

Wisconsin's Managed Forest Law

A Program Primer



Prepared by the
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Division of Forestry

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Executive Summary

The Managed Forest Law (MFL) program is the largest incentive program that the State of Wisconsin provides private forest landowners and is recognized as a model program throughout the nation. MFL is certified under the American Tree Farm System (ATFS) and Forest Stewardship Council (FSC) third party certification systems as fulfilling all elements of forest sustainability.

The MFL program strives to strike a balance between providing enough incentives for private landowners to enroll and manage their forest lands, and enough benefits to the public to insure support of the MFL program. The benefits of MFL include clean air and water, wildlife habitat for game, threatened and endangered species, carbon sequestration, public recreation, and a wide variety of timber products that contribute to Wisconsin's economy.

This document provides background material for the Managed Forest Law (MFL) Legislative Study Council Committee to evaluate elements of the MFL program to ensure that program accomplished the public purposes for which it exists.

With this in mind, the background materials have been developed to help the MFL Legislative Council Study Committee members assess where improvements might be made to more effectively and efficiently balance the needs of private landowners and the public to ensure that Wisconsin remains a leader in the protection and sustainable management of private forestlands.

Division of Forestry Mission

The Department of Natural Resources Forestry Division's mission is to work in partnership to protect and sustainably manage Wisconsin's forest ecosystems to supply a wide range of ecological, economic and social benefits for present and future generations.

The Division of Forestry plans, coordinates and administers current and long-range programs for the protection, improvement, perpetuation and sustainable use of Wisconsin's forests, as well as the protection of life, property and resources from wild fire. Integrating the ecological, social and economic values in managing Wisconsin's forests is critical to ensure the long-term sustainable management and use of our forests.

Understanding the Private Forest Landowner and the Private Forest Resource

Roughly sixty-five percent (65%) of Wisconsin’s forested lands are owned by private landowners. The Wisconsin Department of Natural Resources (DNR) has completed a detailed assessment of the “state of affairs” of Wisconsin’s public and private forests and analyzed the sustainability of our forested ecosystems.

The Statewide Forest Assessment identifies trends and issues with the resource. The assessment was intended for use by (1) natural resource professionals to inform management and to design policy, (2) the public and partners who require statewide forestry data, and (3) as a requirement of the United States Forest Service, State & Private Forestry Program (S&PF). The assessment is found at: <http://dnr.wi.gov/forestry/assessment/strategy/data.asp> and provides detailed information on the state of affairs of all forested lands in Wisconsin, including private forest lands.

Pertinent information related to the forested resources owned by private landowners, the trends of private forest landowner ownership are included in this section; however this document is not intended to replace the trends and issues identified in the Statewide Forest Assessment.

Private Forest Acreage in Wisconsin

Wisconsin has over 16 million acres of forestland that are owned, managed and cared for by a variety of stewards including the DNR-Division of Forestry, the U.S. Forest Service, forest industries, individual private landowners, and the state’s counties, cities, towns and villages.

Most of the forested land is located in the northern one-third (1/3) of the state. Eighty-four percent (84%) of Wisconsin’s forests are deciduous types (maple-basswood, aspen-birch, oak-hickory).

State-owned forests make up almost seven (7%) percent of the total, while roughly sixty two (62%) percent of Wisconsin’s forestlands are privately owned by individuals and families. Roughly four (4%) of Wisconsin’s forestlands are owned by forest industry companies.

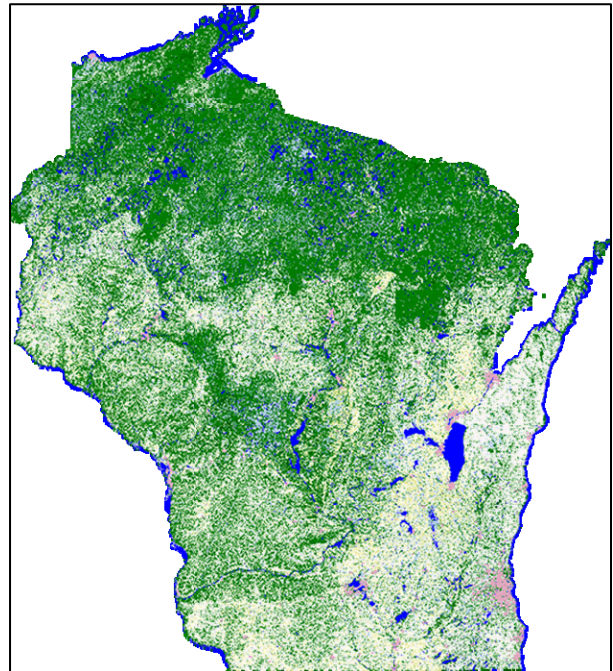
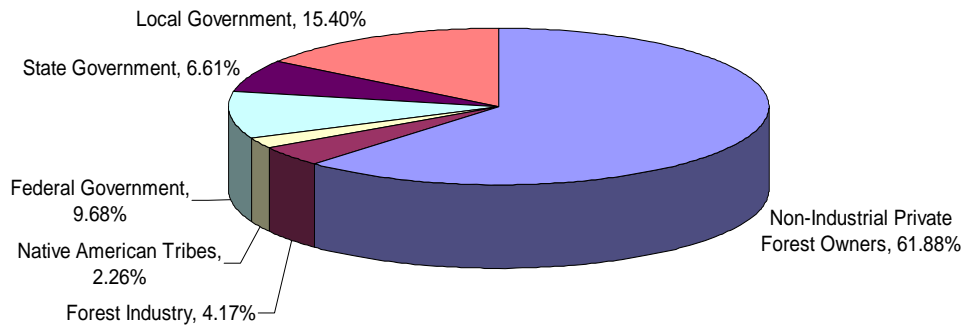
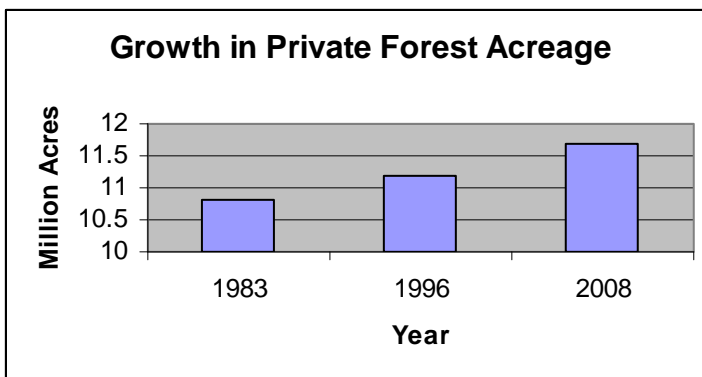


Figure 1: Forest Cover in Wisconsin

**Area of Wisconsin Forestland by Ownership
16,274,000 Acres Total (2006)**



Private forest land in Wisconsin increased by almost one million acres in the last 25 years. Between 1983 and 1996 private forestland increased from 10.8 million to 11.2 million acres and increased again by 2008 to 11.7 million acres.

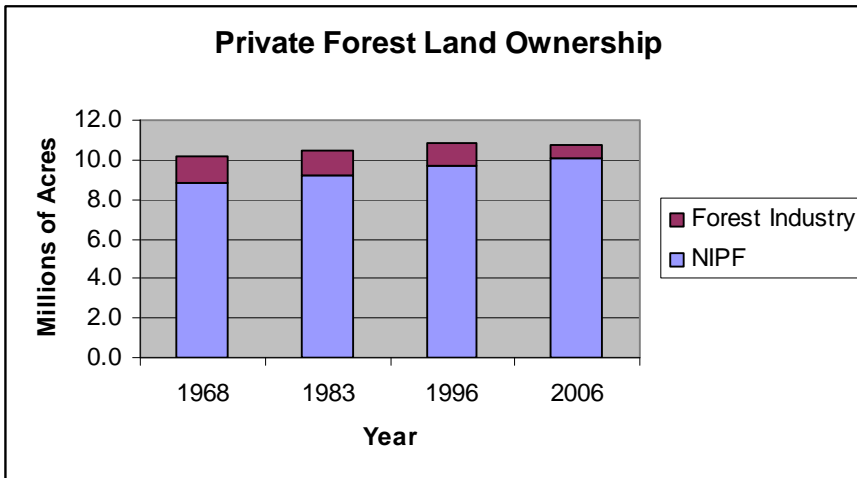


Much of this additional acreage is a result of tree planting under the Conservation Reserve Program (CRP), Wisconsin Forest Land Grant Program (WFLGP), Environmental Quality Incentives Program (EQIP) and other conservation programs offered by federal, state and county government programs.

Other increases in forest acreage are a result of changes in farming practices, especially the fencing and removal of cattle from woodlands and allowing natural seeding on marginal agricultural or pasture lands. Other increases in forested land are a result of natural conversion from grassland, oak savanna, and other vegetation types that have been in a non-forested condition.

Non-Industrial and Industrial Forest Owners in Wisconsin

The years between 1968 and 2006 have seen changes in ownership between non-industrial private forest (NIPF) landowners and industrial landowners. Many industrial landowners are selling lands to NIPF landowners. As a result there are more NIPF landowners and less acreage of lands under industrial ownership.



Trends in Forestland Ownership by Year in Wisconsin

The acreage of woodland owned by NIPF landowners has increased, while that of forest industry has decreased. Other ownership types have stayed relatively the same.

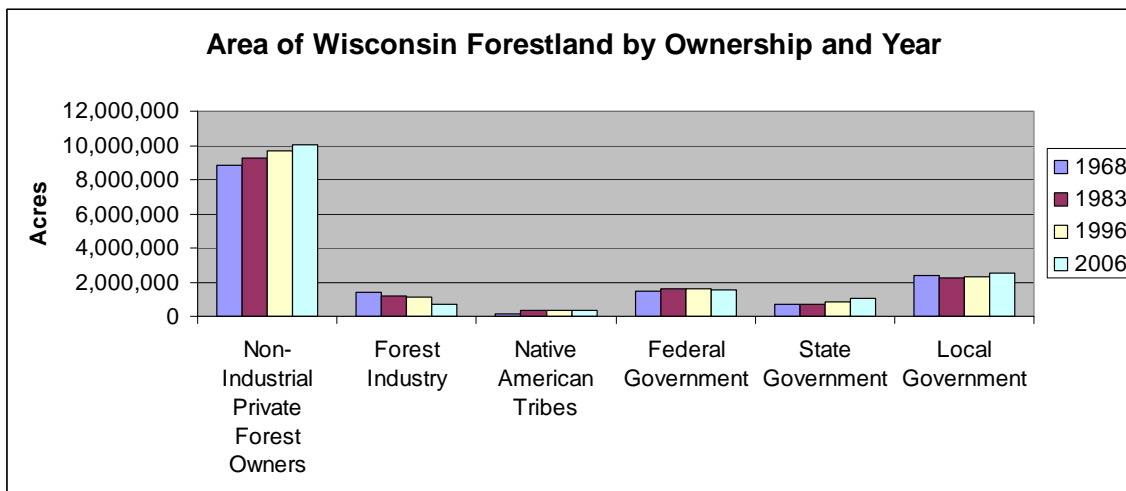
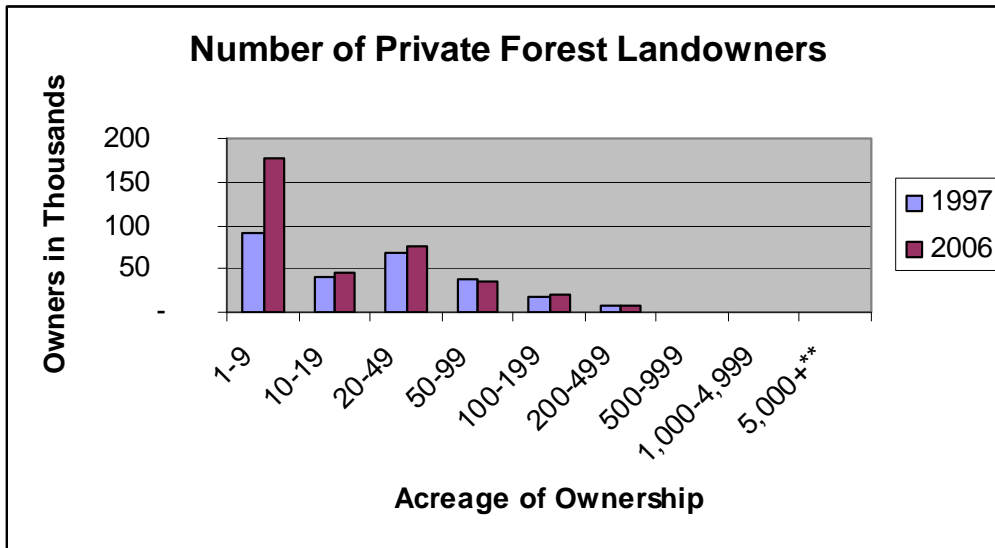


Figure 16.d: Area of Wisconsin forest land by ownership by year (Butler, 2008) (Schmidt, 1996) (Spencer 1983) (Spencer 1972) – Sampling error may account for minor variation.

Number of Private Forest Land Owners in Wisconsin

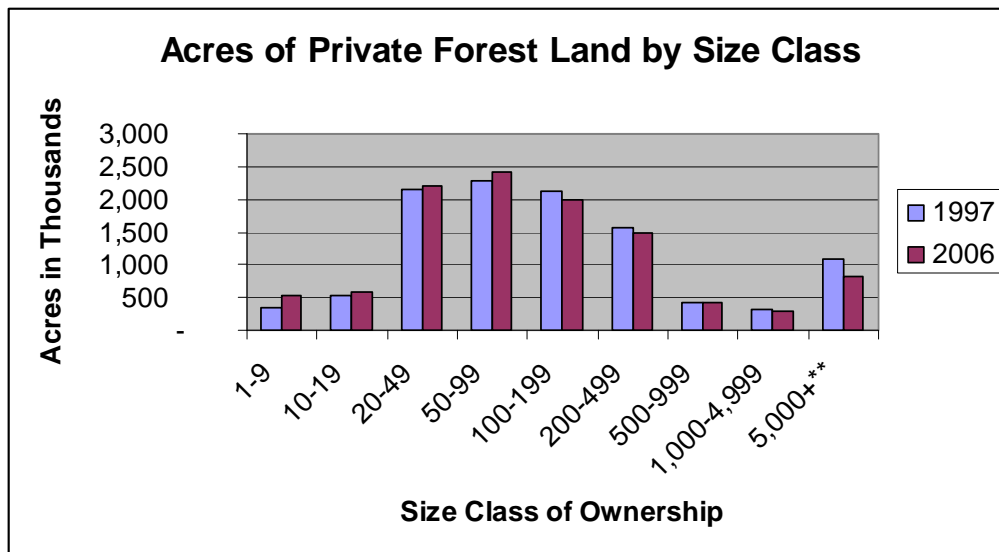
The number of private forest landowners has increased from 1997 to 2006, with the largest number of landowners owning 9 or fewer acres of forested land. The number of landowners

owning 500 or more acres is less than 1,000 landowners in each of the larger acreage categories.



Size of Private Forest Land Ownership in Wisconsin

The acreage of private forest landowners by size class has fluctuated from 1997 to 2006, with acreage of some size classes showing increases and some size classes showing decreases. The smaller size classes of 1-9 acres through 50-99 acres have shown increasing acreage, while all other larger size classes have shown decreases.



In general, the size of forest ownership has decreased within the past decade.

Average Parcel Size: All Private Forest Ownership		
	1997	2006
Acres	10,811,900	10,749,000

No. Owners	263,000	362,000
Ave Parcel Size	41	30

Average Parcel Size: NIPF Owners		
	1997	2006
Acres	9,709,700	10,070,000
No. Owners	262,234	362,000
Ave Parcel Size	37	28

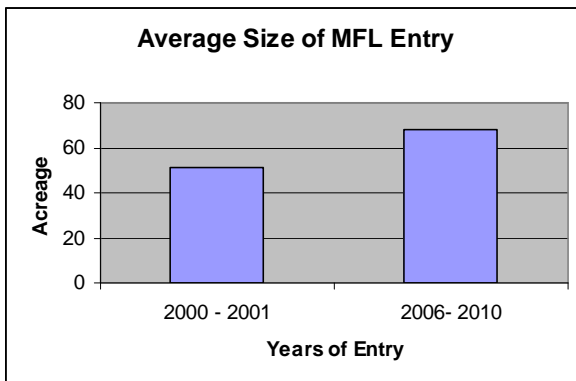
Length of Forest Land Ownership in Wisconsin

The 2006 National Woodland Owner Survey, conducted by the United States Forest Service, shows that Wisconsin woodland owners generally hold their lands for a period of 10 to 24 years. This table shows family forest owners owning 1 or more acres. It does not include forest industry, corporations, etc. The 2006 National Woodland Owner Survey can be found at <http://www.fia.fs.fed.us/nwos/>

Land tenure (years)	Area		Owners	
	Acres	SE ^a	Number	SE ^a
	Thousands	Percent	Thousands	Percent
<10	1,306	11.4	57	16.1
10-24	2,953	5.7	152	13.7
25-49	3,145	5.4	88	14.3
50+	449	29.4	7	21.1
No answer	1,230	12.0	48	24.4
^a SE = sampling error				

Size of Forest Land Enrolled in MFL

Even though the average statewide forested parcel size has decreased, the size of forested parcels enrolled in MFL has increased 33% since 2005.



The increase in forested parcel size is a result of legislation that increased the allowable closed acreage from 80 acres to 160 acres (2003 Wisconsin Act 228). Landowners are enrolling more land under a single MFL entry with the 160 acre closed limitation. Without 2003 Wisconsin Act 228 landowners would likely have enrolled the same amount of total acreage, however many landowners with more than 80 acres of land had divided their properties into separate 80 acre ownerships for the purposes of enrolling their entire ownership into MFL as closed to public access. The change in the closed acreage limitation is encouraging some landowners to keep and enroll larger blocks of forested lands.

Forest Types in Wisconsin

There are a variety of different forest types in Wisconsin. In general, 70% of Wisconsin's forests are in a hardwood forest type, including:

- Maple/beech/birch (27%)
- Oak/hickory (21%)
- Aspen/birch (20%)

The conifer forest types make up roughly 18% of Wisconsin's forests, including:

- White, red and jack pine (9%)
- Spruce, fir (9%)

Over the past 25 years hardwood forest type acres increased by 9½% while softwood forest type acres increased by 7½%.

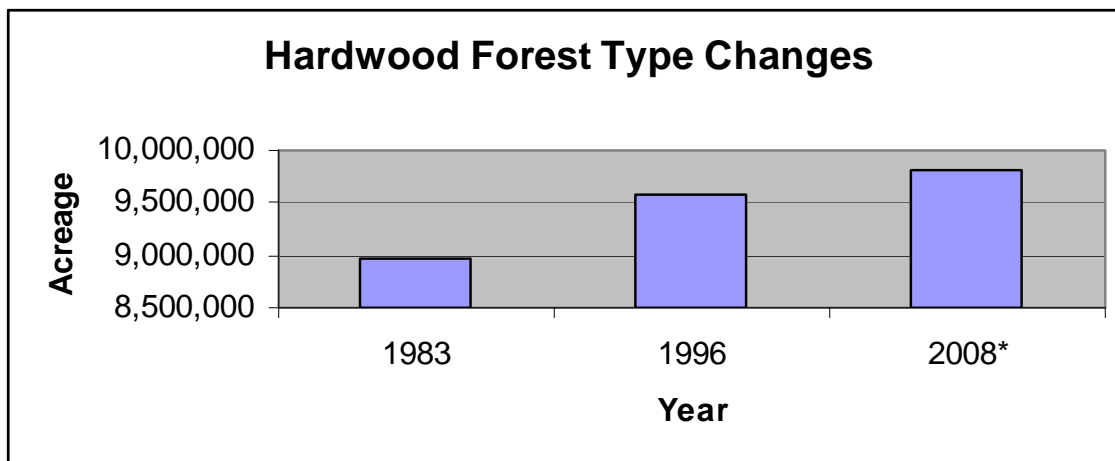


Figure 2: Forest type algorithms changed dramatically between 1996 and 2008 to the extent that they are not comparable beyond hardwood types.

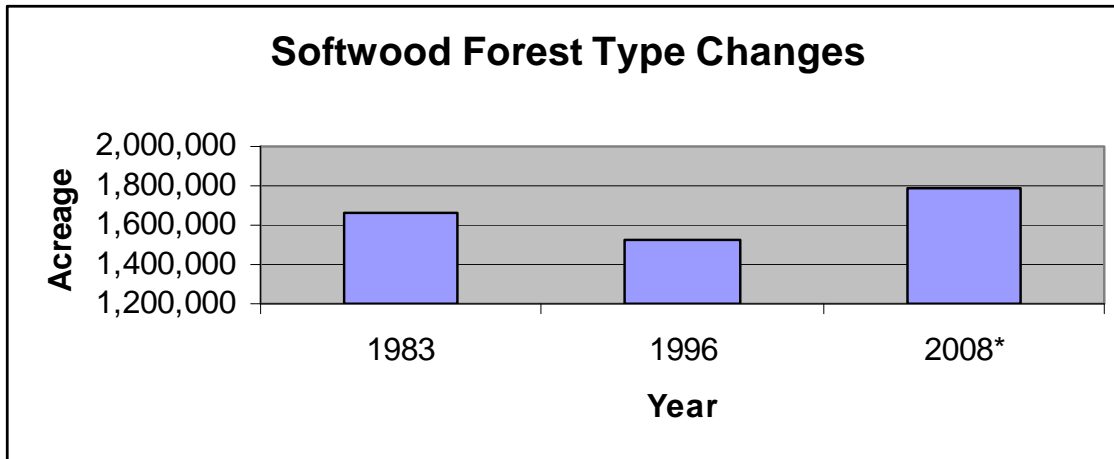


Figure 3: Forest type algorithms changed dramatically between 1996 and 2008 to the extent that they are not comparable beyond softwood types.

Highlights of the MFL Program

The MFL program is the largest incentive program available to landowners to encourage long term sustainable management of forested lands. The MFL program was developed to insure that private landowners had an incentive to enroll in the program and that public benefits were provided. Many MFL provisions were taken from the older Forest Crop Law (FCL) and Woodland Tax Law (WTL) program. Additional provisions were included to reflect provisions that were not included in either of the older program and that reflected the concerns of society. The MFL program provides a balance between private and public concerns.

Entry Requirements

Lands that are enrolled in the MFL program must meet eligibility requirements. These requirements are:

- Have 10 or more acres of contiguous (touching) forestland under the same ownership.
- Have a minimum of 80% of the land in forest cover. No more than 20% of each parcel may be unsuitable for producing merchantable timber, including water, bog, rock outcrops, sand dunes, vacant farmland, roadway, utility right-of-way or railroad right-of-way.
- Use lands primarily for growing forest products; it may not be used for any other industry or for uses such as cropland, pasture, orchards, etc. A management plan and map must outline the forest types, management goals, and management practices to sustainably manage the forested lands.
- Not have land in a recorded plat (assessor's and vacated plats are allowed).
- Not have recreational uses that interfere with forest management or receive consideration for recreational activities.
- Allow hunting, fishing, hiking, sight-seeing and cross-country skiing for lands open to the public for recreational purposes.
- Have all current and delinquent property taxes paid to the county treasurer by August 15 of the year prior to entry.
- Not have buildings with living space for human residence that exceed 4 of the 8 buildings characteristics.

Payment of Yield Taxes when Timber is Harvested

Landowners who harvest timber under the MFL program must file a cutting notice and report. The cutting notice allows DNR foresters to insure that harvesting is needed and the proper trees are designated for cutting.

