

# ***Report to the Legislature Regarding a Legislative Study on the Managed Forest Law***

*Council on Forestry  
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## **Background**

The Council supports a legislative study on Managed Forest Law (MFL) to further identify needs of a forest law program enabling Wisconsin to continue having a successful management incentive program for private landowners that provides a wide array of benefits to the public.

The Council on Forestry has prepared this report for the Legislative Study Committee to identify possible topics to be considered. We hope that this report will provide some clarity regarding the multiple issues related to the current MFL program. The current MFL program encourages managing private forestlands sustainably for a variety of goods and services, both traditional and emerging. A legislative study on MFL is pertinent at this time because many changes to MFL have occurred since its inception roughly 25 years ago. Such a study would provide a comprehensive review of the MFL program to identify possible future direction, ensuring that the state of Wisconsin continues to provide a forest law program for private forestlands that meets the contemporary needs for managing forests sustainably.

## **Importance of the Current MFL Program**

The state of Wisconsin has invested public resources in private forestlands to encourage sustainable management on those lands, ensuring an array of benefits will accrue to the people of Wisconsin. Private forests provide products that help fuel one of the top three sectors of the state's economy; two-thirds of the wood harvested in Wisconsin comes from family forestlands. These lands also provide an important setting for forest-based recreation and tourism, which is another significant contributor to the economies of our rural areas. Private forests purify our water and clean our air. They also provide the habitat for a wide array of plant and animal species, and store carbon, which helps combat climate change.

Since its inception in 1985, 3.04 million acres of forestland, or 19% of Wisconsin's 16 million acres of forestland have been enrolled in MFL, representing over 44,052 individual enrollments with private owners and corporations.

These 44,052 individual enrollments have provided the following public services:

- Clean Air and Carbon Sequestration – Forests sequester carbon and release oxygen as part of the trees' photosynthetic life

processes. This ecological service is becoming more important with the threat of climate change. Companies that purchase carbon credits are becoming active in Wisconsin. Landowners who are entered into the MFL program and are third-party certified by the Tree Farm and FSC programs are able to sell carbon credits. Regardless of being able to sell carbon credits, forests provide for cleaner air by virtue of having trees on the landscape and completing their life processes. The MFL program helps landowners keep forests in forests.

- Clean Water – Forests purify water, as demonstrated by the map of Wisconsin, that shows the areas of highest water quality corresponding to the areas most heavily forested. Furthermore, forested lands that are managed sustainably prevent sedimentation from entering water systems (i.e., streams, lakes). *Wisconsin's Forestry Best Management Practices for Water Quality Manual* provides landowners with the tools and knowledge to keep equipment out of riparian management zones, create access roads on stable environments, establish erosion control structures on active logging roads and guide other management practices. Although forest management practices do not contribute to a lot of sedimentation problems statewide, they can be used to correct or prevent sedimentation problems from occurring.
- Timber Products – Timber industries receive most of their raw material from private landowners since most of the wooded lands in Wisconsin are privately owned. MFL provides landowners with the incentive to keep forests as working forests, meaning that forests are kept in large blocks to make it economical for woodland management practices to be accomplished.
- Jobs and Stable Economy – The timber products industry accounts for nearly 14% of all manufacturing jobs in Wisconsin. The forest products industry is successful because the raw material for their manufacturing processes is readily available from private landowners.
- Wildlife Management – Private landowners provide most of the wildlife habitat in Wisconsin. Landowners are interested in providing good habitat to benefit their desired recreational pursuits, whether hunting, watching wildlife or both. Wildlife biologists work along with DNR foresters to provide missing habitat components for a landowner's preferred wildlife species.

