears to be reasonable. As such, we will not substitute our judgment for that of the Trustees on this issue.³

donation to the Trust, with the understanding it would be distributed to the Colebrook Hospital for delivery of medical care for disadvantaged Coos County residents.

² You have indicated that the Trust intends to provide the Society with a one-time donation of \$350,000 to establish an easement monitoring endowment fund. This donation is not a covenant of the Agreement submitted for our review and approval.

³ In reaching this conclusion, the Charitable Trusts Unit makes no finding regarding whether a transfer to RPI would have been consistent with the Trust's charitable purpose, or in the best interests of the North Country.

With prior proposed transactions involving the sale of the Balsams, we considered the benefit to be received by the Trust as a result of the transaction. The proposed financial return to the Trust from the sale of the asset was one of the many factors considered. However, the proposed transaction with the Society differs markedly from the prior transactions concerning the sale of the Balsams. The proposed transaction involves the Trustees' decision to transfer an asset to another charitable entity at a below market value rate, not the sale or conversion of an asset to a private for-profit entity.

Having reviewed and considered the information provided to our office, and having discussed this matter with Attorney General Michael Delaney, we find that the Trustees have acted within the limits of their discretion and the provisions of the Trust. As such, we approve the Purchase and Sale Agreement between the Corporation and the Society.

If you have any further questions or concerns, please contact me.

Sincerely,



Anthony I. Blenkinsop
Director, Charitable Trusts Unit
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