The cutting report allows DNR to verify the volume harvested from MFL lands. Landowners are required to report trees based on the size of tree harvested. The sizes include:

- “Sawlogs—board feet” means forest products that have the following minimum specifications:

Position in tree	Butt or upper
Minimum diameter*, small end— Hardwoods	10.6
Minimum diameter*, small end— Conifers	9.6
Minimum length, without trim**	8 (except walnut and cherry, which are 4)
Sweep allowance***	½ of diameter small end for each 8 length
Maximum scale deduction for unsound defects	50%
Clear cuttings free of knots or other defects	No requirements.
Sound or unsound surface defect limitations	Diameter of knots, holes, rot, etc., may not exceed 1/3 diameter of log at point of occurrence.
Sound end defects	No requirements

*Diameter inside bark

**The maximum trim allowance is 8 inch. Cut products that exceed the 8 inch trim allowance will be classified as misbucked and will be scaled as sawlogs at the next whole foot increment.

***Sweep is defined as the maximum departure distance of a line drawn between the ends of a log from the nearest surface of the log.

- “Cord” means 128 cubic feet including wood, air and bark assuming careful piling. Forest products described as cords are further defined to include all cut products not meeting the minimum specifications in par. (a) for sawlogs and which are not listed as piece products in par. (c).
- *Piece products*. Per piece, post, pole or Christmas tree.
- Fine Woody Material consists of tops, branches and other materials that are not large enough to market as pulpwood.

Yield taxes are collected by the DNR and paid to the local municipality. The local municipality keeps 80% of the payment and remits 20% to the county.

Practice Sustainable Forestry

Landowners must follow generally accepted forestry practices as a condition to remain in the MFL program. DNR uses the following documents to determine the range of management options available to landowners.

- Silviculture Handbook - <http://dnr.wi.gov/forestry/Publications/Handbooks/24315/24315.pdf>
- Forest Management Guidelines (FMGs) - <http://dnr.wi.gov/forestry/publications/guidelines/>

The range of options are determined after evaluation of the landowner's management goals, current stand condition, current science and program requirements. Generally accepted practices can be shown by a graph.



Management plans outline the practices landowners must meet in order to practice sustainable forestry. Management practices are amended when changes in stand conditions or current science occur. Landowners can also request a change in their management plans if management goals change.

Implementation of Mandatory Practices

Landowners are required to implement mandatory practices for the 25 or 50 year entry periods. Mandatory practices include:

- Harvesting mature timber
- Thinning plantations and natural stands
- Release of conifers and hardwoods from competing vegetation
- Reforestation to meet the minimum medium density classifications
- Post-harvest and pre-harvest treatment to insure adequate regeneration
- Soil conservation practices that may be necessary to control any soil erosion

Change in Open/Closed Status

Landowners may change the open/closed tax status when MFL lands are purchased. Landowners under MFL are further allowed to change their open/closed tax status twice during their 25 or 50 year enrollment period.

Requirement to Provide Access to Open Lands

Landowners who enroll MFL lands as open to public access are required to allow access for hunting, fishing, hiking, cross-country skiing, and sight-seeing. If public access to open managed forest land is available solely by crossing a landowner's contiguous land that is not entered as managed forest land, contiguous managed forest land of the owner that has been

designated closed, or an access by easement or otherwise that provides the owner access, the owner may not restrict public access for recreational activities authorized in MFL. Landowners may limit the public access across such land or access way to a reasonable corridor or location.

Landowners may post signs to prohibit recreational activities on lands closed to public access. These signs can be “no trespassing” or “private property” signs.

Landowners may also post signs to prohibit recreational activities that are not allowed on open MFL, including motorized vehicle use, trapping, camping, target shooting, or firewood cutting. Landowners who choose post prohibited uses must clearly state the uses that are allowed. This is required to insure that the public is not inadvertently prevented access on open MFL lands through wording of their signs. Landowners should review the wording of their signs with the local DNR forester.

MFL Entry Remains with the Land

Lands that qualify for MFL are taxed at a different tax rate than regular productive forest land. DNR sends an Order of Entry to county, state and assessor offices so that lands can be taxed correctly. The orders are recorded at the county register of deeds office and become a public record.

MFL entry remains with the land for the 25 or 50 year entry period, insuring that sustainable management is done for a long enough period of time to insure that timber products can be harvested on most MFL parcels.

Landowners who purchase MFL lands are required to certify their intent to continue following the provisions of the MFL program by submitting transfer forms.

Annual Determination of Stumpage Values

DNR is required by statute to annually adjust the average stumpage value by species and product by November 1 of each year. The average value is used to collect yield and severance tax from landowners enrolled in the MFL and Forest Crop Law (FCL). DNR is given the authority to develop separate market zones if the prices differ between different areas of the state.

DNR collects actual timber sale data from cooperating and DNR foresters. Foresters must report the market zone in which the timber sale occurred, species, product (definitions of the products are included in NR 46), volume harvested and price. This data is compiled and new rates are determined using the following formula.

$$\frac{\left[\begin{array}{c} \text{wtd avg} \\ \text{current year minus 3} \\ \text{stumpage value} \end{array} + \begin{array}{c} \text{wtd avg} \\ \text{current year minus 2} \\ \text{stumpage value} \end{array} + \begin{array}{c} \text{wtd avg} \\ \text{current year minus 1} \\ \text{stumpage value} \end{array} \right] + \begin{array}{c} \text{wtd avg} \\ \text{current year minus 1} \\ \text{stumpage value} \end{array}}{\begin{array}{c} \text{\# of years of wtd avg stumpage values} \\ \\ \text{Average} \end{array}} = \text{Weighted Stumpage Value}$$

2 (if there is a wtd avg current year minus 1 stumpage value, otherwise it's 1)

$$\begin{array}{c} \text{wtd avg} \\ \text{current year} \\ \text{stumpage value} \end{array} = \frac{\text{Sum of (volumes X stumpage value) by species}}{\text{Sum of volumes by species}}$$

Calculations are proofed by DNR foresters and taken to public hearing. Adjustments are made to the stumpage values based on comments from the hearing.

In May 2010 a change to the MFL program removed the requirement for stumpage values to be developed through the rule making process. The change was authorized in 2009 Wisconsin Act 365 and allows for faster development and use of the stumpage values.

Enforcement of the MFL Program

DNR administers and enforces the MFL program to fulfill MFL's statutory purpose. The Department's enforcement philosophy is to gain voluntary compliance with the law to obtain sound, sustainable resource management on the enrolled lands and to fulfill the purpose of the MFL program.

DNR uses stepped enforcement of all violations of the MFL program provision. The earlier stages of the MFL enforcement process include education and reminders. DNR works with landowners at this stage to remediate (or fix) the violation. Examples may include: finishing a coppice harvest, planting additional trees, repairing ruts in roads or log landings, establishing water bars and broad based dips, installing culverts, removing tree tops from wetlands and water ways, and other measures. Time lines are developed for completion of these practices. Most MFL violations are resolved at this stage.

Middle stages of enforcement may include corrective actions, including time lines in which to complete prescribed practices, when landowners fail to comply after initial discussion with DNR foresters. In the middle stages of enforcement DNR tries to get voluntary compliance with the law. Additional wording is included in correspondence to begin notifying municipalities of violations. Issuance of citations and fines may begin in this stage. The issuance of citations and fines allows DNR one more step in gaining compliance before the ultimate decision to withdraw lands from the MFL program is necessary.

Some of the items involved with this phase may include:

- Citations for failing to file a cutting notice or report, filing a false cutting report, or cutting timber contrary to an approved cutting notice and management plan. DNR law enforcement personnel would issue the citation. Citations are processed through the county circuit court.
- Issuance of a \$250 non-compliance fee. This fee is issued by the local municipality for each practice that is not completed. DNR certifies to the local municipality of practices not completed. The local municipality issues and collects the fine, then deposits the revenue into their financial account. This non-compliance fee allows municipalities to receive income that was not returned to them through payment of a yield tax because of the delay in a mandatory harvests and it stresses the importance on landowners that practice must be completed or withdrawal from MFL may be imminent.

The last stage of enforcement is withdrawal from the MFL program. Landowners who are withdrawn from MFL pay a withdrawal tax and fee.

The withdrawal tax is the HIGHER of:

- The total net property tax for the acreage under the law in the year prior to withdrawal multiplied by the number of years the land was under the law. All acreage share and yield tax payments are subtracted, or

- 5% of the established stumpage value of merchantable timber present less any acreage share and yield tax payment made during the order period.

Additional calculations are done for those entries where lands are converted from FCL to MFL and where lands were withdrawn and re-entered to add additional lands to a pre-2005 MFL entry.

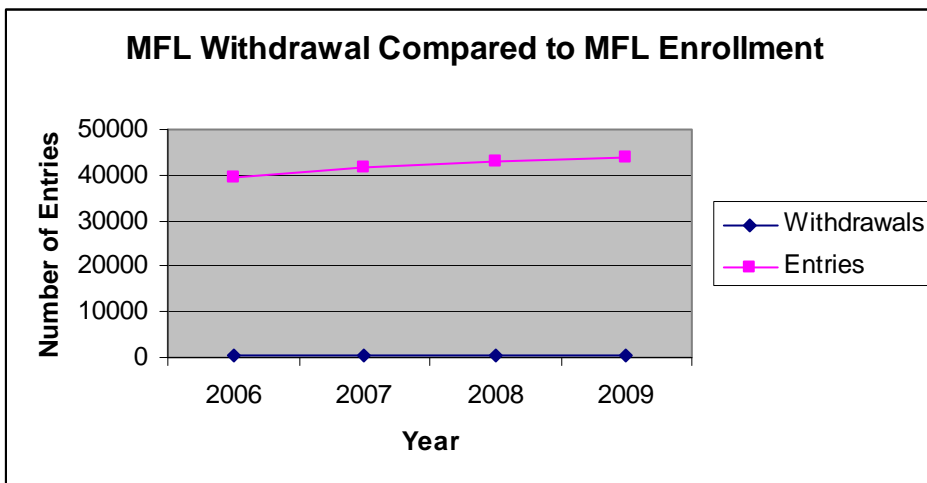
Withdrawal of Land from MFL

Withdrawal of land can be voluntary, such as when a landowner wishes to build a home on their property, sell building lots to others, or no longer wants to be involved in the MFL program. Many times lands are withdrawn from MFL at the time of land sale if new owners do not want to be involved in the MFL program.

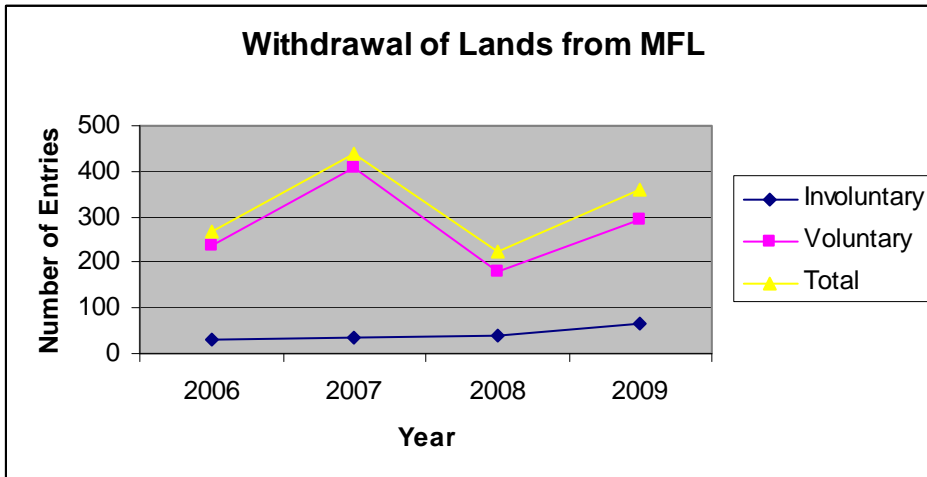
Other withdrawals are involuntary as a result of a landowner's inability or unwillingness to correct a violation. Most of these violations include:

- Splitting of ownership
- Failure to file transfer forms
- Failure to follow through with a mandatory practice
- Cutting contrary to an approved cutting notice or management plan

Withdrawal of lands from the MFL program is small compared to the total number of entries. Between the years of 2006 through 2009 an average of 322 MFL entries were withdrawn annually from MFL, for a percentage of 1%.



Most of the lands are voluntarily withdrawn. The average number of voluntary withdrawals is 279 out of 322 for a percentage of 87%.



The steps to involuntary withdrawal are long and place a large burden of proof on the department. DNR foresters must build an enforcement case file to document justification for withdrawal. The case file is submitted for review by the Forest Tax Program. A Withdrawal Order is issued if withdrawal is justified. Withdrawal Orders are mailed to the landowner and all agencies needing to know that lands will no longer be enrolled in MFL.

Landowners have many avenues for review of decisions in every stage of the enforcement process. Landowners work with their local DNR forester to determine if alternative measures can be developed to get lands back into compliance with the law. Landowners who are unsuccessful at this stage may contact first line supervisors and work up the chain of command (team leader, area leader, regional leader, central office.) Silviculture and law enforcement specialists may be consulted for additional interpretation of alleged violations.

Once Withdrawal Orders are issued landowners have the right to a contested case hearing or judicial review. These hearings are more formal than the previous review and include an administrative law judge or circuit court judge. Landowners who pursue a contested case hearing or judicial review should seek legal council with their own attorney.

Legislative Goals for the MFL Study

Ensure the long-term management and sustainability of private forest lands.

The purpose of the MFL program is to encourage long-term management and sustainability of private forest lands so that these private lands can provide economic, ecological and social benefits to the public. The MFL program has been very successful in meeting its purpose.

77.80 Purpose. The purpose of this subchapter is to encourage the management of private forest lands for the production of future forest crops for commercial use through sound forestry practices, recognizing the objectives of individual property owners, compatible recreational uses, watershed protection, development of wildlife habitat and accessibility of private property to the public for recreational purposes.

History: 1985 a. 29.

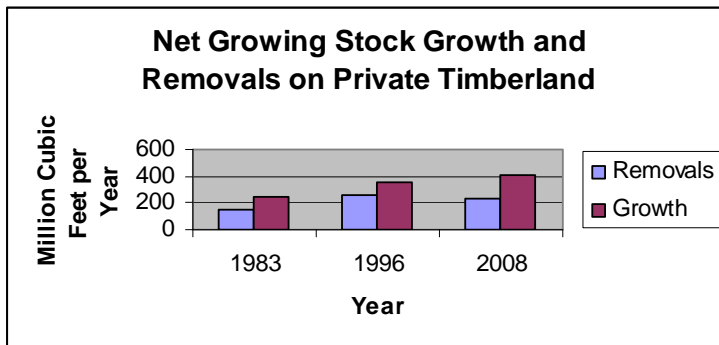
Since almost 65% of the forested resource belongs to private owners, much of the timber products harvested by industry come from private lands. The same is true for ecological and social benefits. This section discusses some of the main benefits that private forests provide the State of Wisconsin.

Growth and Removals of Wisconsin Forest Resources

Wisconsin’s Private forest lands are growing more than what is being harvested. Growing stock volume on private timberland in Wisconsin increased from 11.2 million to 14.8 million cubic feet (32%) over the last 25 years. Average annual removals to growth ratios on private timberlands in Wisconsin were 42%, 72% and 55% in the inventory years 1983, 1996 and 2008, respectively.

Net average annual growing stock growth on private timberland in Wisconsin has increased from 347 million cubic feet in 1983, to 352 million cubic feet in 1996, to 414 million cubic feet in 2008.

Average annual removals of growing stock on private timberland increased from 145 million cubic feet in 1983 to 253 million cubic feet in 1996 and then decreased to 227 million cubic feet in 2008.



Between 1983 and 2008 red maple had the largest increase in growing stock volume (734 million cubic feet) of all species on private timberland in the state. Other species that had large growing stock volume increases in the last 25 years were: eastern white pine, red pine, sugar maple, white oak, green ash and northern red oak. Sugar maple and northern red oak volumes stayed about the same between 1996 and 2008.

In the last 25 years the biggest losers of growing stock volume on private timberland were: paper birch, quaking aspen, jack pine, balsam fir and butternut. Elm growing stock volume on private timberland declined from 354 million cubic feet in 1983 to 241 million cubic feet in 1996. However, by 2008 the volume had rebounded to early 1980’s levels (347 million cubic feet).

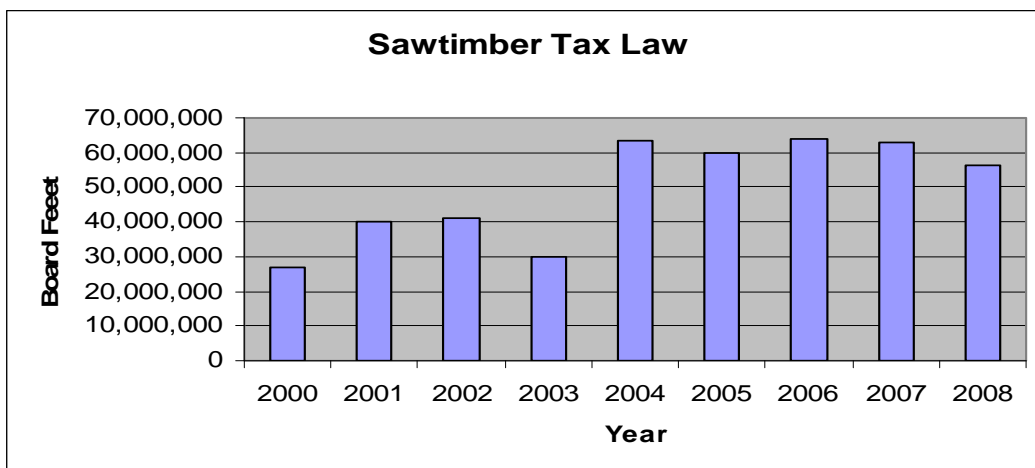
Between 1983 and 2008 eastern white pine had the largest increase in sawtimber volume (2.6 billion board feet) of all species on private timberland in the state. Other species that had large sawtimber volume increases in the last 25 years were: red pine, red maple, northern red oak, sugar maple and white oak. Sugar maple sawtimber volumes increased only slightly between 1996 and 2008.

In the last 25 years the biggest losers of sawtimber volume on private timberland were: elm, balsam fir, jack pine, butternut and paper birch. Elm sawtimber volume on private timberland declined from 973 billion board feet in 1983 to 380 billion board feet in 1996. However, by 2008 the sawtimber volume had rebounded to 643 billion board feet.

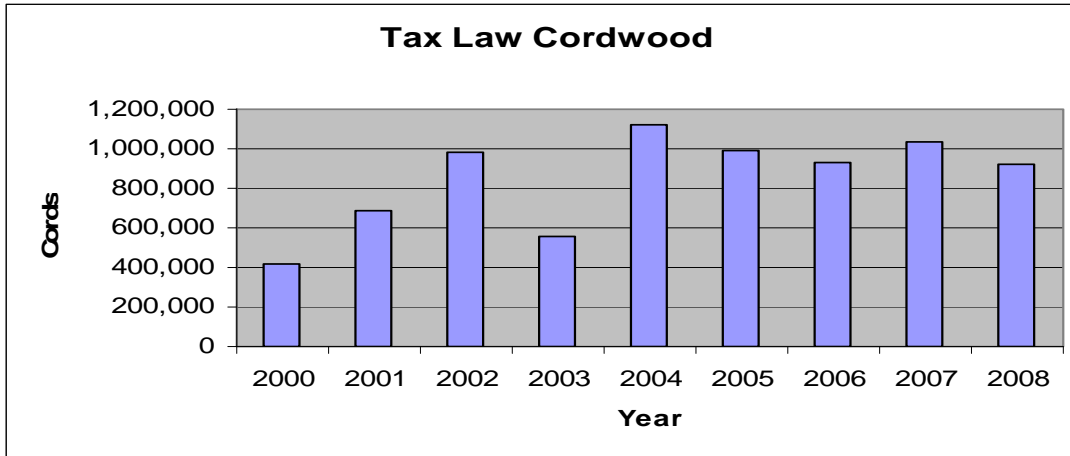
Economic Contributions of Tax Law Lands to Forest-Based Economy.

Forest industry obtains most of its raw materials from private lands since almost 65% of Wisconsin's forested acreage is privately owned. Since timber is not a crop that must be sold every year, many landowners will not sell their timber during downturns in the market due to reduced value. The industry still needs a supply of raw materials during these times to survive. The mandatory practices on lands in tax law programs appear to be supporting the industry during the recession.

Timber harvesting on tax law lands has increased since 2004 when DNR made concerted efforts to eliminate backlog mandatory practices. Lumber production on tax law lands increased 140% between the years 2000 and 2006. Lumber production has declined by 50% in Wisconsin during the recession, but the sawtimber sold from tax law lands has only declined by 12%.



Pulpwood production on tax law lands increased 160% between the years 2000 and 2004. Pulpwood demand in Wisconsin has declined during the recession by 1/3 while the cordwood sold from tax law land has declined by 1%



Landowners have questioned the fairness of being required to harvest timber when timber prices are down. DNR has issued directives to DNR and cooperating foresters that harvesting must be based on silvicultural reasons and not based on current market prices. DNR has no way to predict or time the timber market in order to get the landowner the optimum or highest timber value. The optimum or highest timber value can be determined through competitive bidding and timber sale advertising.

Mandatory management practices can be postponed if timber markets are not existent. DNR foresters will monitor these postponed practices and notify landowners when markets become available. Active marketing of timber has shown that postponement of mandatory practices is rare.

Threatened and Endangered Species, Archeological and Historical Resources

National Heritage Inventory (NHI), archeological and historical databases must be checked when lands are enrolled in MFL and before implementing management practices. This is done to insure that management practices do not adversely impact valuable non-timber resources. Mitigation of resources must be done if resources are identified.

Carbon Sequestration

The global carbon cycle is a natural process. In forests, carbon dioxide is transformed through photosynthesis into elements of plants including roots, shoots, leaves and wood. This process of converting carbon into plant material is often described as carbon sequestration. Stored carbon dioxide is released as plants respire, and as dead plants and fallen leaves break down into the soil or are burned by fire. The capture and release of carbon dioxide in forests occurs simultaneously, but when the net balance results in carbon dioxide removals from the atmosphere, forests act as a carbon “sink.” Conversely, when forests give off more carbon dioxide than they capture they become a carbon “source.” Whether or not a forest acts a sink or source depends on age, vigor, pest and disease influences. The capacity of forests to store carbon may become an important factor in reducing atmospheric carbon dioxide concentrations, mitigating global climate change, and reducing future reliance on carbon based fuels.

Silvicultural practices that increase the rate of growth, hold stands to a higher maximum tree size class, increase basal area, extend rotations, promote structural retention, increase forest area, and other techniques can store additional carbon. There are further opportunities to increase carbon storage after harvest through conversion of material to long lived wood products.

- Historically, Wisconsin held 57% more above-ground carbon in live trees than the state does today.
- Wisconsin's forests are a net carbon sink. The carbon sequestered contributes to lowering the atmospheric balance of carbon dioxide by 27.7 million tons per year, with a net balance of 8.4 million tons sequestered after emissions are included.
- Wisconsin's current 14% urban forest canopy avoids 50,000 tons of carbon emissions from fossil-fueled power plants annually, but expanding the canopy to a recommended 40% could nearly triple that reduction.
- For every ton of above ground carbon, there are approximately 1.88 tons of below ground carbon, and so a complete and healthy ecosystem stores more carbon than live trees alone. This is a critical concept that must be taken into consideration when evaluating management alternatives for impact on carbon emission or sequestration.
- At present, Wisconsin's carbon pools are concentrated in northern counties that are more densely forested. Different forest types vary in their carbon storage potential. Oak/Hickory and Maple/Beech types dominate the proportion of total carbon stored within the state, but Spruce/Fir stores the most carbon per acre.

If increasing carbon storage is desired, there are forest management tools to do so. Management practices that could result in greater carbon storage in existing forests include holding stands to a higher maximum tree size class, increasing basal area, extending rotations, and promoting structural retention (such as conserving snags and down woody debris on site). Reforesting open lands that were formerly forests, and manipulating the composition of forests with stocking could also increase carbon storage. If these practices are used, it is also important to consider the impacts on the forest as a whole, and the carbon cycle changes to the ecosystem.