- Endangered Resources – Lands entered into the MFL program must protect endangered and threatened species and habitats, as well as any cultural and historic sites. This level of protection be lacking on lands not enrolled in the MFL program if landowners are unaware of how to protect these resources. DNR foresters work with Endangered Resources specialists to protect and enhance habitat conditions so that species populations can be protected or enhanced.
- Recreation – The MFL program increases the amount of lands open to public recreation. Most of the open lands are provided by industrial landowners and some larger private landowners. The MFL and FCL programs provide 20% of all lands in Wisconsin open to the public for hunting and other recreational activities. Open MFL lands can be found on the DNR Web site at *WDNR – Open Tax Lands*.
- Aesthetics – Wisconsin’s forested landscape encourages tourism in the state. While many tourists visit public recreational facilities, private forests provide the landscape that keeps people coming back to look at fall leaf color, spring leaf out and ephemeral woodland flowers, as well as the larger landscape of open green space.
- Forests are Kept as Forests – The MFL program allows for forests to be kept as working forests. Subdivision of lands for housing development and other land uses is minimized because of the incentive to keep lands intact. Services, such as road access, power and sewer, police protection and others are not needed as much in large forested areas as in well-developed areas.
- Readily Available Source of Raw Material – Landowners in the MFL program are required to harvest timber when trees are mature or become overstocked, recognizing the public value of providing the raw material for one of the state’s largest economic sectors. Management plans are prepared for each landowner, and the harvest date is entered into the computer data system. Reminder letters and mandatory practices lists are developed each year, allowing DNR and cooperating foresters to contact each landowner regarding implementation of mandatory practices. Many forests are harvested sustainably as a requirement of the MFL program that may not have been harvested sustainably or at all without the incentive offered by this program.

The MFL program requires that 80% of each entry must have lands that are suitable for producing timber products. Only 20% of an MFL entry can be considered not suitable for producing timber products, including lands in bogs, swamps, rights-of-way, grass areas or lands that are designated as no management zones.

- Source of FSC and Tree Farm Certified Wood – The MFL program is certified under FSC and Tree Farm as being managed sustainably. Independent, third-party certification means that management of Wisconsin’s forests meets strict standards for ecological, social and economic sustainability. Publishers, building contractors and other manufactures are expanding use of certified wood to assure customers that their products are not tainted by timber theft or destructive timber cutting issues that plague some parts of the world. Forest certification helps Wisconsin remain competitive in global markets that increasingly demand certified raw materials. Objective review is also instrumental in improving how we care for our forests.
- Reduced Property Taxes While Trees are Growing – Landowners are allowed to pay a reduced property tax while trees are growing. The tax reduction is 95% to 75%, depending on whether a landowner chooses to keep lands open or closed to public recreation. The law is designed so that landowners may only close 160 acres of land per township to public recreation.
- Payment of Deferred Property Tax When Timber is Harvested – Yield taxes are paid by landowners when timber is harvested as a way to reimburse local municipalities for a portion of property taxes that were not paid (i.e., deferred) while the trees were growing.
- Sound Forestry Advice – Landowners receive advice through a written management plan that describes the timber resource and sound forestry practices. Sound forestry practices are determined after evaluating the landowner’s management goals, the current stand conditions, the current science and the program requirements.

The MFL program has made Wisconsin a leader in the management and certification of private forests in the United States.

## **Study Topics – Listing**

1. Contractual Language
2. Leasing
3. Involvement of Local Government
4. Technical Assistance
5. Parcelization and Fragmentation of Forestland
6. Narrow Scope of MFL
7. Tax Levels
8. Vacant Working Lands
9. Program Obsolescence
10. Public Access
11. Automatic Rollover

## **Study Topics – Detail**

### **1. Contractual Language**

Under the present system, a petition is presented to the DNR to enter forestland under the MFL program. If all landowner's documents are completed satisfactorily, an order is issued by DNR placing the land under MFL rules.

The MFL program is not a contract between the state of Wisconsin and the landowner and is subject to change as evidenced by the leasing amendment issued by the Legislature in 2008. Most landowners assume that the agreement is a binding contract on both the landowners and the state.

Moreover, administrative rules and their implementation have resulted in a complex set of requirements which may not be conducive to attracting new entries. For example, although disputes regarding compliance with MFL between the landowner and DNR have an appeal process, the appeal process may not be well understood by the landowner.

### **2. Leasing**

Private landowner parcels entered into the MFL program are following the national trend of decreased size. The present minimum size allowed under MFL is 10 acres but the fastest growing parcel size is less than 10 acres.