Many MFL landowners have attended meetings sponsored by the United States Department of Agriculture Farm Service Agency (FSA), Natural Resource Conservation Service (NRCS) and private carbon credit companies to sign contracts with woodland owners to sell carbon credits.

The MFL program does not prohibit landowners from signing contracts to sell carbon credits. Landowners are made aware that conditions of any carbon credit contract do not supersede conditions of the MFL program. Landowners are also aware DNR is not available to complete the baseline timber cruise necessary for entering into a carbon credit contract. DNR is also not available to provide annual surveillance audits. Private firms are available to provide these services. All risks and investments into obtaining carbon credits are borne by the landowner.

Soil and Water Protection

Wisconsin is often noted for its productive forests and clean lakes and streams. Not surprisingly, the health of Wisconsin's forests and water resources are closely tied.

Forests contribute to productive soils and clean water resources in a number of ways. Trees and shrubs provide a protective canopy over soils, intercepting and slowing rainfall. Leaves, twigs,

and branches contribute organic matter that builds a protective layer over the soil, insulating it from damage. This organic material also plays an important role in ecological processes, including nutrient storage and carbon cycling.

In addition, responsibly managed forests generally have very low rates of soil erosion relative to other types of land uses. This helps to maintain soil nutrients on-site for use by trees and other vegetation. It also helps to prevent sedimentation in lakes, streams, and wetlands, ensuring clean water and protecting aquatic habitat.

Beyond environmental factors, the quality of soil and water resources also influences an ecosystem’s ability to sustain forest economies and forest-dependent businesses and communities.

Wisconsin successfully protects water and soil resources using best management practices (BMPs) for water quality. This program uses best management practices (BMPs) to promote water quality in managed forest areas. The BMP program can be considered a success as studies have shown that silviculture is not a significant source of water quality impairment in Wisconsin. The continuation of the BMP program will further success.

- Over 10 million acres of Wisconsin’s 16 million acres of forest land have a management focus that includes protection of soil and water resources. BMPs for water quality are mandatory under the MFL program to fulfill the MFL purpose of recognizing watershed protection.
- When forestry BMPs for Water Quality are correctly applied, water quality is protected over 99% of the time. When not applied, impacts to water quality are observed 66% of the time.
- Additional training is needed for foresters, loggers, and forest road construction contractors to improve the use of forestry BMPs for forest roads and skid trails.
- In 2006, a set of rivers, streams and lakes that appeared impaired were assessed. The primary sources of impairment were atmospheric deposition of toxics and non-point source pollution. Silviculture was not a significant source of water quality impairment.

Most BMPs are incorporated in the management practice design at the time harvesting or land management occurs. Remediation is prescribed when DNR foresters become aware that BMPs have not occurred.

The BMP field manual provides over 128 BMPs for forestry activities, addressing issues such as road building, timber harvesting, prescribed burning and the application of chemicals. Copies of [Wisconsin’s Forestry Best Management Practices for Water Quality Field Manual](#) (Forestry Publication #93 03Rev) are available from the Division of Forestry at (608)267-7494. (Source DNR Forestry Web Site at http://dnr.wi.gov/forestry/Usesof/bmp/index_water.htm.)

Table 10.a: Correct application of BMPs for water quality by landowner category

Landowner Category	Monitoring Cycle		
	1995 - 1997	2002	2003 - 2008
Federal	92%	96%	95%
State	86%	100%	90%
County	86%	89%	93%
Industrial	91%	95%	94%

Non-Industrial Private	82%	81%	90%
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Note: Shaded cells indicate a sufficient sample size for statistically valid results.

Source: DNR, 2008

Control of Invasive Species

“In 2006, Wisconsin began the process of developing the Best Management Practices (BMPs) for invasive species. Through a collaborative process which involved industry practitioners, experts and affected stakeholders, they strove to develop voluntary standards of practice to aid in the management and control of invasive species in the forests and natural landscape of Wisconsin.

The Wisconsin Department of Natural Resources-Forestry Division, in partnership with the Wisconsin Council on Forestry, facilitated the development of the BMPs with funding from the US Forest Service. The BMPs offer a framework for addressing the state’s invasives problems. The BMPs for Invasive Species Manual offers voluntary practices that can be integrated with all activities that impact forests. The BMP manual includes standards of practice that will aid in limiting the introduction and spread of invasive plants, invertebrates and diseases.” (*Excerpt taken from the DNR Forestry Public Web Site at http://dnr.wi.gov/forestry/Usesof/bmp/index_invasives.htm.)*

DNR developed Chapter 40, Wis. Admin. Code to address invasive species in Wisconsin.

NR 40.01 Purpose. The purpose of this chapter is to identify, classify and control invasive species in Wisconsin as part of the department’s statewide program required by s. 23.22 (2) (a), Stats.

History: CR 08–074: cr. Register August 2009 No. 644, eff. 9–1–09.

Note: Chapter 23.22(2)(a), Stats. directs the DNR to establish a statewide program to control invasive species in the state.

NR 40.02(28), Wis. Admin. Code is meant to pertain to private lands as well as public lands by the inclusion of the words “private lands” in the definition.

NR 40.02 (28) “Natural areas” means undeveloped or wild lands and those lands preserved or restored and managed for their natural features, including but not limited to parks, forests, refuges, grasslands, wetlands and shorelines on public and private lands.

NR 40 lists species and control measures for plants under the following categories:

- Prohibited – No person may transport, possess, transfer or introduce a prohibited invasive species. Control measures may be done by the DNR. DNR may recover reasonable expenses for the control from the landowner.
- Restricted – No person may transport, transfer or introduce any restricted invasive species listed under NR 40.05(2), Wis. Admin. Code. Control requirements are directed at nursery production, whereby nurseries shall make a good faith effort to destroy the plant upon closure of the nursery. A note in Admin. Code states that “Any person who owns, controls or manages land where a restricted plant species is present in the pioneering stage, in an area otherwise not infested with that species or where there is a high priority resource threatened by a restricted plant species is encouraged to control the restricted plant or contain it to the already infested sites, to reduce its population, and to foster an increase in desired species.”

History: CR 08–074: cr. Register August 2009 No. 644, eff. 9–1–09.

- Quarantined – no person may transport an identified carrier (including trees, wood products, etc.) of an invasive species from a DNR infestation control zone or Department of Agriculture Animal and Plant Health Inspection Service quarantine area unless that carrier is certified as being free of the invasive species.

The control of invasive species is not referenced in either ch. 77, Stats. or NR 46, Admin. Code. In 1985, invasive species were not as abundant in Wisconsin as they are today. NR 46, Admin. Code lists the management practices that are mandatory under MFL. This list includes:

- Harvesting of mature timber
- Thinning plantations and natural stands for merchantable products
- Release of conifers and hardwoods from competing vegetation.
- Reforestation of land to meet minimum medium density classifications.
- Post-harvest and pre-harvest treatment to insure adequate regeneration.
- Soil conservation practices necessary to control any soil erosion that may result from forestry practices.

Control of invasive species is considered voluntary under MFL. If invasive species prevent or restrict the successful completion of a mandatory practice (s), such as forest regeneration, then the management of the invasive species will be mandatory until the practice is successfully completed. Landowners who are required to control invasive species to insure adequate regeneration are eligible to apply for cost share payments under the Wisconsin Forest Landowner Grant Program (WFLGP).

Forest Certification

Forest certification is a market-based mechanism giving assurance that forest products originate from responsibly-managed woodlands. Independent auditors review forest management programs to verify conformance to the chosen standards. The standard-setting bodies are themselves separate from land management operations and the audit process. The standards that are applied most often in Wisconsin include Forest Stewardship Council (FSC), Sustainable Forest Initiative (SFI) and American Tree Farm System (ATFS) forest certification.

Forest certification is important in enhancing Wisconsin's ability to market forest products, but it also promotes sustainability in a broader sense, not merely the ability of land to produce timber. Certification does not mandate timber cutting, but rather responsible management for any identified environmental, social or economic objective. About a third of U.S. certified land and 53% of FSC-US certified land are located in Minnesota, Wisconsin and Michigan.

The Wisconsin Managed Forest Law Certified Group is registered by third-party auditors and found to be in conformance with sustainable forest certification standards established by the American Tree Farm System® (ATFS) Group Certification and the Forest Stewardship Council (FSC) programs. The recognition allows MFL Group members to claim that timber harvested from their land is produced from well-managed forests meeting ATFS and FSC standards. Participation in the MFL Certified Group is entirely voluntary for woodland owners in MFL and separate from statutory MFL regulations. Roughly 31% of the certified land in Wisconsin is from the MFL program.

Auditors have commended DNR and the MFL program for insuring the use of silviculture on participant forests, stating that this policy is commendable given the level of high grading and other exploitative cuts that can occur on small, nonindustrial private forests outside the MFL program. Regeneration through both even-aged (e.g., clearcuts, small patch cuts, often with reserves) and uneven-aged (conversion using small group openings) methods is commonplace on MFL lands, and yet rare on NIPFs not in the MFL program. These regenerated forests are consistent with WI DNR's commitment to sustainable forest management.

Concerns of Private Landowners and the Public

Landowner Concern: Not Enough Flexibility in Choosing Management Objectives.

Management of the timber resource for the commercial harvesting of future forest crops is the primary purpose of the MFL program; however this purpose must take into account landowner goals, other resource management (wildlife habitat, watershed, soil, aesthetic, etc.) and access to the public for recreation.

Landowners are asked to provide their management goals at the time of application. These goals are re-evaluated after the field inventory of the forest stand and site conditions is completed. Adjustments of goals are sometimes necessary in consultation with the landowner in order to meet program requirements.

Landowners have a lot of flexibility in determining land management goals, however if land management goals fail to meet program requirements lands may not be approved for entry. Examples may include:

- No harvesting of trees – a goal does not allow for the purpose of growing future crops of trees to be met.
- Managing for all old growth forest – once old growth forest conditions are met harvesting is generally no longer done. Old growth forests must fall into the 20% of the MFL land base that is considered not suitable for growing timber products, since timber products will not be harvested from the acreage.

Most landowner goals are compatible with the MFL program, so this concern is not often identified.

Landowner Concern: Sustainable Forestry Practices Change Over Time.

Sustainable forestry practices do change over time, however improvements in silvicultural practice is expected as peer reviewed scientific knowledge is learned. Foresters are directed to implement the latest scientifically prescribed recommendations to insure that the purpose of the MFL program is met.

Most landowners agree to changes in their management practices based on a change in current site conditions or scientific knowledge when notified of mandatory practices. New information is shared with landowners at the time of practices establishment and implemented with the mandatory practice. Foresters continue to identify areas where additional coordination between forester, logger and landowner will help to insure that regeneration and sustainability of private forest lands is met.

Landowner Concern: Ecosystem Services Are Not Provided if Timber is Harvested

Research and monitoring of private forest lands shows that soil and water resources are protected, carbon is sequestered, wildlife habitat is provided, especially for game species, aesthetics are provided and non-timber products are harvested from MFL lands.

BMPs for water quality are implemented by private landowners during timber sale design. BMPs are correctly implemented by landowners most of the time, including the correct installation of culverts and water bars, correct sloping of access roads, correct design of water crossings, etc. DNR foresters and water regulations and zoning specialists work with landowners to remediate any non-conformances.

Forb, shrub and tree regeneration is enhanced after harvesting once additional sunlight hits the forest floor. Increasing the amount of vegetation close to the ground may result in improved forage for some wildlife species.

Landowners and foresters must always evaluate land management practices to understand the impacts each practice will have on habitat, soil and water resources, and aesthetics to maintain or enhance ecosystem services.

Protect and increase public access on MFL lands.

Immediate and Annual Public Benefit

In 1927 a Wisconsin constitutional amendment was made to allow differential taxation on forested lands. This constitutional amendment allowed for FCL to be created. Later Woodland Tax Law (WTL) and MFL were created.

Differential taxation cannot occur without having or showing a public benefit. The public benefit for the tax law programs have been sustainable management on private forest lands, production of timber products, clean air, clean water, wildlife habitat for game and non-game species, watershed management, erosion control, carbon sequestration, aesthetics, and access to private lands for recreational activities.

FCL required all lands to be open to the public for hunting and fishing. This requirement returned to the public an immediate and annual benefit in opening up additional lands for recreation. This requirement was particularly important in parts of the state with limited public access.

MFL requires lands to be open to the public for hunting, fishing, hiking, sight-seeing, and cross-country skiing. Landowners are allowed to close 160 acres of land to public access with the intent that remaining lands are left open to public access. Again, an immediate and annual public benefit is to open up additional lands for recreation. All other recreational uses may be regulated by the landowner.

The earliest MFL law allowed landowners to close one parcel of forested land up to 80 acres in size. Some landowners were adversely impacted by this restriction in that if they had two forested parcels separated by cropland they could close one or the other forested parcel, but would be required to keep the other parcel open, even if the two forested parcels together did not exceed 80 acres.

The earliest MFL law did not allow commercial recreation, including the leasing of lands for hunting. In 1992 Wis. Admin. Code was changed to allow hunting leases on closed MFL lands

since hunting leases did not change the characteristics of the forest or prevent the practice of forestry.

Public Access on Private Lands Controversial

Providing the benefit of public recreation on private lands has been and continues to be a major challenge with administration of the MFL program. Many landowners are uncomfortable with allowing public recreation on their lands, yet providing an immediate benefit to the public on private lands helped sell the MFL program in 1985.

As hunting leases became more popular, more landowners divided their properties into 80 acre tracts to be able to close their lands to public recreation and lease those lands to individuals or small groups of people. Other landowners divided their properties into 80 acre tracts to close their lands to public recreation regardless if they chose to lease hunting rights on the lands.

Large, industrial landowners also began dividing their properties and leasing lands for recreation. As larger and larger block of MFL lands were closed to public recreation the legislature took action to reduce the incentive of dividing and closing land by prohibiting the leasing of lands enrolled in MFL for recreational purposes.

Private landowners have learned of other land division and titling systems to close lands to public recreation, with some results in having a certain amount of land taxed as open, but with having little to no public access to those open lands.

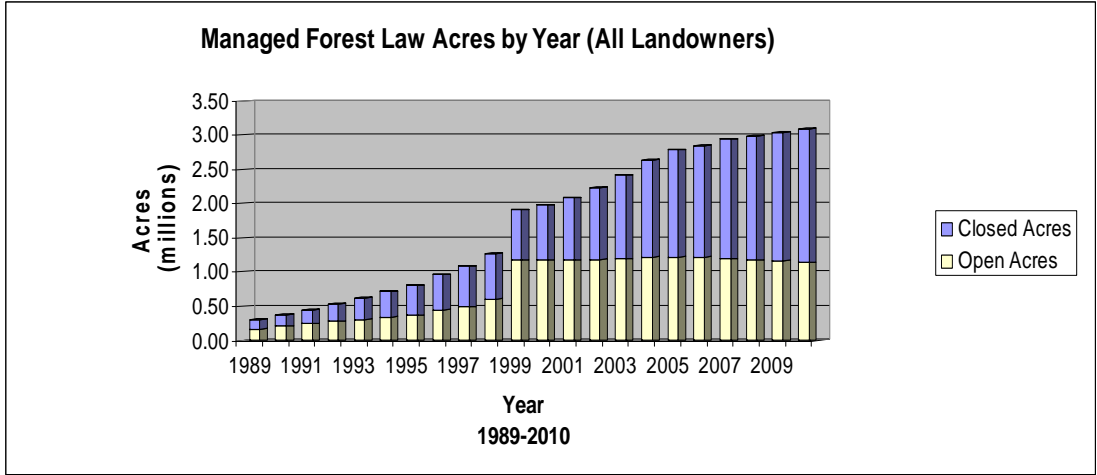
Legislative Changes to Improve Public Access

The Wisconsin Legislature has been aware of the difficulties in providing for public access on MFL lands and has taken steps to establish policies to influence decisions made by forest landowners. These legislative steps include:

- In 2004 the MFL program was changed to allow a maximum closed acreage limit of 160 acres. This change in the law would encourage more lands to be enrolled in the MFL program and reduce the amount of administration by encouraging landowners to enroll lands without dividing their properties into 80 acre tracts. It would also encourage landowners to weigh the benefits of dividing property into smaller units if they had enough closed lands in which family and friends could hunt and recreate.
- In 2004 a new formula for calculating the MFL tax rates was established. This provision applied to all lands entered in 2005 and later. The acreage share tax was changed to be equal to 5% of the average statewide tax on forest land. The closed acreage fee was changed to be equal to 20% of the average statewide tax on forest land. The change in the formula re-established similar a percentage tax incentives that were in place when MFL was first created. The intention was to have enough difference between the open and closed tax rates to encourage landowners to keep additional lands open to public access. (Note: the difference between the open and closed tax rates was lessened once agricultural land use assessment became effective, thus reducing the incentive for landowners to open lands to public recreation.)

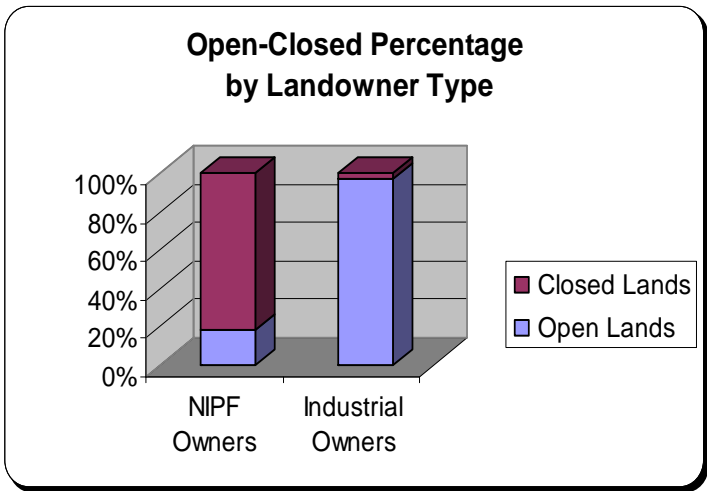
MFL Program Continues to Grow

The MFL program continues to grow in entry numbers and acreage. More lands are closed to public access (1.95 million acres) than are open to public access (1.14 million acres).

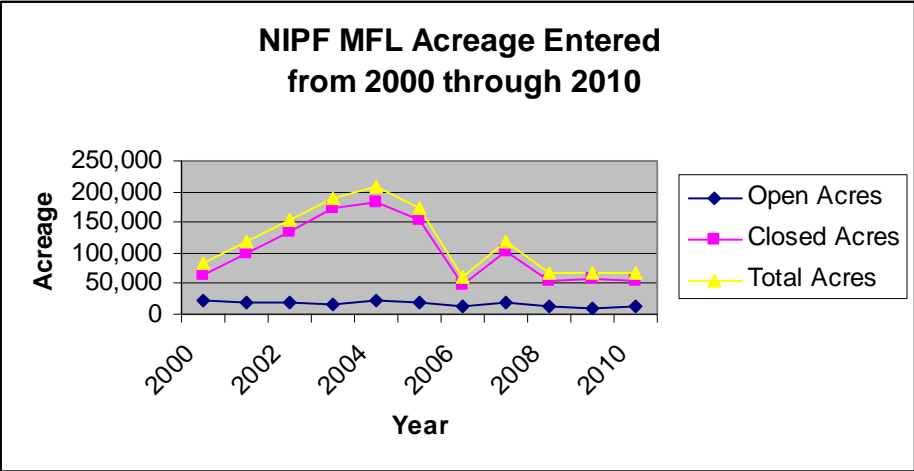


Major Trend in Open and Closed Acreage

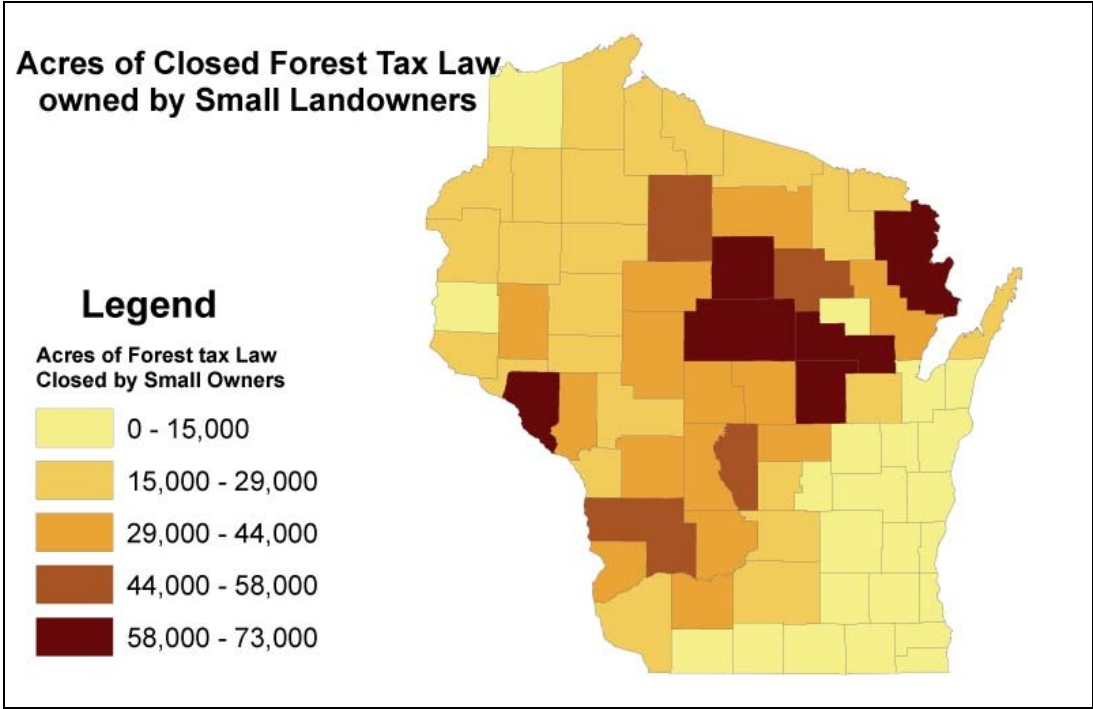
NIPF landowners have largely closed their lands to public access while industrial landowners have opened their lands to public access.



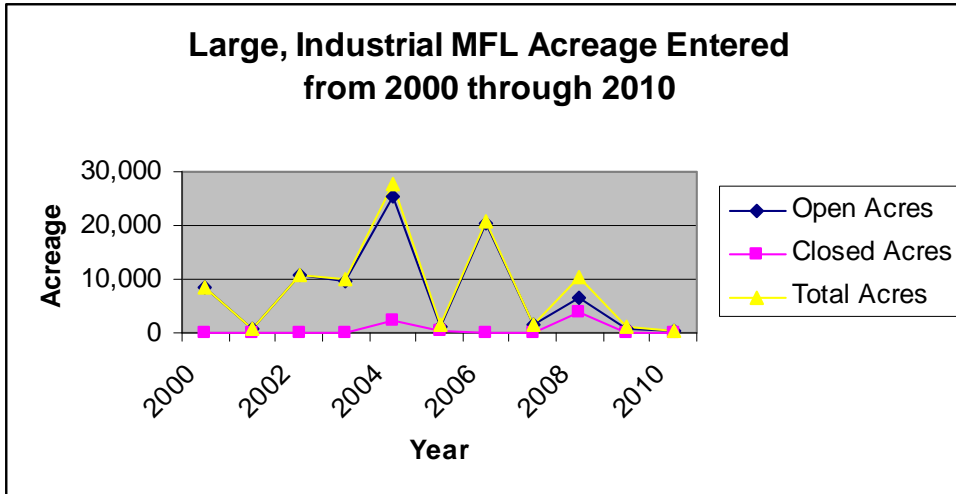
In the past 10 years most NIPF landowners have chosen to close lands to public access when enrolling in the MFL program.



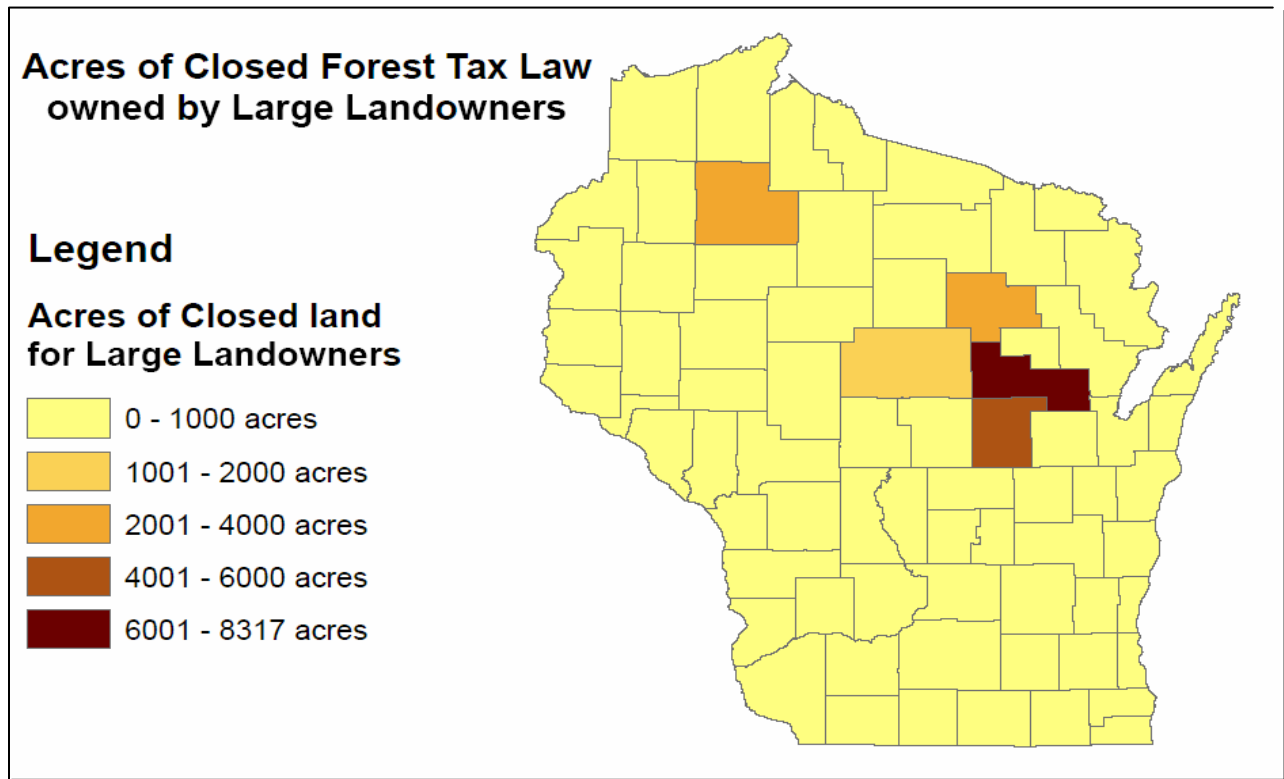
Total acres and locations of land closed to public are shown of the following map.



Large, industrial lands have largely enrolled their lands as open to public access.



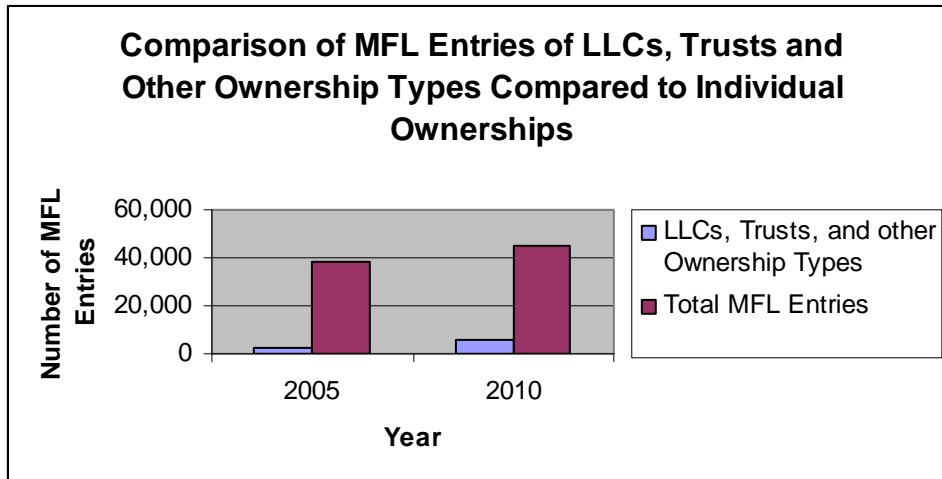
Total acres and locations of large, industrial lands closed to public are shown in more detail on the following map.



Trends in ownership types (personal, LLC, S-Corp, Trust, etc.)

Many landowners are changing ownership of their properties from individual ownerships to limited liability corporations (LLCs), partnerships, corporations, trusts and other entities. Many people are doing this in preparations of transferring lands from one generation to another, or for business reasons. Other people are doing this in order to enroll lands into MFL for the purposes of keeping lands closed to public access.

DNR is aware that landowners have parceled their lands into smaller 80 acre or 160 acre ownerships in order to enroll in the MFL program and to close all lands to public access. In 2005 there were 2,711 out of 38,458 total entries for 7% of the total enrollees. In 2010 the number of entries had increased to 5,760 out of 45,231 MFL entries for 13%.



Trends in recreational opportunity and demand.

Forest-based recreation plays an important role in people’s lives. Many family traditions depend on forest based opportunities like hunting. Wisconsin’s growing human population will potentially increase demand for additional recreation lands and facilities. Tourism and forest management are mainstays to local economies. On an annual basis, forest-based recreationists spent approximately \$2.5 billion within Wisconsin communities (Marcouiller and Mace, 1999). This spending stimulates the economy further and it is estimated that forest-based recreation is a \$5.5 billion industry (WEDI, 2004).

Many factors affect the supply, demand, and participation rates of outdoor recreation in Wisconsin. Since 1965 the state has developed and maintained the Statewide Comprehensive Outdoor Recreation Plan (SCORP) in an attempt to classify, measure, and ultimately provide for the preferences and needs of a statewide recreating public. The SCORP plan is done every 5 years to identify essential issues that affect the future of Wisconsin outdoor recreation and includes appropriate recommendations. (Excerpt from the DNR public web site at <http://dnr.wi.gov/planning/scorp/>.)

The table below includes a sample of the 95 total recreation activities that SCORP tracks. These activities represent the type of recreation that is generally available on public and private forest land. The percent of people who participated in each activity from the 1999 and 2005-2010 SCORP reports are shown. The 2005-2010 SCORP report projected recreation trends in 2010 compared to 2005, presented in the right column.

Table 14.a: Wisconsin Resident Past, Present and Future Participation Trends

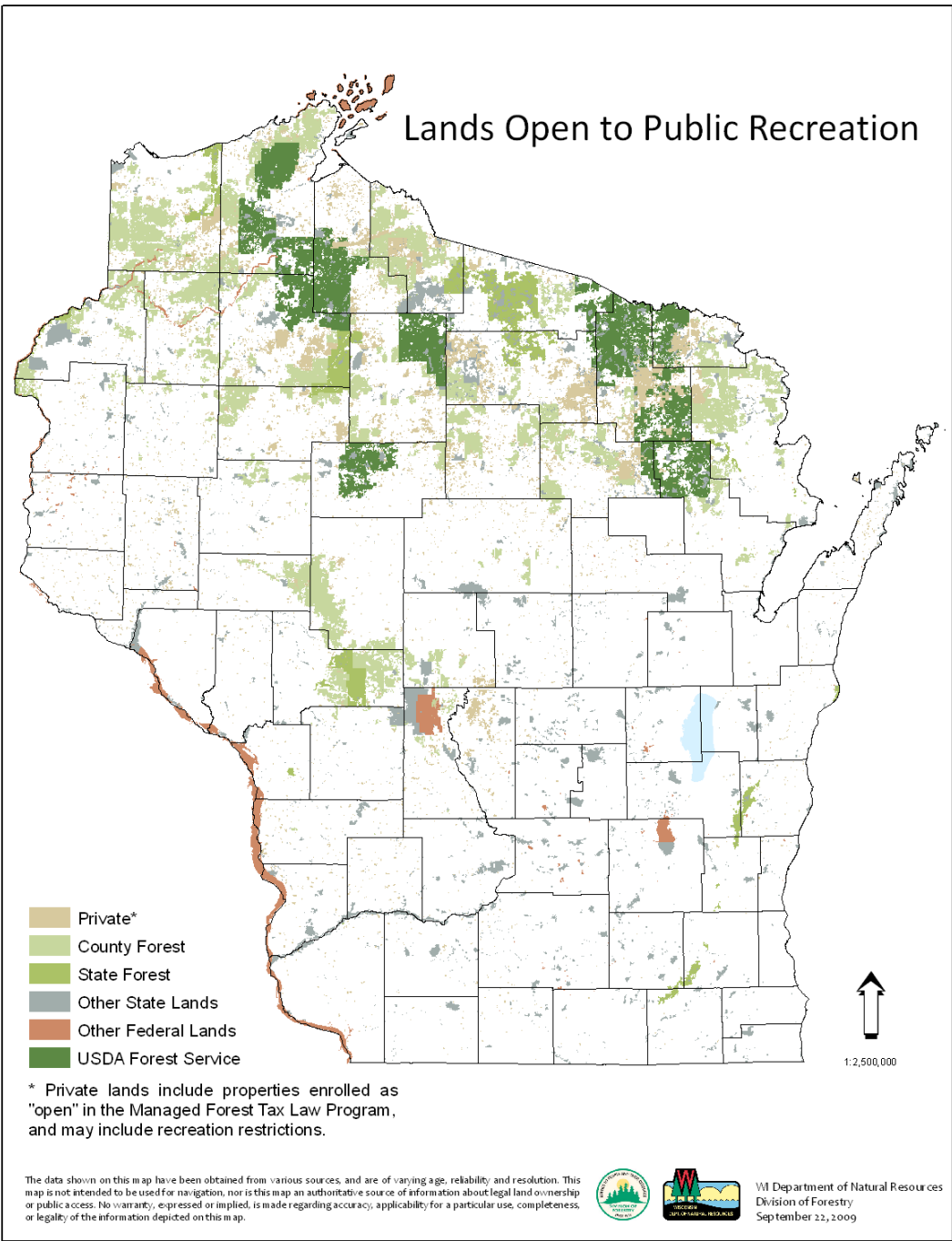
Activity	1999 SCORP* Percent of Participation	2005-2010 SCORP** Percent of Participation	2010 SCORP Future Participation Trends
Birdwatching	46.4	40.9	Increasing Demand
Camping – Developed or RV Camping	12.9	32.3	Increasing Demand
Camping – Primitive or Tent Camping	25.1	16.0	Stable
Day Hike	41.4	35.0	Stable
Fishing:	47.6	NA	Stable
Freshwater	NA	40.7	NA
Warmwater	NA	37.0	NA
Coldwater	NA	13.9	NA
Ice	NA	11.4	NA
Great Lakes	NA	11.0	NA
Hunting:	23.7	NA	Decreasing Demand
Migratory Birds	NA	5.0	NA
Upland Birds	NA	10.5	NA
Small Game	NA	14.5	NA
Big Game	NA	19.2	NA
Mountain Biking	21.0	NA	Decreasing Demand
Off-road	NA	20.4	NA
Single Track	NA	18.0	NA
Off-road Driving with ATV	12.3	23.4	Increasing Demand
Skiing – Cross Country	14.5	11.4	Stable
Snowmobiling	14.6	18.3	Decreasing Demand
Swimming – Lakes & Streams	61.0	45.8	Stable
Visit Nature Centers	NA	65.3	Stable
Wildlife Viewing	59.5	57.0	Increasing Demand

*SCORP, 1999 Table 8, **SCORP,2006, Table2-1

Source: SCORP 2006

The map below shows the public lands that are open to recreational activities.

Lands Open to Public Recreation



Amount and types of public lands currently available for recreational uses.

The amount of public lands available for recreation was broken into the following categories.

Ownership Type			Acreage	Percentage
County Forest			2,363,767	35%
National Forest			1,519,800	22%
DNR Managed Lands			1,464,170	22%
Wildlife	514,459 acres	35%		
Northern Forests	474,132 acres	32%		
Wild Rivers	128,890 acres	9%		
Fisheries	114,957 acres	8%		
Parks	105,270 acres	7%		
Natural Areas	60,843 acres	4%		
Southern Forests	57,968 acres	4%		
Other Acres	7,651 acres	1%		
Forest Tax Laws (open)			1,142,741	17%
US Fish and Wildlife Service			216,000	3%
Board of Commissioners of Public Lands			78,000	1%
TOTAL			6,784,478	100%

Outdoor Activities Grant Program

The state enacted 2007 Act 20 to provide \$1,000,000 annually for an Outdoor Activities Grant Program. The funding originates from a closed-area fee paid by MFL participants and was intended for acquiring easements or purchasing land for approved outdoor recreational activities. A severe \$6.6 billion budget shortfall, however, caused the state to delete funding for the Outdoor Activities Grant Program in the 2009-11 biennial budget. While the budget eliminates funding in the 2009-11 biennium, statutory authority for the program remains (Wisconsin Legislative Fiscal Bureau 2009).

The Managed Forest Land Public Access Grant program would be funded from the MFL closed acreage fees. The program would distribute revenues with the objective to offset the impact of the increased closed acreage by acquiring easements or purchasing land. The Managed Forest Land Board would be responsible for providing grants, funded from closed acreage revenues, to local governments, the Department and non-profit conservation organizations.

Concerns of Private Landowners and the Public

Landowner Concern: Lands are no longer allowed to be leased.

Background information on the statutory change regarding recreational leasing can be found in the appendix.

Landowner Concern: Too many hunters on MFL lands will make landowners liable for accidents.

State statutes limit a landowner's liability from people who recreate on their property under s.896.52, Wis. Stats. The statute gives examples of recreational activities and provides limitation of a property owner's liability. Exceptions to the liability are explained. The state statute is found at <http://www.legis.state.wi.us/statutes/Stat0895.pdf>.

Landowners enrolled in MFL do not receive additional protection except that provided in ch. 896.52. Landowners are also not represented by DNR attorneys if sued by recreational users.

Public Concern: Landowners are reconfiguring ownership in order to close lands to public access.

The MFL program allows each owner the ability to close up to 160 acres of land to public access. No more than 80 acres, or two legal descriptions, can be in lands enrolled prior to 2005.

Two examples of closing lands to public access are identified:

1. Many landowners have reconfigured their ownerships and changed their deeds in order to close lands to public access. Examples include:
 - a. Husband and wife have 3 ownerships: (1) husband, (2) wife, and (3) husband and wife. This example would allow a husband and wife to close 480 acres instead of 160 acres.
 - b. Unlimited number of LLCs, trusts, and other non-natural entities: LLC #1, LLC #2, etc. This example would allow an unlimited number of acreage to be closed to public access since each LLC would be considered a separate ownership.
2. Landowners are creating LLCs and closing them to public access along public access ways (roads), then enrolling additional LLCs away from public access ways as open. Hunters and other recreational users are denied access to cross the closed lands to recreate on the open land. This allows landowners the ability to receive the open tax rate and not provide public access.

Each owner is allowed to close up to 160 acres of land to public access. Lands that are landlocked are allowed under the tax law program and may be enrolled as open to public access. Landowners are not allowed to deny access to the open lands, but it is incumbent on hunters and other recreational users to gain access to the property through the adjacent landowner.

Increase participation in the MFL program.

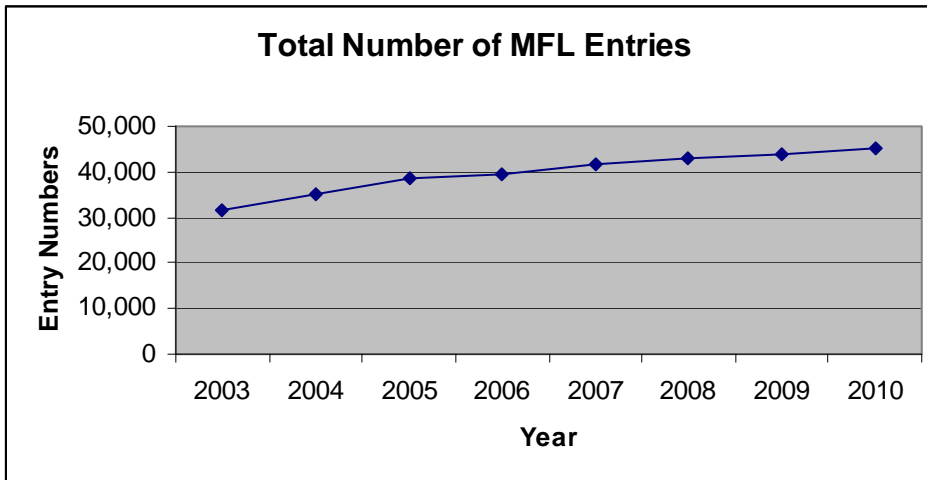
The MFL program is the largest private land management incentive program in the state and the nation. The MFL program has steadily increased in entries and acreage since the first MFL

enrollments in 1987. This interest in private landowner participation is a result of the excellent benefits provided private landowners

Trends in New MFL Entries

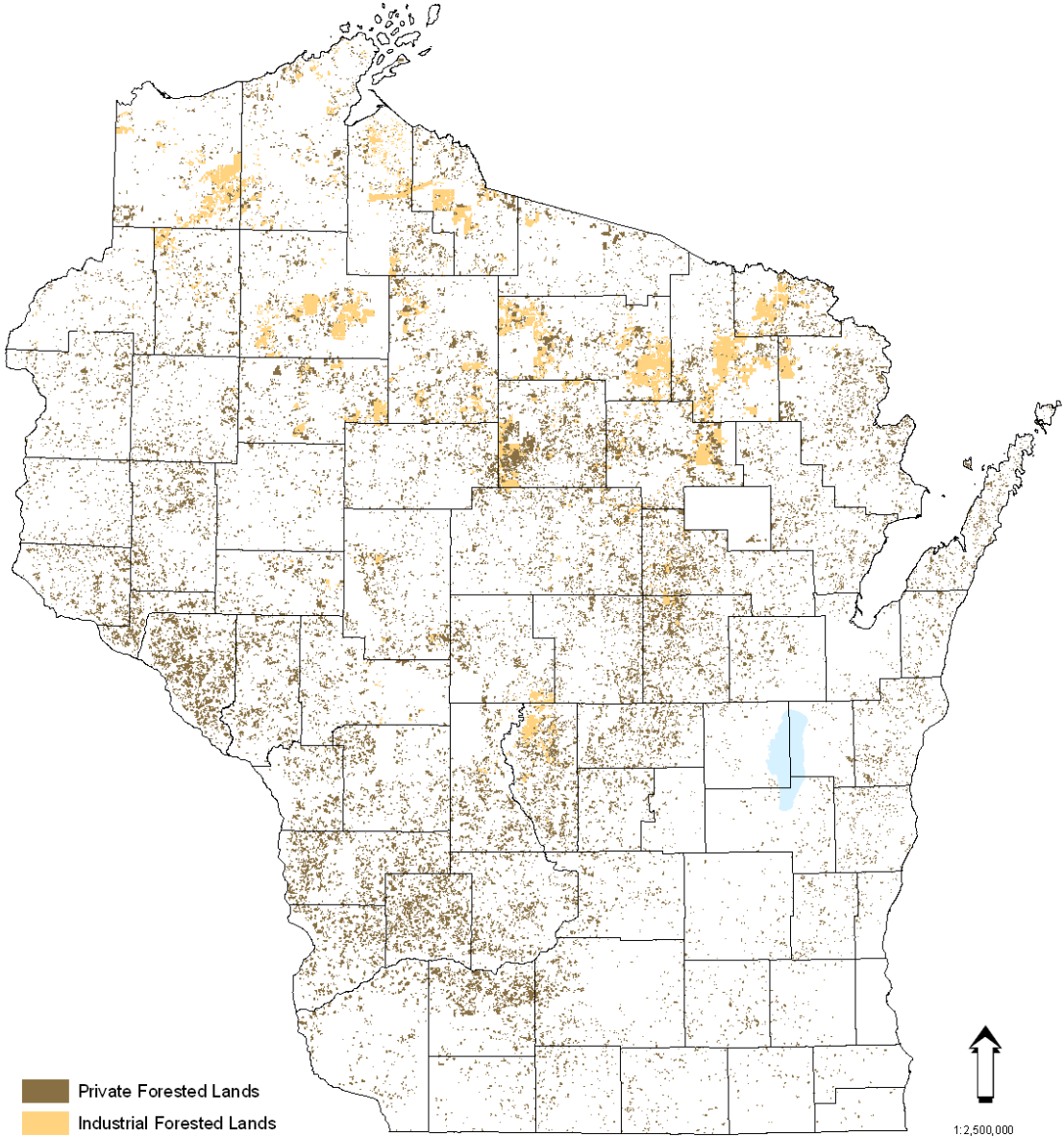
Concerns have been raised that since a number of legislative changes to the MFL program since 2004 the MFL program is not as attractive to private landowners as it once was.

Data shows that the MFL program continues to grow in entry numbers and acreage, although the application growth rate has slowed from 2004 (12% growth) and 2005 (9% growth) to a steady 3% growth in recent years.



The location of lands enrolled in the forest tax law programs is shown below.

Forestland in Property Tax Incentive Programs



The data shown on this map have been obtained from various sources, and are of varying age, reliability and resolution. This map is not intended to be used for navigation, nor is this map an authoritative source of information about legal land ownership or public access. No warranty, expressed or implied, is made regarding accuracy, applicability for a particular use, completeness or legality of the information depicted on this map.



WI Department of Natural Resources
Division of Forestry
September 22, 2009

Ad Valorem Property Tax Rates

Many landowners with rising property taxes enroll their lands into MFL to reduce their property tax burden. MFL participation provides up to a 95% reduction in property taxes.

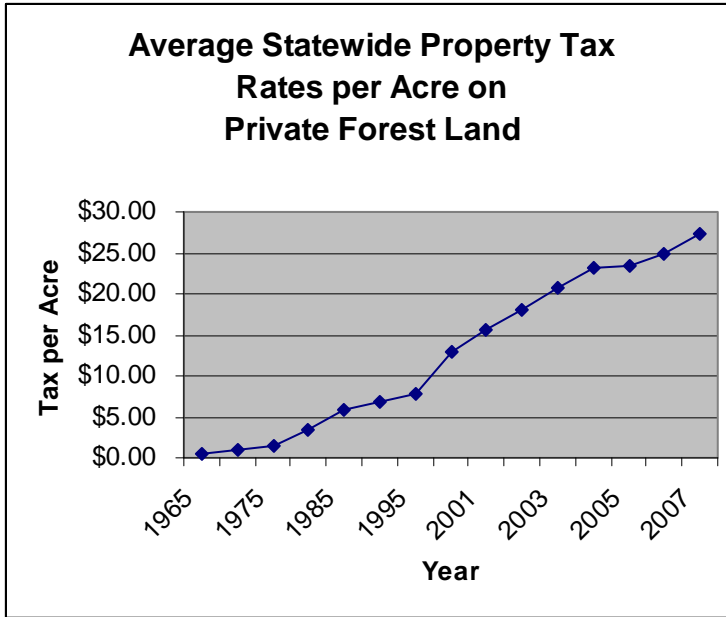
Statewide, average forest land values increased from \$311 per acre to \$2,438 in the last seventeen years, an annualized increase of 12.87% compared to a 2.76% annualized inflation rate over the same period. Because of the high property tax rate Wisconsin landowners are likely to continue enrolling in MFL.

The table below shows Wisconsin forest land property taxes since 1965, the annualized compound rate of tax change for five-year or one-year intervals, and the U.S. annualized inflation rate during the same period. For example, average forest land property taxes between 1995 and 2000 increased at a 10.70% annual compound rate, while inflation was only 2.47% annually. When forest land property taxes increase at a significantly faster rate than inflation, landowners tend to look for relief.