Small acreages limit forest management opportunities. Consequently, many of these increasingly smaller sized entries will be able to derive income from a harvest or thinning only once or twice during the 25- or 50-year order period. Moreover, forestlands entered into the current MFL program after being newly regenerated will not be able to generate any income until the end of the order period, if at all.

Thus, leasing for hunting has become more attractive to smaller forest landowners because it provides an income stream between scheduled intermediate thinnings and harvests. However, recent changes to state law

prohibits any recreational leasing on lands entered into the MFL program, thereby depriving a forest landowner of benefits from this type of income.

The inability to lease lands under the current MFL program may discourage some forest landowners, especially those with small acreages, to enter the program despite the fact that it offers reduced taxes on forestlands.

### **3. Involvement of Local Government**

Both counties and townships have little input regarding which lands are entered into the MFL program. County involvement is limited to the Register of Deeds office to verify ownership, the county tax office on verifying taxes and the receipt of severance payment upon harvest. Town participation is limited only to severance tax receipt and receipt of state tax payment. Municipalities may request that the department deny entry of lands into the MFL program if landowners fail to meet the eligibility requirements. Municipalities are required to provide proof of ineligibility to justify their claim.

Lands entered under MFL may have any number of certified survey maps. Each certified survey map is generally given its own tax parcel identification number, which generates a separate tax bill for the landowner.

MFL forest parcels may include any number of tax parcels, including those tax parcels that have been surveyed off as future development sites for homes. These tax parcels can be included under MFL if they belong to the same landowner and are contiguous to create a forested parcel that is 10 acres in size.

Because of township and county zoning, entry of parcels into MFL may actually work against local zoning particularly where the parcel is entered for tax reduction purposes while waiting development. Currently, there is no provision to reconcile this conflict.

### **4. Technical Assistance**

Presently, DNR technical assistance is limited to 24 hours per year with the MFL plan preparation done by certified plan writers. The department may write plans only if landowners are unable to obtain an offer of service from a certified plan writer. Good forest management requires additional follow-up to secure the full range of ecological benefits, i.e., contact on invasive species management, wildlife habitat development, protection of biodiversity, etc. Landowners are reluctant to initiate projects on their own without professional forestry services and may be unwilling to invest additional financial resources. Thus, a private forest law program needs an adequate technical support program to retain existing forest landowners enrolled in a program and to attract new forest landowners to the program.

## **5. Parcelization and Fragmentation of Forestland**

Presently, 57% of the 16 million acres of forestland in Wisconsin are owned by over 223,000 landowners. About 44,000 parcels totaling just over three million acres are entered into MFL.

Parcels entered into MFL are getting smaller, and the majority of landowners elect to enter the closed acre category.

Projected population in Wisconsin is expected to increase from 5.5 million presently to 6.42 million by 2030, some 21 years from now. The number of forestland owners will continue to grow as well. When forestland is fragmented or cut into smaller parcels, the ability to manage for harvest of forest products (the prime purpose of MFL) often declines along with the desire or objective to carry out any kind of forest management.

Forests function as a forest ecosystem which is important for wildlife as well. Continual parcelization hinders ecosystem management, landowner willingness to invest and the economic intent of MFL.

Recent state law implemented the working lands program by authorizing the creation of Ag Enterprise areas. These areas allow purchase of development rights, revising the farmland preservation tax laws and creating a state financial incentive to protect agricultural land as working lands. Forestland, which has the same economic impact in the state while occupying 46% of the land base, has no collective program to create forestland enterprise acres that could protect high value forestlands. Forestland could be aggregated by encouraging proper zoning for exclusive forestland at the county and/or township level. Creating such a zoning program could stimulate other taxing or creative financial advantages for participating forestland owners.

## **6. Narrow Scope of MFL**

The MFL legislation created in 1985 maintained previous forestry tax reduction provisions to maintain a continual flow of wood and wood fiber, while providing additional benefits of opening lands for recreation.