Year	Average Property Tax per Acre of Taxable Forest Land	Forest land Property Tax Annualized Compound Rate of Change for Interval	U.S. Inflation Rate for Interval
1965	\$0.56		
1970	\$0.87	9.21%	6.82%
1975	\$1.42	10.29%	8.85%
1980	\$3.31	18.44%	8.87%
1985	\$5.90	12.25%	5.51%
1990	\$6.87	3.09%	3.94%
1995	\$7.76	2.47%	3.13%
2000	\$12.90	10.70%	2.47%
2001	\$15.73	21.94%	2.83%
2002	\$17.96	14.18%	1.59%
2003	\$20.65	14.98%	2.27%
2004	\$23.26	12.64%	2.68%
2005	\$23.53	1.16%	3.39%
2006	\$24.82	5.48%	3.24%
2007	\$27.33	10.11%	2.85%

(Source: WI DOR calculated tax rates.) This table reflects reductions associated with Wisconsin forest tax law incentives and, since 2005, Agricultural Forests classification.

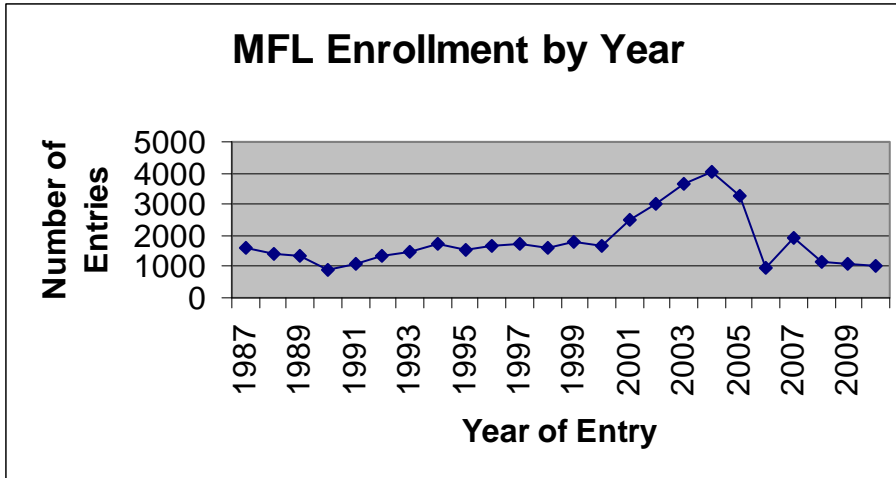
The average statewide property tax is also shown as a graph.



The impact of general property taxes on forests may actually be greater than that shown in the table. The average taxes for forest lands in the table include property enrolled in forest tax law programs and, since 2004, Agricultural Forest classification. Department of Revenue figures for 2007, for example, show an average forest tax of \$27.33 per acre including forest tax law lands and Agricultural Forests. The average rate for forest land under general taxes, however, was \$32.00 per acre. That higher value is calculated as the statewide average equalized value per assessed acre of taxable forest land multiplied by the net statewide tax rate for 2007. Further, the apparent slowing of tax increases in 2005 with a small 1.16% increase is due to the introduction of Agricultural Forests, but those benefits were not enjoyed by owners of non-farm forest land. The Agricultural Forest effect begins to fade soon after 2005 as farmers' assessments are adjusted and the new provision is maxed out.

MFL Entry Growth Rate Slowed Since 2005

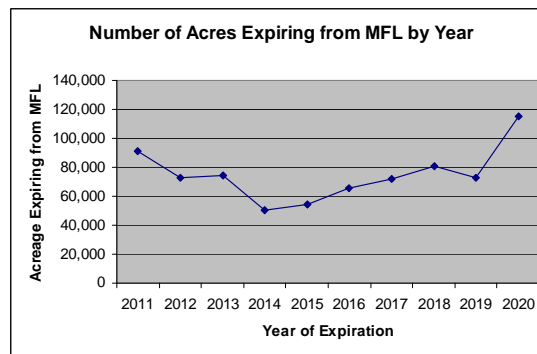
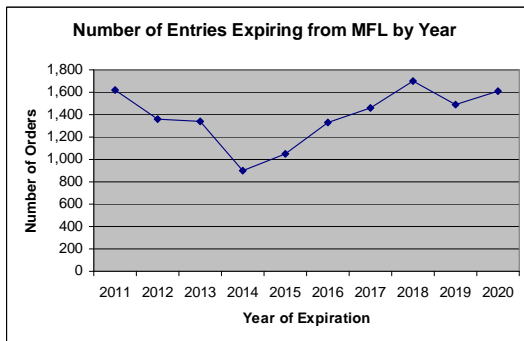
The slower growth rate since 2005 may reflect the completion of new assessed values on forested lands with the full implementation of agricultural use assessment. Landowners who found it difficult to pay increased property taxes after reassessments likely enrolled forested lands into MFL during the years of 2001 through 2005. Other factors that may have affected the growth rate include the cost of preparing an application and the number of changes in recent years to the MFL program. The sharp drop between the 2005 and 2006 entry years reflects a short time period in which to enroll in the MFL program when application deadlines were changed from January 31 to July 1.



Renewal of MFL Lands.

Lands that had been enrolled in MFL in 1987 will be expiring from MFL on December 31, 2011. Landowners with expiring lands were notified by the DNR of the date in which their MFL expires and were given instructions by DNR forester on enrollment options. History has shown that roughly 60 to 67% of landowner re-enroll their lands into MFL (based on landowners who enroll lands into MFL when their Forest Crop Law (FCL) expires).

The number and acreage of MFL expirations is shown below.



Surveys of private forest ownership interests and objectives.

Various surveys of landowner interests and objective are conducted by research companies, universities and the United States Forest Service.

The National Woodland Owner Survey was conducted by the US Forest Service. Results of that survey are found at <http://www.fia.fs.fed.us/nwos/>.

A study was conducted by Pinchot Institute to learn the interest and understanding of children of Wisconsin’s private woodland owners in continuing land stewardship of their parents lands. This report is found at http://www.pinchot.org/gp/Family_Forests.

Concerns of Private Landowners and the Public

Landowner Concern: Catastrophic loss and reduction in yield tax payment.

Landowners are concerned that they may be paying a higher percentage of their income from timber sales towards yield tax if their timber has had a catastrophic loss.

Catastrophic loss provisions are provided in NR 46.30(1), Wis. Admin. Code. All landowners pay a yield tax of 5% based on the average price of each species and product within 13 market zones.

Landowners who have had a catastrophic loss on their timber as a result of ice, snow, insects, disease, wind or flooding are given a 30% reduction on their yield tax payment.

Landowners who have had a catastrophic loss on their timber as a result of fire are given a 70% reduction on their yield tax payment.

Roughly 3% of all cutting reports have claims for catastrophic loss. The department handles roughly 75 catastrophic loss claims out of an average annual 2391 cutting reports.

Much of the support that the department provides survivors of catastrophic events is written in NR 46, Wisconsin Administrative Code. In 2007 the NR 46 catastrophic loss provision was changed as a result of a large fire event, the Cottonville Fire, which occurred in Adams County in 2005. A larger catastrophic loss reduction was created for fire events and the acreage of catastrophic events was decreased from ten to five acres.

Many catastrophic events show little reduction in timber value, although timber volume may be reduced. This can occur in straight line winds, insect and disease events and other events if the timber is harvested before rot and decay set in. The department determined that fires cause more value loss than other catastrophes and warrant a larger reduction in yield tax. Char on wood and bark reduces the number of markets that wood can be sold to when salvaging fire damaged forests, thus making it more difficult for landowners to salvage after a catastrophe.

The reduction in acreage was done to make it easier for landowners to qualify for catastrophic loss and to encourage smaller areas of land to be cleaned up after such an event. This change was meant to encourage greater utilization and management of MFL lands.

Landowner Concern: Re-enrollment of lands with catastrophic loss.

Senate Bill 296 was introduced in the 2009 Legislative Session to give landowners who have had a catastrophic loss the ability to do pay their yield tax invoices over a 10 year period and to re-enroll in MFL for a period of 10 years at the open or closed tax rates that were in existence at the time of the catastrophic loss. A similar bill was proposed in the 2007 Legislative Session as 2007 SB 550 on February 29, 2008. Neither of these bills passed the legislative session.

Information on the bills can be found at the Legislative Web Site at

<http://www.legis.state.wi.us/>.

The reduction in yield tax payments compensates landowners for the loss of timber value when a catastrophic loss has occurred. Reductions are 30% if the loss is from ice, snow, insects, disease, wind or flooding, and 70% if the catastrophic loss is from fire.

Re-enrollment under the MFL program would require landowners to pay the 2005 and later open and closed tax rates. Landowners have stated that they are concerned they may not be

able to pay the increased cost of the closed acreage rate when re-enrolling. The closed acreage tax rate for landowners who re-enroll lands into MFL would be \$8.34 per acre instead of \$1.57 per acre on acres enrolled pre-2005.

Landowner Concern: Leasing Prohibition.

On January 1, 2008 a new statutory provision banned recreational leasing of MFL lands. The statute had the following provisions:

- Prevented landowners to sign recreational leases on MFL lands as of January 1, 2008.
- Required landowners who had recreational leases to terminate those leases as of January 1, 2008.
- Created authority for DNR to issue citations to landowners who violated this provision.

DNR mailed letters to all landowners under MFL announcing this change in the MFL program. Many landowners contacted DNR as a result of these letters. The letter and additional information, including a summary of the questions that were asked by landowners are found in the appendix.

Landowner Concern: Cost of preparing a new MFL application for re-enrollment.

Landowners who have lands up for renewal need to develop an application and submit it to DNR by June 1, 2011 for renewal effective on January 1, 2012. Landowners who are renewing lands must prepare an application as if they had not been enrolled in MFL previously, meaning that they need to hire a certified plan writer and pay the full cost of the plan development. Landowners are not allowed to extend their existing MFL entries for the following reasons:

- New tax rates must be applied to all MFL entries as of January 1, 2005.
- Management plans must be updated and based on new timber recon data.
- New orders must be issued and recorded at the register of deeds office.

The only provisions that do not apply to MFL renewals is that DNR is not required to notify local municipalities of renewals, hold hearings or render decisions on requests for denial. DNR is authorized to deny renewal of lands if there are unpaid property taxes on the land, the lands no longer meet eligibility requirements or the landowner has failed to follow the management plan in effect at the time of renewal.

The cost of plan writing has increased for landowners who are renewing lands initially entered the MFL program. Landowners can offset some of this cost with a grant through the Wisconsin Forest Landowner Grant Program (WFLGP). Landowners must receive grant money approval before work is begun on developing the plan. Cost share reimbursement rates are up to 50% of the cost of the plan.

The differences between the enrollment process from 1986 and 2011 are shown in the following table.

Application Component	1986	2011
Application Fee	\$10	\$20
Cost of Plan Preparation	\$0	Cost of Certified Plan Writer – average statewide

		cost is \$466/plan + \$7.09/acre
Finding a Plan Writer	DNR developed all management plans.	Landowners are responsible to hire a certified plan writer. DNR will develop applications if landowners are unable to find the services of a certified plan writer. DNR must charge fees for application development.

Many landowners are also concerned that conditions of the MFL program have changed since they initially enrolled.

MFL Program Component	1986	2011
Tax Rates	Open Land = 67¢/acre Closed Land = \$1.57/acre	Open Land = \$1.67/acre Closed Land = \$8.34/acre
Recreational Leasing	Initially not allowed because leasing was considered another form or commercial recreation. Admin. Code allowed leasing in 1992 because leasing did not affect on-the-ground management activities.	Leasing and receiving compensation is prohibited through statute.

Landowner Concern: Contractual Relationships.

DNR Legal Services reviewed the MFL program and MFL management plans and has determined that neither is considered a contract with the State of Wisconsin.

Changes to the law, catastrophic events, changes to on the ground conditions, mistakes, and changed scientific information all require adjustments to land management practices. The DNR needs to have the flexibility to prescribe sound forestry practices to meet the underlying purpose of the MFL program for the benefit of the citizens of the State of Wisconsin. Currently, most approved cutting notices contain modifications that are not included in the landowners management plan.

The legislative history shows that 14 statutory changes had occurred to the MFL program since the first MFL enrollments in 1987. These changes would not have occurred, nor would landowners currently enrolled in the MFL program been able to take advantage of some of these changes if the MFL program was a contractual relationship. A summary of the history of changes can be found in the Appendix.

The adjustment of management plans based on current stand conditions and current science allows for the latest information to be used in the management of MFL lands. Most MFL landowners readily accept modification to management plans, however a small number of

MFL landowners would prefer that management plans are contracts and cannot be changed, especially if the prescription would require harvesting of trees where none was previously prescribed.

In conclusion, history has shown that the Legislature did not intend to treat MFL as a contractual relationship as evidenced by the number of times the program has been modified. Also, the ability for landowners and DNR foresters to practice sound forestry on private lands resides with keeping the flexibility to modify plans based on current information or landowner goals.

Please see the appendix for the full legal interpretation.

Landowner Concern: Fairness of Government Programs.

MFL program requirements are listed in s. 77.80, Wis. Stats. and NR 46, Wis. Admin. Code. Handbook provisions give greater detail on implementation of program requirements.

Each state, federal or local land management program has its own program requirements to meet specific goals. Not all programs have the exact same goals or program requirements, although many of the programs have similar goals and are highly compatible.

A comparison of program requirements on MFL, CRP, CREP and Land Use Assessment are found in the appendix.

Ensure that MFL Does Not Conflict with Local Zoning Ordinances.

Local zoning ordinances and management of MFL lands are highly compatible. There may be instances, however, when local zoning may preclude the entry of lands under MFL.

Right to Practice Forestry

The State of Wisconsin insured the right for landowners to practice forestry when 2005 Wisconsin Act 79 was effective on January 7, 2006. This act states that no ordinance enacted under 59.69, Wis. Stats., the statute authorizing counties to create zoning districts and regulate land uses, may prohibit forestry operations that are in accordance with generally accepted forestry management practices, as defined under s. 823.075 (1)(d).

s. 823.075, Wis. Stats. states that forestry operations cannot be called a nuisance if landowners are following forestry practices that are outlined in the Wisconsin Forest Management Guidelines (FMGs) as publication number PUB-FR-226. The FMGs are updated regularly to keep current with new knowledge associated with sustainable management practices.

Lands enrolled under MFL are required to practice sustainable forestry practices. These practices are outlined in DNR's Silviculture Handbook as well as the FMGs.

Relationship between MFL, local zoning and conservation easements.

DNR works with county offices and partners to insure that management of lands enrolled in MFL are compatible with local zoning ordinances and conservation easements, including:

- Subdivision plats – lands that are recorded as a subdivision plat are not allowed entry under the MFL program since the intent of the plat is to provide housing for human residence.

- Building lot size – many counties have minimum lot sizes for building requirements. Landowners who wish to sell some building sites are encouraged to check with their zoning office to leave enough acreage from entry into MFL in order to prevent problems with their MFL entry in the future.
- Water Regulations and Zoning – many counties have the minimum setback requirements and land management standards in flood plains and lands adjacent to waterways. These regulations may have impacts on entry and management of MFL lands.
- Scenic and land management easements – Many landowners have sold scenic, development, timber and other land management rights to federal, state and local units of government, non-governmental agencies and individuals. These easements may have impacts on entry and management of MFL lands.
- Local ordinances – Local units of government may have county, township, village or city ordinances that may impact the entry and management of MFL lands.

County ordinances may change after entry of lands into MFL. Many counties work with DNR in designing county ordinances that do not adversely impact MFL entries.

Enhance the benefits of and minimize negative effects of MFL enrollment on local units of government.

Cooperation between DNR, Local Government and Other State Government Agencies

DNR cooperates with other units of government in the administration of the MFL program. There are many ways in which this cooperation occurs.

Who Initiates?	What is Done?	What is the Outcome?
DNR	Notifies local municipal clerks of lands applied for entry into MFL.	Local municipalities have the opportunity to request denial of lands. Supporting information must be provided to the DNR. DNR may hold a hearing on the municipality’s request if necessary, but most likely reviews the data and makes a determination if the lands meet eligibility requirements as written in statute. Local municipalities who are denied their request may appeal the decision through a contested case hearing or judicial review.
DNR	Notifies county treasurer offices to verify that property taxes have been paid.	DNR requests that landowners who have delinquent taxes show proof that those taxes have been paid before entry into MFL is allowed.

DNR	Notifies municipal assessors, municipal clerks, county register of deeds, WI equalization district supervisors, and WI Department of Revenue of new entry, transfers, withdrawals, rescinding, correction and amended MFL entries.	Allows for partners to update their records of lands enrolled in MFL.
DNR	Notifies municipal assessors, municipal clerks, county real property listers, WI equalization district supervisors and WI Department of Revenue of master lists and expiring FCL and MFL lands.	Allows for partners to update their records of lands enrolled in MFL. DNR asks that the master list is checked against county records and discrepancies are reported back to the DNR. Discrepancies may reveal lands sales that weren't reported to DNR, changes in acreage as a result of resurveys, or changes to property identification numbers. DNR sends a list of expiring FCL and MFL lands so that lands that are not re-enrolled into MFL are taxed as regular property taxes.
DNR	Makes payments to local municipalities and counties: 1. Annual aid payment 2. Resource aid payment 3. Yield, severance, withdrawal and termination tax of MFL and FCL lands	Local municipalities and county receive financial support for lands enrolled in the MFL and FCL programs.
Local Municipalities and DOR	Work with the DNR to determine withdrawal taxes on FCL and MFL lands by providing assessed values and tax rates for lands enrolled in MFL and the amount of taxes that should have been paid while lands were enrolled in FCL.	Allows for proper assessment of withdrawal taxes.
County Treasurer	Remits the closed acreage fees to the DNR for all lands in the county that are closed to public access. DNR collected \$4,069,334.89 in closed acreage from counties with closed MFL lands.	Money is placed in the Forestry Account.
DNR	Certifies to local municipality when unable to collect invoices issues to MFL landowners.	Local municipality places the value of the invoice as a special charge to the landowner's next property tax bill.
Local Municipality	Certifies to DNR when unable to collect personal property tax bills from landowners with buildings that are	DNR withdraws the affected legal description from the MFL program and charges the landowner the associated

	allowed on MFL.	withdrawal tax and fees.
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Tax payments made to local municipalities and counties

DNR makes payments to local municipalities and counties for lands enrolled in MFL and FCL. In addition to this money, local municipalities keep the MFL acreage share payment that is billed annually to MFL landowners on annual property tax bills.

Type of Payment	Paid to Whom	Dollar Value
Annual Aid	20¢ per acre for MFL and FCL lands is paid to the municipal treasurer. The treasurer keeps 80% and pays the county treasurer 20%.	Total Payment was \$659,150.12 in Fiscal Year 2010. MFL = \$618,026.75 FCL = \$41,123.37
Resource Aid	Counties with 40,000 or more acres of MFL and FCL lands share a lump sum payment.	DNR paid \$1,237,500.00 to counties who qualified for resource aid payments.
Yield, severance, withdrawal and termination tax	Payment is made to the municipal treasurer. The treasurer keeps 80% and pays the county treasurer 20%. On FCL lands DNR keeps the annual aid payments and remit the remaining money to local municipalities.	DNR made \$1,167,804.30 in payments to local municipalities in FY 2010.

Coding of FCL and MFL on Property Tax Rolls

Lands that are enrolled in the MFL program are taxed at the MFL open or closed tax rate. No other taxes are to be paid on these lands.

According to sec. 70.32, Wis. Stats., there are EIGHT classifications of general taxable real estate available in Towns, Villages, and Cities. There are also 7 codes that define the MFL and FCL programs. They are summarized here in chart form:

Class	Type	Code	Description
1	Residential		
2	Commercial		
3	Manufacturing		
4	Agricultural		
5	Undeveloped		
5m	Agricultural Forest		
6	Forest Lands	1	Forest Crop Law – Regular Classification PRIOR to January 1, 1972
		2	Forest Crop Law – Regular Classification AFTER December 31, 1971
		3	Forest Crop Law – Special Classification between 1949 and 1963.
		5	Managed Forest Law – Open Lands Entered After 2004
		6	Managed Forest Law – Closed Lands Entered After 2004
		7	Managed Forest Law - Open Lands Entered Before 2005
		8	Managed Forest Law – Closed Lands Entered Before 2005
		7	Other

Impact of MFL entries on non-MFL tax law parcels.

One of the primary concerns for townships and counties is how the number of forest tax entries affect property taxes others must pay. Prior to 2004, new MFL enrollments had a small effect on most other property tax payers because the state shared revenue formula generally compensated local governments for any loss in tax revenue. State revenue sharing for each county and municipalities was frozen at its respective 2003 level, for 2004 and beyond. Shared revenues have been replaced by county and municipal aids. For most tax districts the impact of MFL land is still relatively low. Research indicates that a 20% increase in MFL enrollment would raise taxes, on average about \$1.90 on other property assessed at \$100,000. Some townships with a large amount of land in the Agricultural Forest category and a lower per-capita tax base might, however, be especially vulnerable to greater impacts. (Rickenbach and Saunders, 2009)

The entire report can be found at <http://learningstore.uwex.edu/Assets/pdfs/GWQ052.pdf>.

Concerns of Private Landowners and the Public

Public Concern: Lands that are enrolled in the MFL program raise taxes on non-MFL lands.

This concern was heard by a variety of public agencies. UW-Madison professor Mark Rickenbach conducted a study of the effects of MFL on the local tax base and published the report in a publication named **The Managed Forest Law & Property Tax Revenues for Townships: A Study of Enrollment Shifts & Local Impacts**.

Detailed analysis of the results can be found at <http://learningstore.uwex.edu/Assets/pdfs/GWQ052.pdf>.

Public Concern: Municipalities have difficulties collecting personal property taxes on building.

Buildings that are eligible to be on MFL lands are taxed as personal property. This includes cabins, sheds, garages, and second homes. The land under the building is taxed as MFL.

Municipalities who have difficulties in collecting personal property taxes from MFL landowners may certify those lands to DNR. Certification is done by letter stating the inability to collect the tax, the name of the landowner and the legal description in which the personal property tax lies.

DNR is required to withdraw lands from the MFL program when certification is received. Landowners are assessed a withdrawal tax and fee for the lands withdrawn.

Public Concern: Landowners are not following through with mandatory practices.

In 2004 DNR began concerted efforts to eliminate the MFL backlog mandatory practices. MFL landowners statewide had 11,637 mandatory practices for a total of 202,587 acres that were due for completion in 2001 and earlier. At the end of 2008 the backlog practices had been reduced to 123 practices and 1,716 acres.

REGION	ORIGINAL PRE-2002 BACKLOG		TOTAL REMAINING CURRENT PRE-2002 BACKLOG		PERCENT REDUCTION	
	PRACTICES	ACRES	PRACTICES	ACRES	PRACTICES	ACRES
NER	3,830	72,955	65	1057	98%	99%
NOR	2,149	44,618	15	195	99%	100%
SCR	868	12,269	0	0	100%	100%
SER	140	1,546	0	0	100%	100%
WCR	4,650	71,199	43	464	99%	99%
TOTAL	11,637	202,587	123	1716	99%	99%

DNR foresters are working with landowners to reduce backlog practices in other years. From 2002 through 2006 there were a total of 5463 backlog practices for a total of 66,136 acres. In 2008 these practices had been reduced to 2046 practices (63% reduction) and a total of 29,381 acres (56% reduction). Further reductions in the 2002 to 2006 backlog have been completed but not quantified. Continued efforts are being made to complete mandatory practices within 3 years of their scheduled date.

YEAR	PRACTICES	ACRES
2006	5463	66136
2008	2046	29381
Percent Reduction	63%	56%

Public Concern: Forested lands are heavily cut prior to MFL entry.

Development of a management plan and management practice schedule is a requirement of the MFL program. The management practices are determined after reviewing current stand conditions, current science and landowner goals and determining what the future stand will be. Silvicultural systems and management practices are chosen to take the starting primary timber type to the desired timber type.

Currently, 75% of NIPF lands enrolled in MFL have mandatory practices. This data was determined from reviewing the mandatory practices database in the Madison DNR office. Mandatory practices that had been completed did not show up in the data search results. Based on this data it appears that most lands that are enrolled in the MFL program are not being heavily cut prior to entry in order to eliminate payment of a yield tax.

Public Concern: Enrollment of multiple tax parcels in one MFL parcel.

MFL enrollment is based on contiguous forested parcels. Each forested parcel must be 10 acres in size and be 80% productive. No more than 20% of the parcel can be unsuitable for producing timber products, including swamps, bogs, rights-of-way, grass areas and areas designate as no management zones.

Local municipalities report difficulties when many tax parcels are included in one MFL forest parcel. Printing and issuance of the annual tax bill is reported to cost more than the dollar value received from the landowner.

Ensure that the MFL adapts to allow sustainable management for emerging forest products markets.

Current and Projected Market Opportunities for Biomass.

One of the purposes of the MFL program is to encourage the management of private forest lands for the production of **future forest crops for commercial use** through sound forestry practices.

The legislature did not specify all of the current and future forest crops that could emerge when the MFL program was initially created, thus allowing for adaptability of the MFL program to meet new market opportunities. Biomass for energy production is the newest market opportunity for woodland management.

DNR, in conjunction with the Council on Forestry and partners, developed Biomass Harvesting Guidelines to accommodate landowners who are interested in harvesting biomass. Harvesting biomass must meet the requirements outlined in the Biomass Harvesting Guidelines. Harvesting must be prescribed in the landowner's management plan.

Wisconsin's Forestland Woody Biomass Harvesting Guidelines

Harvesting of woody biomass is a new timber market that utilizes woody materials that had normally been left in harvested areas as coarse woody debris, including tree branches less than 4 inches in diameter, hollow trees, and trees that do not meet any grade or criteria for traditional wood utilization.

Because of this new emerging timber market, and the need to insure that forest lands are sustainably managed, the DNR, the Council on Forestry, stakeholders and resource experts worked together to develop Wisconsin's Forestland Woody Biomass Harvesting Guidelines. These guidelines can be found at: <http://council.wisconsinforestry.org/biomass/pdf/BHG-FieldManual-lowres090807.pdf>.

MFL landowners are allowed to harvest biomass from their properties as long as the following conditions are met:

- Harvesting is needed on the property.
- Lands meet the criteria for biomass harvesting.
- All conditions of the biomass harvesting guidelines are met.

Appendix

Highlights of the 2006 National Woodland Owners Survey for Wisconsin

Characteristics and Ownership

- The 2006 data shows that 362,000 private owners (all types) hold over 11 million acres or 68% of Wisconsin's forests. Fifty one percent (186,000) own 10 or more acres of forest land.
- Family forest owners make up the largest private ownership type with 97% of the 362,000 private owners. And they own 81% (9 million acres) of the private forest land.
- Other private owners, including forest industry, make up the remaining 3% of the private owners. They own 18% of the private forest land (2 million acres) of which forest industry owns 1/3.
- Of the 352,000 family forest owners who own 9 million acres of forest land, 50% own parcels 1 – 9 acres in size totaling 529,000 acres.
- The average parcel size for all private forest land is 31 acres. The average parcel size for private forest lands held by family forest owners is 26 acres.
- Thirty percent of the family forest owners are 65 years of age or older and 57% percent are over 55.

Owner Objectives and Motives

- Family forest owners hold land for a variety of reasons with the predominate reasons being recreation and aesthetics. Production of forest products is next to last. But 50% (or more) of the family forest owners have harvested timber regardless of their reason for owning the land.

Timber Harvest, Planning and Assistance

- Twenty-three percent of the harvests on family forest land were done with

professional advice. Seventy-seven percent of the harvests were done without professional advice.

- Nine percent of family forest owners holding 28% of the family forest land have a management plan.
- Almost 50% of the family forest owners who have received advice got that advice from the state forestry agency (WDNR). The next 5 highest sources (in order) ranging from 15% to 12% were extension, federal agency, another landowner, private consultant and logger.

Changes in forest ownership from 1997¹ to 2006²

- Total private ownership remained relatively unchanged with less than 1% decrease in acreage (39,000 acres) from 1997 to 2006.
- The number of private forest owners increased from 262,000 in 1997 to 362,000 in 2006. Eighty-four percent of the increase in the number of owners was in the 1-9 acre size class.
- Forest Industry ownership dropped 413,000 acres. 90% of the acres transferred to other private ownership (65,000 to family forests owners and 309,000 to other NIPF owners). The remaining 10% is no longer under private ownership.

¹ 1997 data published in 2001 "Wisconsin Private Timberland Owners: 1997" by Earl C. Leatherberry

² 2006 data from Butler, B.J. 2008. Family forest owners of the United States, 2006. Gen. Tech. Rep. NRS-27.

Definitions of Private Owner Types

Family Forests include families, individuals, trusts, estates, family partnerships, and other unincorporated groups of individuals that own forest land.

Non-Industrial Private Forests (NIPF) includes family forests and corporations and other private groups that own forest land, but do not own and operate a primary wood-processing facility. NIPF includes non-industrial corporations, such as TIMOs and REITs, nongovernmental organizations, such as TNC, and some other groups, such as tribal. In 1997 tribal land was not included under NIPF. Tribal (Native American) acreage was added to the 1997 data for comparison purposes.

Other Private includes all private ownerships other than family forest (forest industry and part of the NIPF)

Why the Managed Forest Law Program is Not a Contractual Relationship

Forestry Attorney Quinn Williams
9/26/2007

This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

Background

This brief is intended to provide guidance on why the Department does not treat designation into the Managed Forest Law (“MFL”) program as a contractual relationship. When practices have to be altered due to changes in the law, catastrophic events, changes on the ground conditions, mistakes, and changed scientific information, the Department needs to have the flexibility to prescribe sound forestry practices to meet the underlying purpose of the MFL program for the benefit of the citizens of the State of Wisconsin. Currently, most approved cutting notices contain modifications that are not included in the landowners management plan.

Introduction:

The Managed Forest Law program is a tax exemption statute extended by the people of the State of Wisconsin to landowners

to encourage the management of private forest lands for the production of future forest crops for commercial use through sound forestry practices, recognizing the objectives of individual property owners, compatible recreational uses, watershed protection, development of wildlife habitat and accessibility of private property to the public for recreational purposes.

Wis. Stats. s. 77.80

The Department of Natural Resources (“the Department”) has been delegated the responsibility of enforcing this statute by the legislature. Wis. Stats. s. 77.82.

1. The Legislature has determined that designation into the MFL program is not a contractual relationship.

All statutory language is given meaning. The courts will read statutes so that any differences in statutory language have meaning. The courts will resolve conflicting language in a way which will give effect and meaning to both provisions.

While an owner enters into a “contract” with the state under the Forest Crop Law (“FCL”) and Woodland Tax Law (“WTL”) programs (Wis. Stats. s. 77.03, 77.16(4)), an owner petitions for “designation” (Wis. Stats. s. 77.82(1)) as part of the Managed Forest Law (“MFL”) program. The creation of the MFL occurred after the creation of the FCL and WTL. Since the legislature did not choose to include the term “contract” in the MFL, the legislature made a deliberate choice and evinced clear intent **not** to make designation into the MFL program a contractual relationship between the state and the private landowner. This is further supported by the legislative history.

2. **Management plans are not contracts.** While there is a management plan required for designation, this plan is akin to a license or a permit, in that it calls for landowners to meet the purpose of the MFL program. Licenses and permits are not contracts, and this is recognized by the Wisconsin courts. Licenses are recognized by the courts as being subject to modification, and the issuance of a license or permit does not extend vested property rights to individuals.

Courts will read any seemingly conflicting or ambiguous provisions in the statute in favor of the overall purpose of the statute.

3. Taxation and tax exemption must be for a public purpose

Article VIII, Section 1, of the Wisconsin Constitution states;

[t]he rule of taxation shall be uniform but the legislature may empower cities, villages or towns to collect and return taxes on real estate located therein by optional methods. Taxes shall be levied upon such property with such classifications as to **forests** and minerals including or separate or severed from the land, **as the legislature shall prescribe.**

(emphasis added)

Levy of taxes and expenditure of government’s money must be for public purpose only. Where there is no public purpose, there is no power to tax or to withhold taxation. In enacting a specific constitutional amendment and the FCL, WTL and MFL, the legislature and the citizens of the state of Wisconsin identified forests as a sufficiently strong public interest to merit special tax treatment.

This benefit must not be a remote benefit, but a direct benefit to the citizens of the state. Public funds cannot be used for private purposes, and so the tax exemption extended under the MFL program must be shown to have a direct public benefit in order to allow its designees to qualify. Tax exemptions are strictly read by the courts, and the presumption is against extending the exemption where there is any question as to the public benefit.

The legislature and the state constitution require the Department of Natural Resources to closely enforce the MFL program to ensure that the public benefits, and thus the constitutionality and purpose of the statute, are met.

4) Enforcement of the Managed Forest Law.

The Managed Forest Law program is a tax exemption statute extended by the people of the State of Wisconsin to landowners. Landowners who produce forest products using sound forestry practices are eligible for this different tax treatment. These sound forestry practices are used to provide jobs, wildlife, recreation, watershed protection, and public use for the citizens of the state. Department personnel have the power and the duty to enforce the MFL program to ensure that these public benefits are realized.

a) The Department determines what is “sound forestry practice.”

Under NR 46.15(29), “[s]ound forestry practices” means timber cutting, transporting and forest cultural methods **recommended or approved by the department** for the effective propagation and improvement of the various timber types common to Wisconsin.” (emphasis added).

The Department’s factual findings are entitled to substantial deference under the substantial evidence test. As a result, the Department is given considerable leeway and deference in determining what is a “sound forestry practice.”

While there is a provision in the MFL program that allows for management plans to be amended through mutual agreement by the Department and a

b) Management plans cannot conflict with the statutory purpose of MFL

Under Wis. Stats. s. 77.82(3)(f), “[a]n owner and the department may mutually agree to amend a management plan.” This provision allows owners to modify their plans to achieve new objectives or different management approaches, subject to Department approval. It does **not** prevent the Department from meeting its statutory and constitutional obligation to enforce sound forestry practices.

Wis. Stat. s. 77.80 indicates that the purpose of the MFL program is “to encourage the management of private forest lands for the production of future forest crops for commercial use through sound forestry practices.” To meet this purpose, the Department must be able to follow current sound forestry practices, and require that landowners follow these practices. In fact, under Wis. Stats. s. 77.82(3)(e), owners sign a statement understanding that they are agreeing to follow “all terms and conditions of the subchapter,” which includes the overall purpose of the MFL program and the intent to follow sound forestry practices. To allow un-sound or destructive forestry practices would do violence to the underlying context, history and purpose of Chapter 77.

Additionally, under Wis. Admin. Code NR 46.18(2)(a) and (b), the mandatory practices prescribed by the management plan for harvesting mature timber or for thinning plantations and natural stands must be done “according to sound forestry practices.” Wis. Admin. Code NR 46.18(2)(c) through (f) provides further guidelines for sound forestry practice under the mandatory practices. It would be an absurd result for a management

plan, which is supposed to follow sound forestry practices to actually achieve the opposite end.

Apparently conflicting provisions of law should be construed so as to harmonize them and thus give effect to the leading idea behind the law.

When a literal construction of a statutory provision produces unreasonable results, the court will look to the statute's context, history, and purposes to determine the legislative intent.

Statutory Language is interpreted in the context in which it is used, not in isolation but as part of a whole, and reasonably, to avoid absurd or unreasonable results.

c. The Department can enforce sound forestry practice

The Department has the judicial deference to determine what constitutes the practice of "sound forestry," and courts will find in favor of the Department unless, under the substantial evidence test, "reasonable minds could not arrive at the same conclusion" regarding the prescription to be enforced. Additionally, the Department is given great weight deference in interpreting Wis. Stats. s. 77.86(1)© so that it does not conflict with the purpose of Wis. Stats. s. 77.80 to "encourage the management of private forest lands for the production of future forest crops for commercial use through sound forestry practices."

Conclusion

- 1) Designation into the MFL program is not a contract.
- 2) Management plans are not contracts, but conditions precedent to entry into the MFL program.
- 3) The MFL program is allowed by the Wisconsin constitution due to its public benefit.
- 4) The public benefit accrues through the sound practice of forestry.
- 5) The Department is charged with administering the MFL program and determining what constitutes sound forestry.
- 6) Courts will defer to the Department in enforcing sound forestry practices

Management plans prepared for a property identify what constitutes sound forestry based on the current stand conditions. As stand conditions change over time or management practices prescribed in the plan no longer represent sound forestry, management practices must be changed to continue meeting the purpose of the MFL program.

Keep in mind that our strength will still be appropriate advanced notification to landowners advising of changing prescriptions based on sound forestry.

The basis for Department approval of rotation ages under the Managed Forest Law (MFL)

Department Position: The Department has a trust responsibility under constitutional and statutory direction, to ensure that sufficient public benefits through the practice of sound forestry takes place on the lands enrolled within the MFL program. In executing that responsibility, particular care must be given to protect these public benefits and the resource as a whole, and the Department is constrained to allow generally accepted forestry practices regarding forest cover type rotation ages.

I. The History and Intent of the Private Tax Laws

As the state was moving through the cutover period, in 1867, the Special Commission on Forestry noted that; 1) It was a duty of the state to prevent undue destruction of the forests; 2) Scientific management should be followed; 3) Forests had uses beyond pure timber production, and that ways should be found in their management to “add to the health, comfort and prosperity of the people.”

This history set the stage for the creation of the FCL. Creation of the FCL necessitated a constitutional amendment. Levy of taxes and expenditure of government’s money must be for public purpose only. Where there is no public purpose, there is no power to tax or to withhold taxation. The public purpose was codified in Wis. Stats. s. 77.01

It is the intent of this chapter to encourage a policy of protecting from destructive or premature cutting the forest growth in this state, and of reproducing and growing for the future adequate crops through sound forestry practices of forest products on lands not more useful for other purposes, so that such lands shall continue to furnish recurring forest crops for commercial use with public hunting and fishing as extra public benefits, all in a manner which shall not hamper the towns in which such lands lie from receiving their just tax revenue from such lands.” (emphasis added)

The statute, broken into its component parts identifies the following purposes.

- 1) Prevent premature cutting through sound forestry practice, which favors a “precautionary principle” approach to the science that continues today through the MFL program.
- 2) Give the townships a just tax revenue.
- 3) Provide for public hunting and fishing opportunities.

The legislature gave the responsibility of balancing these public interests to the Department (then the Conservation Department). However, there were other public benefits that were not being explicitly addressed within the FCL, and this prompted creation of the MFL.

II. The Law

The purpose of the MFL was to expand the definition of “sound forestry” to include public benefits such as wildlife habitat, stable watersheds, scenery and recreational opportunities, all of which were identified, in addition to the forest industry, as contributing significantly to the economy and to the quality of life in this state. Wis. Stats. s. 77.80, the MFL purpose statement, states that;

[t]he purpose of this subchapter is to encourage the management of private forest lands for the production of future forest crops for commercial use through sound forestry practices, recognizing the objectives of individual property owners, compatible recreational uses, watershed protection, development of wildlife habitat and accessibility of private property to the public for recreational purposes.

In the definition, it is clear that the overarching intent of the statute is to produce “future forest crops for commercial use through sound forestry practices.” The Department of Natural Resources, being the agency charged with implementing this statutory purpose, must recognize “the objectives of individual property owners, compatible recreational uses, watershed protection, development of wildlife habitat and accessibility of private property to the public for recreational purposes.”

The Department, in its trust responsibility, will go as far as the state constitution, statutes, administrative rules, and consistent interpretation and application will allow to meet landowner objectives.

1. Constitutional constraints

In enacting a specific constitutional amendment and the FCL, WTL and MFL, the legislature and the citizens of the state of Wisconsin identified forests as a sufficiently strong public interest to merit special tax treatment. This benefit must not be a remote benefit, but a direct benefit to the citizens of the state. Public funds cannot be used for private purposes, and so the tax exemption extended under the MFL program must be shown to have a direct public benefit in order to allow its designees to qualify.

2. Statutory and Administrative Rule constraints

The primary intent of Wis. Stats. s. 77.80 is to produce “future forest crops for commercial use through sound forestry practices.” The Department of Natural Resources, being the agency charged with implementing this statutory purpose, must recognize “the objectives of individual property owners, compatible recreational uses, watershed protection, development of wildlife habitat and accessibility of private property to the public for recreational purposes.”

The legislature intended the Department balance these other considerations. The purpose does not subordinate these other factors underneath “the objectives of individual property owners,” but instead places them on the same level of consideration that the Department must recognize. Wis. Admin. Code NR 46.15(29) indicates that “sound forestry practices”;

means timber cutting, transporting and forest cultural methods recommended or approved by the department for the effective propagation and improvement of the various timber types common to Wisconsin. ‘Sound forestry practices’ also may include, where consistent with landowner objectives and approved by the department, the management of forest resources other than trees including wildlife habitat, watersheds, aesthetics and endangered and threatened plant and animal species.

The Department, as directed by the legislature, determines what constitutes “sound forestry practices,” and makes the final determination as to what the limit of those “sound forestry practices” are when determining their “consistency” with landowner objectives.

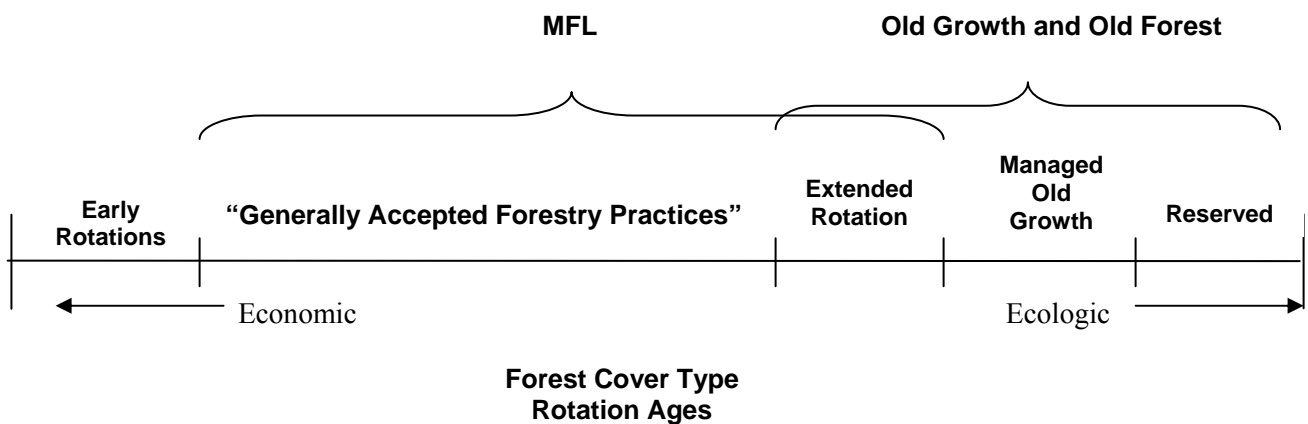
3. Consistency

The Department has consistently interpreted the definition of “sound forestry” to include all of the balancing factors in Wis. Stats. s. 77.80, 77.81 and Wis. Admin Code NR 46.15(29). Moving away from a consistent interpretation threatens the deference that the Department receives in court.

III. The Science

The legislature and the state constitution require the Department of Natural Resources to closely enforce the MFL program to ensure that the public benefits, and thus the constitutionality and purpose of the statute and administrative code, are met. The Department cannot abdicate the responsibility. Sustainable forestry practices may include forest practices that rotate forest stands at a relatively young age through the development of old growth. Basically these scientifically, publicly supported practices are used in the MFL program in order to achieve the public benefits, or that portion of sustainable forestry, intended by the law. Figure 1 visually represents the Department interpretation of rotation ages under the MFL;

Figure 1. The Spectrum of Forest Cover Type Rotation Ages within Sustainable Forestry and Those that are Acceptable under the Managed Forest Law Program



In an effort to meet our statutory obligations the Department has determined that the use of “Culmination of Mean Annual Increment” (MAI) as the measure used for determining maturity. The Department has used this measure historically and it has the following advantages;

1. The culmination of MAI is well referenced in peer reviewed scientific literature.
2. Most Managers’ handbooks recommend rotation ages based on culmination of MAI.
3. MAI provides a method of managing stands to meet a wide range of landowner goals.
3. MAI allows an unhindered method of managing stands to provide the most revenue to the Municipalities and Counties through the collection of yield tax and severance tax revenue.
4. Culmination of MAI provides an accepted method of managing stands for future forest crops for recurring rotations (sustainable in the long run).
5. The use of this measure closely reflects the capability of the species and the site where they grow. MAI provides a range of rotation ages that will not change over the length necessary to manage stands to rotation (it is a consistent measure).

6. MAI allows for the production of a wide array of forest products that sustain the diverse forest product industries of the State providing a significant benefit to Wisconsin's citizens.
7. Utilizing MAI clearly fulfills our statutory obligations to define sound forestry and insuring that future forest capabilities are maintained.
8. MAI provides a range of rotation age recommendations to provide for complementary benefits such as sustaining biodiversity, maintaining more diverse wildlife habitats, forest aesthetics and watershed protection.

The Department does not recognize the use of strictly economic analysis to determine rotation ages because:

1. Economic analysis relies on current and future market conditions. Since market conditions vary, sometimes wildly, rotation ages would vary widely and could change from year to year as markets dictate. This does not provide the necessary foundation for sound forestry planning to occur consistently.
2. Managing for future crops of forest products requires a longer term perspective provided by a biological measure of the stand such as MAI. Using economic analysis to establish rotation ages is also subject to a pretty wide range of assumptions that are not consistently applied. Forecasts of future economic conditions, especially very distant economic conditions, have a high degree of potential error (Imagine trying to forecast in 1920 what today's forest products demands would be). In order for the Department to fulfill its duty to the citizens of the state as required in statute we need to define maturity based on methods that are highly recognized, static and universally definable.
3. Utilizing economic analyses that justify shorter rotations may hamper the ability of the towns in which such lands lie from receiving their just tax revenue from such lands. Since municipalities may not invest and receive compound interest on yield tax and severance tax revenues a reduction in timber quantities would lead to a reduction in revenues to the municipalities and counties where the lands reside.

The Department has always allowed management to the low end of the recommended ranges to provide for the maximum economic flexibility, still allowing for the Department to fulfill its trust responsibility under the law. The Department considers forest health issues as well in arriving at minimum rotation ages.

The minimum rotation ages can be flexible on a case by case basis to meet management objectives, such as a method of evening out age class distributions of a timber type on a property, or dealing with forest health situations as they develop. However, the Department cannot allow for shorter rotations for strictly economic reasons as a general policy.

IV. Unforeseen Circumstances

The state of Wisconsin determines and allows "generally accepted forestry practices" to be used to implement the Managed Forest Law to protect the public benefits intended by the law and guard against unforeseen circumstances. A range of generally acceptable rotation ages for forest cover types are offered as parameters for the law since a variety of forest products are produced (pulpwood, poles, sawtimber, etc.) for a diversified industrial base and a variety of other multiple uses or benefits occur such as diverse forest wildlife habitat and aesthetics. Unforeseen circumstances of shorter rotations could include:

- Economic implications possibly limiting the type of products extracted from the forest could negatively impact certain industries.

- Ecological impacts such as the impacts on wildlife habitat that prefer the range of generally accepted rotation lengths, or the uncertainty of long term impacts on soil nutrient pools given the lack of replicated long term monitoring data as compared to the uncertainty of modeled information in the scientific literature.
- Social impacts of forest aesthetic associated with the range of generally accepted rotation lengths.

V. Conclusion

The Department has a trust responsibility under constitutional and statutory direction, to ensure that sufficient public benefits through the practice of sound forestry takes place on the lands enrolled within the MFL program. In executing that responsibility, particular care must be given to protect these public benefits and the resource as a whole, and the Department is constrained from moving to the edges of the science on either side of the rotation spectrum. The Department will work, as it has throughout history, with all of the stakeholders involved in protecting the future of forests and forestry in the state of Wisconsin.

Professional guidance

Landowners entering lands under the MFL program receive a management plan for their property. The management plan is prepared for a 25 or 50 year period based on the current stand conditions and current sound forestry practices. This management plan outlines the management practices that are needed during the order period, assuming good growing conditions and lack of stressors (storms, droughts, insects, diseases, etc.).

MFL management plans are written to meet program requirements, as well as federal Forest Stewardship and Tree Farm Certified Group requirements. Landowners who enter under the MFL program have high standards for managing their properties.

Foresters work with landowners to determine the scheduled management practices. Data that is collected prior to making this schedule includes:

- Tree species
- Age of trees
- Density of trees (number or basal area per acre)
- Health of trees
- Successional trends
- Habitat classification
- Presence of endangered resources, archeological and historical sites.
- Presence of BMP for water quality issues.
- Presence of invasive species (plants, insects, diseases)

Management plans are prepared to meet landowner goals and program objectives. Sound and sustainable forestry practices encompass a large range of options from the most aggressive practices that maximize economic returns to less aggressive practices that maximize other benefits. Any practice that falls within this range is sound if the stand and site conditions can support that practice.

Management practices are monitored by the local DNR Forester. Landowners receive reminder letters to complete mandatory practices. Cutting notices and reports must be filed and approved.

- **Cutting Notice** – This is a request to complete a harvest or thinning on tax law property. DNR Foresters evaluate the cutting to make sure that it is established according to sound forestry practices. If the cutting complies, the notice is approved. If the cutting is denied, DNR Foresters must work with the landowner to modify the proposed cutting to follow sound forestry practices.
- **Cutting Report** – This is a report of what actually got cut during the harvest or thinning. DNR Foresters evaluate the practice to make sure that harvests or thinnings were implemented correctly. They also verify the volume of

timber cut so that landowners pay the proper amount of yield or severance tax.

Without entry in the MFL program, many landowners would not engage the DNR Forester to help them in making sound forest management decisions. It is estimated that roughly 20% of all forest landowners are entered into the MFL program, leaving 80% not in MFL. The lands in MFL can be managed according to sound forestry practices once landowners make the commitment to practice sound forestry.

The ultimate benefit of sound forestry under the MFL program is to keep healthy, working forests on the landscape, ensuring that these forests provide a wide array of public benefits. Forests and forest products are one of the largest industries in Wisconsin. Encouraging landowners to keep forested lands in larger ownerships and subdivide less is a major factor in keeping large, working forests. Here are a few of the other many benefits that MFL forests provide:

- Recurring forest products. Many forest timber types can be harvested every 10 to 15 years, while other can only be harvested every 40 to 50 years.
- Recreational opportunities for hunting, fishing, hiking, cross-country skiing and sight-seeing.
- Excellent food and cover for many wildlife species, including both game and non-game species.
- Watershed protection for streams and lakes, and purification of drinking water.
- Provision of renewable sources of energy and other products that offset the use on non-renewable resources based on fossil fuels.
- Understanding and care of the natural resources in the state of Wisconsin.

Management practices are continually evaluated and updated by Wisconsin DNR Foresters. As new science emerges, the *DNR Silviculture Handbook* and *Forest Management Guidelines* are updated so that foresters are working with landowners to practice the most current management practices. Work must continue to reach the other 80% who are not entered into MFL or who do not know that professional forest management services can be provided by the DNR or Cooperating Foresters.

Wisconsin DNR Silviculture Handbook (HB24315)

Purpose

Silviculture is the practice of controlling forest composition, structure, and growth to maintain and enhance the forest's utility for any purpose. Silvicultural practices manipulate forest vegetation to accomplish stand management objectives and property management goals.

The WDNR Silviculture Handbook provides silvicultural guidelines for forest types defined in manual code. These silvicultural guidelines attempt to interpret, summarize, and synthesize best available science. They incorporate professional experience, published management guides, and published research papers. They provide forest managers with one accessible document containing distilled information and recommendations. For most forest types, flexible alternatives and ranges regarding silvicultural systems and practices are provided; for example, for the northern hardwood cover type, four different silvicultural systems are recommended, each offering a variety of flexible practices. Forest type conversion is a viable alternative through application of information and guidelines for the current and desired forest types.

Sustainable Forestry is the practice of managing dynamic forest ecosystems to provide ecological, economic, social, and cultural benefits for present and future generations. Sustainable forestry objectives can be highly variable and complex.

In order to limit complexity and detail, and reflect available forestry expertise, the Silviculture Handbook provides recommended silvicultural systems and practices that promote tree and stand vigor and growth, and timber quantity and quality. For example, recommended rotation ages are intended to maximize timber productivity over time (volume/acre/year over the rotation). This emphasis on stand growth and timber yield should coincide with economic sustainability. These recommendations may be modified to satisfy other management objectives, but stand timber productivity (volume/acre/year over the rotation) could be reduced. For example, application of extended rotation ages, provided within the Handbook, will reduce average timber productivity, but can provide additional ecological and social benefits. Management considerations provided in the Handbook address some management objectives that focus on other forest related benefits.

Incorporation of Ecological Forestry Concepts

Ecological forestry is an approach to forest management that incorporates an understanding of natural disturbance and stand development processes more fully into silvicultural practice. Successful implementation requires that silvicultural prescriptions be founded on a conceptual basis that links stand disturbance and dynamics to the development and maintenance of ecological complexity of stands, as expressed in structure, composition, and heterogeneity of these features in space and time. Ecological forestry encourages the

development of ecological complexity through practices that consider legacy retention, heterogeneous intermediate treatments, and appropriate recovery periods. Within the Silviculture Handbook, practices that incorporate ecological forestry concepts are included as recommendations, alternatives, and considerations.

The new retention guidelines for reserve trees and wildlife trees (Silviculture Handbook Chapter 24) address some aspects of legacy retention. Retention of some standing trees and snags as legacies and/or wildlife trees is recommended. However, to limit potential adverse impacts on stand growth and yield, upper limits are also recommended. Alternatives for greater retention levels are recognized, but potentially at a cost to stand growth and yield.

For intermediate treatments, particularly thinning, managing density according to published stocking guides is recommended to maintain full site occupancy and optimum stand growth rates and timber volume production. Within this broad range, stands can be maintained at relatively high or low densities, or allowed to fluctuate; variable density thinning is an acceptable alternative. For example, for a red pine stand with an average tree diameter of 12 inches, acceptable stocking can range widely from a basal area of 90 square feet per acre (about 120 trees) to 200 square feet per acre (about 250 trees). Thinning frequency can be highly varied as long as density is maintained within these limits. Retention of small unthinned patches of wildlife trees is recommended. Management considerations also identify the importance of landscape management that considers reserved forests (may develop higher stocking levels) and nonforested conditions (understocked).

Extended rotations are being incorporated as cover type chapters are updated. For example, white pine rotations can range up to 180 years. These extended rotations can still produce significant timber resources as well as social and ecological benefits associated with larger and older trees, but potential timber productivity over time will be reduced (volume/acre/year over the rotation).

Management considerations that are being incorporated as chapters are updated include such topics as: soil productivity, wildlife, endangered resources, and landscape management

Process for Development and Updates

For over 30 years, the Silviculture Handbook has provided foresters in Wisconsin with a unified resource and systematic approach to silvicultural decision making. Historically, the Silviculture Handbook was developed within the WDNR and was written and reviewed by staff specialists and field foresters.

The Silviculture Team was organized in the early 1990's, primarily to maintain the Silviculture Handbook. The Silviculture Team currently has 13 members: 2 DNR forestry administrators, 3 DNR staff specialists in forest ecology and silviculture,

5 DNR regional field forestry representatives, 1 DNR wildlife specialist, 1 DNR endangered resources specialist, and 1 county forest administrator. Workload is an issue for the team, due to the professional and scientific rigor required for handbook updates. DNR is currently developing a procedure to add several additional interests groups to the Silvicultural Team membership including representatives from forest industry, environmental NGO and a collegiate representative.

Silviculture Handbook chapter update priorities are based on: direction provided by Division of Forestry leadership, Silviculture Team evaluation (of needs and availability of new information), surveys of DNR field foresters, and interest of volunteer authors. Chapter updates may be developed by team members and/or ad hoc teams. While being developed, frequent team reviews occur, and members may seek review by any additional colleagues. Sometimes, presentations are provided at training sessions and workshops, and comments solicited. Once the team is comfortable with a completed draft, it is distributed for review. Distribution of materials for review has been primarily within DNR and County Forestry programs; the most recent chapter update also received review by DNR wildlife and cooperating foresters. Before incorporation into the handbook, chapter updates must be approved by DNR Forestry central office and regional administration. Once “published,” training sessions often are offered to introduce concepts to forest resource managers.

Guidelines and Policies

The Silviculture Handbook is a resource that provides information and guidelines to forest resource managers. Baseline practices focus on the maintenance of tree and stand vigor and growth, and the optimization of timber quantity and quality. Alternatives and considerations are provided to increase the production of other social and ecological benefits, with the recognition that timber growth and yield may be reduced.

The management recommendations provided are based on research, experience, and general silvical knowledge of the species being managed. They are general guidelines, not rules for every situation. Foresters may adapt them to accommodate conditions specific to the stand being managed, and to achieve specific sustainable forest management goals and objectives.

Department policy (Foreword – Handbook Application) states: “This Handbook provides silvicultural guidance that applies to all forest properties owned by the Department of Natural Resources (DNR), all county forest lands as specified in the comprehensive county forest land use plan, and private forest tax law lands. Department personnel and cooperating partners will follow the management alternatives outlined in this Handbook, unless the approved property management plan makes an exception, or in the judgment of the forester, a variance from these guidelines is warranted and can be documented to the satisfaction of the Department. In addition, these management alternatives will

be recommended on other public and private forest lands. Review and approval procedures within the various private and public programs will determine the appropriateness of recommended silvicultural prescriptions ... This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced ... Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.”

Specific programs may develop policies and recommendations regarding interpretation and application of the Silviculture Handbook. For example, the Managed Forest Law (MFL) requires the practice of sound forestry by statute. In administration of the MFL, foresters must evaluate the soundness of silvicultural practices; the Silvicultural Handbook provides approved, generally accepted silvicultural guidelines and standards. However, options are available to follow other reasonable science-based guidelines as agreed upon by the landowner and the DNR; for example, Plum Creek has a management commitment that identifies and follows other guidelines for the management of northern hardwoods. In addition, some forest certification programs, such as FSC, require specification of silvicultural standards. The Silviculture Handbook provides an opportunity to provide such standards, but landowners can negotiate other standards with certification organizations. Specific programs may limit or expand management options available, depending upon the purpose of the program.

Wisconsin Forest Management Guidelines, published in 2003, summarize and reference silvicultural guidelines provided in the Silviculture Handbook. It also provides guidance on many other sustainable forest management issues, such as BMPs for water quality, soil productivity, wildlife and biodiversity, forest aesthetics, economics, and pesticide use. The “goal is to establish basic, sensible concepts that outline responsible resource management at the site-level.”

Definitions

Biological Legacy: An organism, a reproductive portion of an organism, or a biologically derived structure or pattern inherited from a previous ecosystem. Biological legacies often include large trees, snags, and down logs left after harvesting to provide refugia and to structurally enrich the new stand.

Extended Rotation: Old forests which are dominated by trees older than their traditional rotation age yet younger than their pathological rotation age (average life expectancy), and are managed by objective for both commodity production and the development of some ecological and social benefits associated with older forests.

Forest Management: The practical application of biological, physical, quantitative, managerial, economic, social, and policy principles to the regeneration, management, utilization, and conservation of forests to meet specified goals and objectives while maintaining the productivity of the forest.

Guideline: 1) An indication or outline of policy or conduct; advice. 2) Non-mandatory, supplemental information about acceptable methods for implementing requirements found in directives, processes, procedures, work instructions, etc.

Intermediate Treatments: Any treatment or tending designed to enhance growth, quality, vigor, and composition of the stand after establishment of regeneration and prior to final harvest.

Management Goal: A broad, general statement, usually not quantifiable, that expresses a desired state or process to be achieved.

Management Objective: A concise, time-specific statement of measurable planned results that correspond to pre-established goals in achieving a desired outcome.

Management Plan: A predetermined course of action and direction to achieve a set of results, usually specified as goals, objectives, and policies.

Management Policy: A definite course or method of action to guide present and future decisions or to specify in detail the ways and means to achieve goals and objectives.

Management Prescription: A set of management practices and intensities scheduled for application on a specific area to satisfy multiple goals and objectives.

Policy: 1) A high-level overall plan embracing the general goals and acceptable procedures.
2) A statement of principles and/or values that mandate or constrain the performance of activities used in achieving institutional goals. A policy is general in nature, has broad application and helps to ensure compliance with: applicable laws and regulations; contract requirements; and delegation of authority. Policies do not contain requirements. Directives, processes, procedures, work instructions, and the like flow from policies and the requirements are specified in them.

Recommend: To endorse as fit, worthy, or competent; to make acceptable.

Silviculture: The practice of controlling forest composition, structure, and growth to maintain and enhance the forest's utility for any purpose.

Silvicultural Prescription: A planned series of treatments designed to change current stand structure to one that meets management goals and objectives. The prescription normally considers ecological, economic, and societal constraints.

Silvicultural System: A planned program of vegetation treatments during the entire life of a stand. The three basic components are tending, harvesting, and regeneration.

Sustainable Forestry: The practice of managing dynamic forest ecosystems to provide ecological, economic, social, and cultural benefits for present and future generations.

Statute: A law enacted by the legislative branch of a government.

Silvicultural Systems

The Department of Natural Resources prescribes management practices based on peer reviewed scientific research from universities, research foundations and other organizations. This information is the basis for determining sound forestry practices on public and private lands.

There are two major treatments that are done to forest stands.

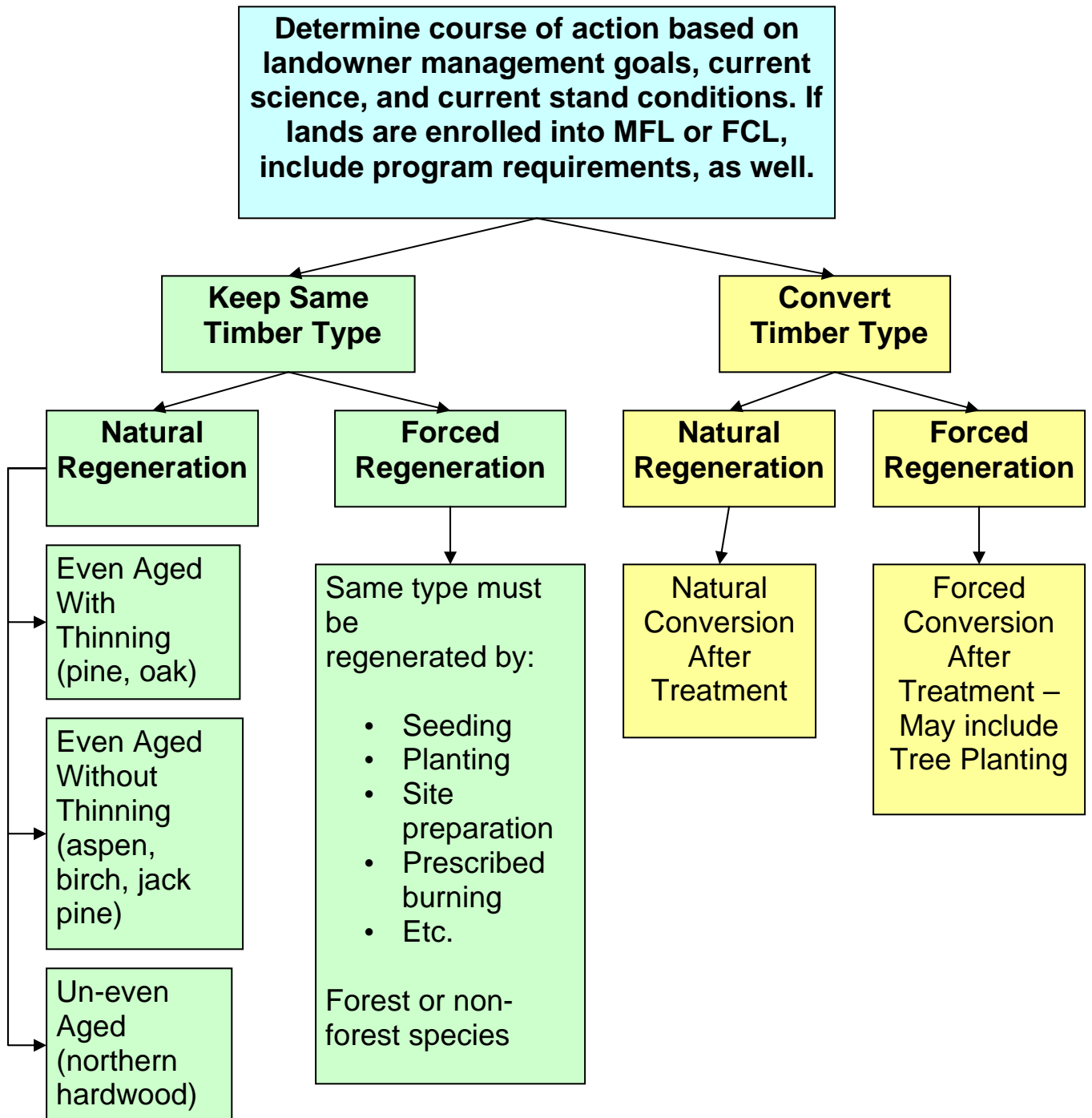
1. *Tending* refers to treatment of the stand during the time period between stand origin and final harvest. These treatments may include:
 - a. *Pruning*
 - b. *Release*
 - c. *Thinning*
 - d. *Salvage*
 - e. *Improvement cuts*

2. *Regeneration* refers to the treatment used to establish or renew a forest through natural or artificial reproduction. These treatments may include:
 - a. *Coppice harvest* - used to regenerate aspen
 - b. *Clearcut harvest* – used to regenerate jack pine, white pine, white birch
 - c. *Seed Tree harvest* – used to regenerate jack pine, white pine, white birch
 - d. *Overstory Removal harvest* – used to release young trees after regeneration has already been established after a shelterwood harvest.
 - e. *Shelterwood harvest* – used to regenerate oaks and other tree species that need special light and moisture conditions for seed beds/
 - f. *Selection harvest* – used to regenerate northern hardwood and central hardwood forests.

Foresters, after evaluating the current stand conditions and reviewing current scientific literature for management recommendations, determine the best silvicultural systems to meet landowner goals and program requirements. This can be shown as a graph.



Management practices that are commonly prescribed depend largely on what the new forest stand will become. The thought process can be viewed as a decision tree.



Old Growth Forests and the Forest Tax Laws

Management of old growth forests has gained popularity on state lands to provide habitat and ecological benefits that are not present in younger forests. As the desire to manage for old growth forests increases, it is natural that private woodland owners would want to do the same. Since many landowners are entered under Wisconsin's Forest Tax Law programs, it is prudent to determine what parts of the old growth policy, if any, apply to lands under the Forest Crop Law and Managed Forest Law programs. Statutory limitations for lands enrolled in the forest tax laws limit the amount of old growth management, depending upon the tax law in which the land is enrolled.

The Old-growth and Old Forest Handbook (HB24805) identifies three management classes that provide all or some of the characteristics and societal benefits attributed to old forests. These management groups and their management implications are:

- **Reserved** – The primary management goal is the long-term maintenance of relict forest or the development and maintenance of old-growth compositional, structural, and functional attributes within a minimally manipulated environment. Future active management is very limited. Relict forests appear never to have been manipulated, exploited, or severely disturbed by humans of European origin since about 1800 AD. There are a few representative stands in Wisconsin that qualify as relict forests and that would be managed under the reserved management system.
- **Managed Old Growth** – The primary management goal is the long-term development and maintenance of some old-growth or old forest ecological attributes within environments where limited management practices and product extraction are allowed. Tree cutting can be applied to enhance or accelerate the development of old-growth compositional, structural, and functional attributes. Management would apply to those forests that are old and relatively undisturbed by humans (old-growth forests) or that are older than the typical managed forests, but are not biologically old (old forests).
- **Extended Rotations** – The primary management goal is commodity production and the development of a variety of structural, compositional, and functional attributes associated with older forests. Big Tree Silviculture is an existing DNR policy that falls into the extended rotation management category. Management would apply to those forests that are older than typical managed forests, but are not biologically old (old forests).

In determining what parts of the old growth policy apply to the forest tax law programs, it is necessary to review the purposes for which the tax law programs were created.

The purpose of the Forest Crop Law program is:

77.01, Wis. Stats. Purposes. *It is the intent to encourage a policy of protecting from destructive or premature cutting the forest growth in this state, and of reproducing and growing for the future adequate crops through sound forestry practices of forest products on lands not more useful for other purposes, so that such lands shall continue to furnish recurring forest crops for commercial use with public hunting and fishing as extra public benefits, all in a manner which shall not hamper the towns in which such lands lie from receiving their just tax revenue from such.*

Based on the purpose of the statute, none of the alternative management regimes would be a permissible use on lands enrolled under the Forest Crop Law. Reserved, managed old growth and extended rotation management regimes significantly limit the production of recurring timber crops, and thus would not be permissible objectives. It could be argued that extended rotations produce future crops through sound forestry. However, extending rotations to a point just short of the average life expectancy of the species that make up the various timber types would hamper the tax revenues that the towns would receive if these lands were managed based on more traditional rotation lengths that seek to maximize the mean annual increment of the stand. Therefore, even extended rotations would not be a permissible management alternative on lands enrolled under the Forest Crop Law.

The purpose of the Managed Forest Law program is:

77.80, Wis. Stats. Purpose. *The purpose of this subchapter is to encourage the management of private forest lands for the production of future forest crops for commercial use through sound forestry practices, recognizing the objectives of individual property owners, compatible recreational uses, watershed protection, development of wildlife habitat and accessibility of private property to the public for recreational purposes.*

Sound forestry is defined in Wis. Administrative Code as:

NR 46.15 (29), Wis. Admin. Code. *“Sound forestry practices” means timber cutting, transporting and forest cultural methods recommended or approved by the department for the effective propagation and improvement of various timber types common to Wisconsin. “Sound forestry practices” also may include, where consistent with the landowner objectives, and approved by the department, the management of forest resources other than trees including wildlife habitat, watersheds, aesthetics and threatened and endangered plant and animal species.*

Alternative uses to timber production are detailed in Wis. Administrative Code:

NR 46.18 (3) (b) 2, Wis. Admin. Code. *On the 80% of a managed forest land parcel required to produce or be capable of producing 20 cubic feet per acre per*

year, practices for the management of forest resources other than trees may be approved consistent with owner objectives as provided in subd. 2. a. and b.

a. The creation of openings and other vegetative cover not producing forest products at the level meeting minimum eligibility requirements under s. 77.82 (1) (a) 2., Stats., may be approved so long as the total area of openings or vegetative cover, combined with land unsuitable for producing merchantable timber and non-stocked land, does not exceed 20% of the managed forest land parcel.

b. In addition to practices approved under subd. 2. a., other practices may be approved on managed forest land to accomplish the objectives of the owner relating to forest resources other than trees if such approved practices do not significantly alter the value of the merchantable stand of timber or preclude the growing of future forest crops for commercial use. Such approved practices may include, where consistent with the landowner's objectives, dividing clear-cuts into smaller blocks, shortening or lengthening rotations, creating irregular cutting boundaries, leaving uncut small stands, strips or individual trees on clear-cut, modifying residual basal area on partial cuts, modifying species composition, reserving den or cavity trees, substituting partial cuts for clear-cuts or substituting clear-cuts for partial cuts.

Reserved and Managed Old Growth classes may be allowed on Managed Forest Law lands only within the constraints that these areas combined with other non-productive and non-suitable areas comprise 20% or less of the total land area within a given entry.

Based on NR 46.18 (3) (b) 2. b., extended rotations would be a permissible use under the Managed Forest Law. A note of caution should be made to insure that extended rotations do not significantly alter the value of the merchantable stands of timber. Extended rotations as detailed in the individual chapters of the Silvicultural handbook are broad recommendations based on the best available information on the forest cover types in question. These recommendations do not take into account individual site conditions, past stand history, individual tree health and vigor, and insect and disease issues. It is the forester's responsibility, in conjunction with the landowner, to take these factors into account. Further, extended rotations require that these stands be monitored to insure that declining health and decreasing stand growth rates would not significantly alter merchantable timber values or allow the average growth rates to drop below the minimum required standards (i.e. 20 cubic feet per acre per year).

Notification of MFL Landowners of January 1, 2008 Statutory Change



State of Wisconsin | DEPARTMENT OF NATURAL RESOURCES

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October 30, 2007

Subject: Changes to the Managed Forest Law

I'm writing to notify you of an important change to the Managed Forest Law (MFL) program that will affect your ability to allow specific recreational activities by others on your property in exchange for compensation. Please read through this information and contact your local Department of Natural Resources (DNR) forester or the Forest Tax Section if you have questions.

With the passing of the 07-09 state budget a change to the MFL program was made. This statutory change states that effective January 1, 2008:

- No person may enter into a lease or other agreement for consideration or compensation if the purpose of the lease or agreement is to permit persons to engage in a recreational activity.
- A person who currently has a lease or other agreement for consideration on closed MFL land must terminate the lease before January 1, 2008 if that person wishes to continue receiving the benefits of the MFL program.
- Non-profit organizations are exempt if the lease or agreement has consideration or compensation solely for reasonable membership fees and is approved by the Department of Natural Resources.

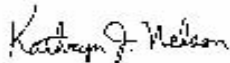
The specific recreational activities covered in the new law are hunting, fishing, hiking, sight-seeing, cross-country skiing, horseback riding and staying in cabins.

These frequently asked questions and answers are provided to help explain the change in the law.

1. **Why was the MFL law changed to exclude the ability to be compensated for recreational rights on closed lands?** The MFL program was written in 1986 to allow landowners a property tax reduction and deferment in return for providing public benefits from their woodlands for many years to come. The public benefits include the production of forest products, creation of jobs, clean air, clean water, wildlife habitat and providing public recreation, specifically hunting, fishing, hiking, sight-seeing and cross-country skiing. Landowners are allowed to keep up to 80 acres of land closed to public use (more recent entries pay higher fees and can close up to 160 acres). Unfortunately, some landowners have divided their properties to create the appearance of different ownerships in an effort to close more land than would otherwise be allowed under the law. In some cases, these lands are subsequently leased to hunters for revenue. More landowners (particularly those with large holdings) have decided to divide their properties, close lands and lease recreational use rights. As a result lands that would otherwise be open to the public as part of the MFL program are no longer available. The Legislature's decision to change the law appears to have been done in an effort to remove the incentive to divide property, close lands to public access and receive compensation for allowing recreational uses.
2. **Does the change affect me if I've been under MFL for many years?** Yes. The Legislature has the authority and power to modify laws, including laws affecting long-term programs such as the Managed Forest Law. In this case, the Legislature appears to have made the change to bring implementation of the program more clearly in line with the purposes for which it was created.

3. **What does the change in the law mean to me?** If you don't lease or receive any compensation or consideration for allowing others to recreate on your closed land you will not be impacted. If you lease your land or receive compensation for allowing these recreational activities you will need to terminate your lease or agreement (written or verbal) by January 1, 2008 in order to remain in compliance with the law.
4. **What will happen if I don't terminate my lease or agreement?** Landowners who do not comply can be fined the higher of \$500 or the amount of their lease or agreement. Continuing the practice may result in removal from the MFL program.
5. **Can I still control who enters my closed lands?** Yes. The change does not remove the ability of a landowner to control who is allowed on their closed MFL lands. You are simply not allowed to receive compensation or consideration for specific recreational uses.
6. **What does consideration or compensation mean in the law?** To constitute consideration, a performance or return promise must be bargained for. The performance may consist of (a) an act other than a promise, or (b) a forbearance, or (c) the creation or modification of a legal relation. A clear example of a performance or return promise is that a person pays cash for the right to hunt or recreate on any given piece of land. However, not all consideration or compensation needs to include the exchange of money. Exchanges of goods or services are also a consideration and violation of the law if that exchange of goods or service was negotiated for the right to use the land for any of the specific recreational activities. Simply put, if you barter for something of value in return for recreational use of your property, that is "consideration" and not allowed on MFL lands.
7. **Does this mean that I can no longer receive gifts from a hunter or hiker?** No. You can accept gifts from a hunter or other recreational user as thanks for being allowed to use your land for recreational purposes. You are not allowed to make receiving the gift from the person a condition for them to use your property for recreational purposes, however.
8. **Can lands already in the MFL program be grandfathered to allow leases?** No. The law specifically addressed previously enrolled lands and provided a limited window for the owners to come into compliance with the new provisions. That deadline to come into compliance with the law is January 1, 2008.
9. **Can I remove my land from the MFL program if I don't agree with these changes?** Yes, but withdrawal prior to the ending date of the MFL order period will result in you being assessed for all deferred property taxes that would have been paid had you not participated in the program. Caution: Withdrawal penalties can be significant and this option should not be done without a careful analysis of the costs and benefits prior to submitting any paper work.
10. **Who do I contact if I want more information?** You may contact your local DNR forester or Ken Symes, Enforcement Specialist for the Forest Tax Section, for more information. A list of DNR foresters and their contact information can be found at <http://dnr.wi.gov/forestry/private/Assist/index.htm> and Ken can be reached at (608) 266-8019.

Sincerely,



Kathryn J. Nelson
Forest Tax Section Chief
Division of Forestry

Background Information on Statutory Change Regarding Recreational Leasing

Managed Forest Law Introduction

The Managed Forest Law is a program which permits private woodland owners a property tax deferment in return for practicing long-term (25 or 50 years) sustainable forestry on their lands.

Landowners have the option of opening their land for public recreation for a reduced tax rate or closing a limited amount of acreage for an additional fee. Each ownership was allowed to close 80 acres before 2005. In 2005 the law was changed to allow each ownership to close 160 acres per municipality. All additional lands were meant to be left open for public use.

The program promotes such public benefits as sustainable forestry, clean air, and an increase in acreage open for public recreation including hunting, fishing, hiking, sightseeing and cross country skiing.

Managed Forest Law is the largest tax incentive program Wisconsin offers to private forest landowners. It has approximately 41,500 entries totaling nearly three million acres.

Background 1992 Rule Change

When the Managed Forest Law was first introduced in 1985, lands “developed for commercial recreation” were, by statute, not eligible under the Managed Forest Law. This definition included a range of activities from highly developed activities, such as downhill ski runs with lifts, to activities with little or no development, such as hunting leases.

In 1992, as a result of requests from the public, a rule change to the definition of “developed for commercial recreation” occurred. The rule change redefined “developed for commercial recreation” as the alteration of land or its features or the addition of improvements that impede, interfere with or prevent the practice of forestry. Under this rule change commercial recreation opportunities, such as hunting leases, no longer made lands ineligible for Managed Forest Law. It was determined that hunting leases, per se, do not prohibit the management of forest resources.

Background 2007 Rule Change

The move by a large MFL landowner last year to close and lease over 10,000 acres of previously open MFL lands by setting up multiple ownerships, caused a loud public outcry in that region and subsequently in the halls of the Legislature.

The Division was contacted earlier this year by several legislators and asked to identify how to end leasing on MFL lands. Underlying their request was the stated belief that public access for recreation is a key benefit of MFL and that allowing landowners to profit from closing and leasing land was contrary to one important aspect of what the public values under the law.

Landowners have learned how to create deeds to show the appearance of different ownerships in order to maximize the amount of lands closed to public recreation. A husband and wife could have 3 different ownerships between them including: (1) husband, (2) wife, and (3) husband and wife. Large-block accounts could have many combinations of ownerships including: (1) 99% industrial ownership and 1% private ownership (president of the company) and (2) limited liability companies (LLC #1, LLC #2). There are many types of ownerships that landowners have been able to create.

The fact that landowners can creatively override the legislative limitation on closed acreage under the law fueled their concerns, particularly when leasing actually encourages landowners to close land and violate the legislative intent to limit the amount of land any one landowner closes.

In response to the legislative request, the Department developed a list of options, along with the pros and cons of each, and provided this to the requesting legislators. Division staff worked with our legal experts to identify and frame the options.

The legislators selected an option, which they later modified and submitted into the budget bill. The specific language was introduced into the Joint Committee on Finance and passed through the committee unanimously. It was subsequently included in both chambers' budgets and was carried forward into the final budget package adopted last week. See: *Leasing Prohibition MFL Statute Attachment and Leasing Prohibition MFL Conf Comm Language Attachment*.

From a Department perspective, this is yet another case highlighting the challenge of maintaining a law in place that balances public benefits with landowner incentives. Private forest lands provide a large array of public benefits; MFL is a public investment in assuring the ability of private forest lands to provide those benefits for the long-term. As a result, it becomes important to assure we have a viable MFL long into the future. It is clear that a significant part of the public support for MFL is based on the provisions regarding public access for recreation.

As a result, actions like those taken by the large landowner last year weaken support for the law, causing significant concern. On the other hand, the more restrictions placed on MFL landowners, the less attractive the program is to landowners.

Summary of Comments

On October 30, 2007 a letter informing landowners of the statute change was sent out to approximately 31,000 landowners after the budget was signed. As of Monday, November 27, 2007, we have had 219 telephone calls from landowners with questions

and concerns. The ability of the legislature to make the law change retroactive to all landowners under MFL instead of those that would be entering after January 1, 2008 were concerns expressed by many landowners who are opposed to the law change. Landowners calling in had the following concerns, comments and questions. The majority of the calls ranged from different scenarios and their possible legality to simple clarifications of what the letter meant

Percentage of Questions	General Topics
24%	General questions – “How do I post my closed land?”
17%	Non-leasing questions – “How do I transfer MFL?”
16%	Proposing different scenarios and questioning their legality- “If I allow a snowmobile trail through my MFL and receive a dinner from the club for doing so, am I violating the new law?”
15%	Returned call but unable to make contact with caller.
11%	Hung up or left no message.
9%	Landowners reported that they do not lease and were clarifying that they were in compliance with the law.
5%	Negative comments – “Just another way for government to keep money out of landowner pockets.”
3%	Positive comments – “Glad new law was passed and is being enforced.”

History of Changes to the MFL Program

History of Change to the MFL Program	
Year	Event
1985	The FCL and WTL are repealed, and the Managed Forest Law (MFL) is enacted.
1991	Legislation is passed to allow withdrawal of FCL, WTL, and MFL lands without assessment of a withdrawal penalty if the land is transferred to a governmental agency for parks, wildlife and fishery areas, or public forests, or if land is transferred for use as a public road, railroad, or utility right-of-way.
1993	Legislation included in the state budget bill changes the MFL petition deadline for non-industrial ownerships to January 31, allows adjustments in the petition fee, and makes other minor changes affecting closed areas and transfers. Prior to this an ownership was allowed to have 80 acres closed per contiguous ownership. This allowed for some owners to have more than 80 acres closed if their ownership was not contiguous.
1994	<p>The Legislature enacts a law to allow FCL participants to roll into MFL enrollment without paying an FCL withdrawal tax. Petitions for an FCL to MFL conversion accepted between September, 1994 and January, 1998.</p> <p>The definition of an MFL closed area changes to allow closure of up to 80 acres (or two quarter-quarter sections, two government lots or two fractional descriptions) per civil township regardless of the configuration of the closed areas. The closed area no longer has to be contiguous. The change benefits landowners whose woodlands may be separated by fields or other non-forest cover types.</p>
1997	Chapter 77, Wis. Stats., changes to direct the DNR to define “human residence” to include a residence of a petitioner regardless of whether it is the petitioner’s primary or secondary residence.
2002	<p>2001 Wisconsin Act 109 enacts several changes to the MFL and FCL including the following:</p> <ul style="list-style-type: none"> • Increases the MFL petition fee to \$100 for petitions submitted without an approvable plan. • Retains a \$20 MFL petition fee for petitions submitted with an approvable plan and for additions to existing entries. • Re-opens the opportunity for FCL participants to rollover/convert to MFL prior to the expiration of the FCL order without a withdrawal tax. Unlike the first window of opportunity, which was only available from September 1, 1994 through January 1, 1998, there is no ending date to this opportunity.
2004	<p>2003 Wisconsin Act 228 modifies the MFL including the following: (Changes apply to all entries unless specifically noted.)</p> <ul style="list-style-type: none"> • Increases the MFL petition fee to \$300 for petitions submitted without an approvable plan. • Increases the transfer fee to \$100. • Creates a withdrawal fee of \$300. • Changes the MFL petition deadline from January 31st to July 1st (18 months prior to entry).

	<ul style="list-style-type: none"> • Creates second petition deadline of May 15 for petitions submitted with a completed management plan package prepared by a certified plan writer, for entry effective the following January 1st. First available deadline is May 15, 2006. • All legal instruments (deeds, land contract, etc.) must be recorded before submission with an MFL petition. • Additions to 1987-2004 MFL entries no longer allowed. • Additions to new MFL (2005 and after) entries will be allowed. • Increases allowable closed acreage to 160 acres, but only 80 of the 160 can be entered in 2004 or earlier. The closed acreage entered may exceed 80 acres only if it consists of 2 entire legal descriptions (or due to past wording in statute or due to past interpretations). • Establishes new formula for calculating the MFL tax rates. Applies to all lands entered in 2005 and later. Acreage share tax equal to 5% of the average statewide tax on forest land. Closed acreage fee equal to 20% of this average. • The open/closed designation of MFL land can be modified up to 2 times. • Creates a \$250 non-compliance penalty to be used in the enforcement process when landowners fail to complete the mandatory practices. • No yield tax in first 5 years of 2005 and later MFL entries. Does not apply to FCL conversions or MFL renewals. • MFL land may be withdrawn if personal property tax for buildings on the MFL land is delinquent. • Land within a city is eligible for entry.
2005	<p>2005 Wisconsin Act 25 modifies petition process.</p> <ul style="list-style-type: none"> • Required DNR to certify independent certified plan writers (ICPW) and to promulgate rules that specifying the qualifications that a person must satisfy to become a CPW. • Requiring charging of a plan preparation fee for plans written by DNR foresters. PPF for 2008 entries set at \$375 plus \$5.60/acre. • Petition fee decreased from \$300 to \$20.
2005	<p>2005 Wisconsin Act 64</p> <ul style="list-style-type: none"> • Effective date of Act 25 changed from July 1, 2005 to July 2, 2005 so all applications for 2007 were subject to the same provisions of the law. • Two exceptions added to the 5 year yield tax exemption. Expiring Forest Crop Law lands being entered in to managed forest law and Withdrawal and Re-designations are not exempt from paying yield tax the first 5 years of the managed forest land order. • Withdrawal taxes for Withdrawal and Re-designation modified. If lands are withdrawn and re-designated any subsequent withdrawals will be the sum of a withdrawal tax for the original acres using the tax rate established the year before withdrawal and re-designation PLUS a withdrawal tax using the previous year's tax rate for all acres designated by the withdrawal and re-designation order. This unique withdrawal tax stays in effect until the original acres order will have expired. For the remaining order years the normal MFL withdrawal tax calculation applies.

2006	<p>2005 Wisconsin Act 299</p> <ul style="list-style-type: none"> • Petition by ownership not by municipality allowed. Made it possible to enter lands in multiple municipalities on one petition.
2007	<p>2007 Wisconsin Act 20</p> <ul style="list-style-type: none"> • New statutory provision created to prohibit the receiving of consideration for recreational activities on MFL lands. Exceptions exist for non-profit organizations as described in the Internal Revenue Codes.
2009	<p>2009 Wisconsin Act 28</p> <ul style="list-style-type: none"> • Allows acreage exemptions for certain parcels of lands to be enrolled in the Forest Crop Law (FCL) program. • Allows withdrawal of tribal lands upon acceptance into trust status. Lands are withdrawn without payment of withdrawal taxes and fees. Lands must be treated as if enrolled under MFL until the natural expiration of the MFL enrollment period.
2009	<p>2009 Wisconsin Act 186</p> <ul style="list-style-type: none"> • Allows withdrawal of lands if sold or leased to a governmental unit for a public safety communications tower. Lands are withdrawn with payment of withdrawal taxes and fees. A 10 acre maximum withdrawal acreage is established.
2010	<p>2009 Wisconsin Act 365</p> <ul style="list-style-type: none"> • Creates a single deadline for enrollment into MFL. • Requires Department of Revenue to provide withdrawal tax estimates. • Requires landowners to disclose MFL enrollment to buyers of MFL land. • Provides additional citation authority for violations of MFL provisions. • Provides other efficiencies to the administration of the MFL program.

Comparison of MFL, CRP, CREP and Land Use Assessment

Program Requirement	MFL	CRP	CREP	Agricultural Use Assessment
Minimum Acreage	10 acres	None.	None.	None.
Program Length	25 or 50 years	10 or 15 years	10 or 15 years	None..
Eligible Land	80% productive forest, no more than 20% not suitable for producing commercial forest products	Cropland (including field margins) that is planted or considered planted to an agricultural commodity 4 of the previous 6 crop years from 2002 to 2007, and which is physically and legally capable of being planted in a normal manner to an agricultural commodity; or certain marginal pastureland that is suitable for use as a riparian buffer or for similar water quality purposes.	Lands can be enrolled only in high-priority conservation areas. Areas are identified to resolve an agriculture-related environmental issue of state or national significance.	Lands devoted to agricultural purposes.
Management Practices Required	Yes. Management practices are prescribed in a management plan.	Yes. Initial conservation practices are prescribed. Maintenance of the practices is required throughout the contract period.	Yes. Initial conservation practices are prescribed. Maintenance of the practices is required throughout the contract period.	No.
Payment of Regular Property Taxes	No. An acreage share tax is required, however.	Yes, regular property taxes must be paid. Eligible for agricultural use assessment.	Yes, regular property taxes must be paid. Eligible for agricultural use assessment.	Yes, regular property taxes must be paid. Eligible for agricultural use assessment.
Payment of Additional Taxes	Yes. Yield tax payments are required when commercial timber is cut.	No.	No.	No.
Rental Payments	No.	Yes, based on the agriculture rental value of the land.	Yes, based on the agriculture rental value of the land.	No.
Cost-share assistance.	Yes, up to 50% of participants costs	Yes. up to 50 percent of the	Yes. up to 50 percent of the	Yes. Lands may be eligible for cost

	in establishing non-commercial practices through WFLGP.	participant's costs in establishing approved conservation practices	participant's costs in establishing approved conservation practices	share program such as CRP, EQIP, CREP.
Public Access	Required if landowner has enrolled more than 160 acres of land.	No. Landowner may regulate access to lands.	No. Landowner may regulate access to lands.	No. Landowner may regulate access to lands.
Recreational Leasing Allowed?	No.	Yes. CRP does not prohibit recreational leasing.	Yes. CREP does not prohibit recreational leasing.	Yes. Landowners retain control of use of their lands.

SCORP Highlights for the Managed Forest Law Legislative Study

The purpose of the 2005-2010 Wisconsin Statewide Comprehensive Outdoor Recreation Plan (SCORP) is to assess current and future recreational preferences and needs of a statewide recreating public. Its findings should be considered when making decisions that affect the long-term recreational profile of Wisconsin.

A concise, four-page summary of the SCORP is presented in its Executive Summary (vii-x). Beyond this summary, there are other excerpts from the SCORP that may be relevant to the Managed Forest Law. The following are excerpts which discuss public access or MFL explicitly:

Excerpts from Chapter 2: Wisconsin Outdoor Recreation Demand and Uses

Page 2-17

Environmental Barriers for Increased Physical Activity/Outdoor Recreation in Order of Importance

1. Distance/travel time
- 2. Lack of access to public lands**
3. Lack of information about where to go
4. Not enough campsites/electric sites
5. ATV noise and other motorized uses
6. Lack of bike trails
7. Lack of public transportation
8. Lack of snow

This ranking is based on a survey of approximately 1,300 residents which asked what barriers caused them to not recreate as often as they would have liked. The open-ended responses were then categorized into “personal barriers” and “environmental barriers.” Among all environmental barriers cited, “lack of access to public lands” was the second most important obstacle to increased outdoor recreation.

Excerpts from Chapter 3: The Supply of Outdoor Recreation in Wisconsin DNR

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Table 3-1, State and Federal Conservation and Recreation Lands in Wisconsin, Acres by Ownership, 2004

Public Ownership Type	Total Acreage	% of Total
Federal Government	1,795,030	31 %
Wisconsin DNR		
Forests and Wild Rivers	624,470	10.4 %
Park and Natural Areas	141,246	2.4 %
Fisheries and Wildlife	600,978	10.2 %
Total	1,366,694	23 %
County Parks and Forests	2,594,625	45 %
City, Village, and Township		
City	38,571	<1 %
Village	12,677	<1 %
Town	10,754	<1 %
Total	62,004	1 %
Total	5,782,353	100 %

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Private landowners also provide outdoor recreational resources for both consumptive and non-consumptive recreational uses. Typically these lands are not available to public use, although some owners provide access to select individuals such as members of their immediate family, friends, and acquaintances. Two programs funded by state and federal taxes—the Wisconsin Managed Forest Law and the National Conservation Reserve Program—provide ideal settings for outdoor recreation uses. However, as shown in Table 3-2, only 43% of lands managed in these programs are open to the general public.

Table 3-2: Wisconsin Managed Forest Law and Conservation Reserve Program Lands

Program Enrollment Type	Total Acreage	% Open to Public
Managed Forest Law Lands	2,846,280	53%
Conservation Reserve Program Lands	618,446	0%
Total	3,464,726	43%

Excerpts from Chapter 7: Wisconsin SCORP Outdoor Recreation Goals and Actions

This chapter presents eight specific goals developed through the input of a SCORP external review panel, WNDR groups, and Wisconsin citizens. Two of these eight goals are excerpted here:

Page 7-3

Goal: Understand and Manage the Growing Issue of Wisconsin Outdoor Recreation Conflicts

As demand for different outdoor recreation activities grows, managing the conflict that develops between these uses will become an increasingly important issue of public policy. Two

conflict arenas merit continued creative management from those charged with prioritizing public resources. (...) The second conflict arena is that which develops between outdoor recreation and other forms of land use. *This conflict has impacted the development and maintenance of open space, creating struggles in the development of residential, agricultural, and managed forest areas.* These conflicts have not gone unnoticed by state residents who have witnessed a rise in noise pollution, an overcrowding of public lands and waters, and increased development pressures on parks and open spaces.

Actions and Recommendations

1. Proactively plan for increased user conflicts and provide for increased recreation uses consistent with the state's growth in population.
(...)
4. Examine and understand Wisconsin's capacity for local and state recreation growth according to the state's natural resource base.
5. Designate more public land for recreational use to better meet the increasing demand for outdoor recreation.
6. Examine options such as private landowner incentive programs, which would allow public access to private lands.

Page 7-4

Goal: Continue to Provide and Enhance Public Access to Wisconsin Recreational Lands and Waters

As recreation continues to place demands on public lands and waters, the lack of public access to these areas has become an increasing concern among many state citizens. (...) In many cases, however, public access to recreational resources does exist, the public is simply not aware of it. Improved and easily accessible maps and signage would aid the public in locating access points.

Actions and Recommendations

1. Develop a statewide interactive mapping system showing all public lands and water access points across the state.
(...)
3. Promote awareness of the location of existing recreation lands, facilities, and opportunities available within a given region.

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Special thanks go to the following Department of Natural Resources personnel for contributing to the Legislative Study background material.

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