Since 1985, conditions have changed, population has increased and the number of private forestland owners has doubled in one decade. Industrial forests have changed hands. Ownership benefits of forestland for its role in recreation for hunting, ATVs, snowmobile and passive use dramatically increased.

Moreover, the forest itself has and continues to change. Some changes have been unanticipated and unwanted such as the invasion of non-native and/or aggressive species such as gypsy moth, emerald ash borer, buckthorn, garlic mustard and others, which have negatively modified forest composition and survival. Another example is the loss of red oak savannahs because of the purposeful reduction of wildfire. Still another example is the decrease in the area of aspen forest types in the Wisconsin forest landscape from historic highs because of increased emphasis in managing for late seral stages. All

these changes have important implications for not only timber and wood fiber supply but also wildlife habitat and, in particular, value derived from forest ecosystem services.

Presently, MFL recognizes 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. However, the main purpose of the current MFL is, in fact, relatively narrow and that is to maintain a continual flow of wood and wood fiber while providing additional benefits of opening lands for recreation. More and more people now understand and appreciate the changing nature of forests and societal needs of forests to provide more than timber and wood fiber and a place to recreate.

We suggest that the scope of the current MFL be examined and that consideration be given to expanding the scope of a managed forest law whose purpose is not only to promote the continual flow of wood, wood fiber and providing recreation, but also promotes ecosystem services provided by forestlands, such as clean water and clean air, among other services.

## **7. Tax Levels**

We suggest a re-examination of forestland taxation. Forestland traditionally uses few community services, e.g., police and fire protection, and garbage collection. Yet, it is taxed extremely high by local assessors reflecting only the sale value of the land. The present tax rate under MFL is 5% of the average statewide property tax per acre of property classified as productive forestland under s. 70.32(2)(a)6., as defined under par. (c)2. The closed acreage fee is equal to 20% of the average statewide property tax per acre, for a total of 25% of the average statewide property tax per acre.

## **8. Idle Agricultural Farmlands**

As agriculture has shifted its focus and the resultant consolidation of farms has occurred, the number of farms has dramatically decreased. About 25% of the private nonindustrial forestland in Wisconsin is owned by farmers. Oftentimes these acreages are not considered part of the economic unit of the farm.

Equally important is the nonused farmland in these expansions. A recent study by the University of Wisconsin identified nearly one million acres of idle farmland existing in Wisconsin.

While Forest Inventory Analysis data shows Wisconsin gained over 500,000 acres of forestland in the last decade, those one million acres of vacant working lands are nonproductive. Some of these lands would benefit the environment by being planted to trees. One example is the highly erodible soils in the driftless area.

MFL does not address afforestation of idle farmlands. Entries might be enhanced by adding idle farmland to the application with the intent that the



forestland owners plant those acres to trees or other woody biomass while still meeting entry requirements. It might make some smaller parcels eligible for entry, and also provide other forest benefits.

## **9. Program Obsolescence**

MFL was passed in 1985 incorporating the best principles of the woodland tax and forest crop laws, and incorporating new principles to meet the current needs of society. MFL continues to provide landowners a reduced property tax while trees are growing in exchange for producing a future forest crop for commercial use, as well as compatible recreational uses, watershed protection, development of wildlife habitat and accessibility of private property to the public for recreational purposes.

Population increases, forest parcelization and fragmentation, decreases in public technical assistance, increases in invasive species, high rural property values and resultant property taxes on forestland, reduced farmland taxation through use value with subsequent tax shift to forestland, growth in county responsibility and local zoning to protect taxes have all occurred since 1985. The question is, does the MFL of today meet the needs of tomorrow, or should MFL be phased out and replaced by a new program that can better meet the needs of the society today and into the near future?

We encourage the study committee to carefully consider the consequences now and in the future of proposed changes, modifications, additions and deletions to MFL that would necessitate a premature review as a result of the program becoming obsolete.

## **10. Public Access**

Lands in the “open” designation of MFL allow unrestricted access for statutorily identified, nature-based recreational purposes. This provision may be unrealistic for some types of recreational activities for a number of reasons. One major reason could be safety, especially during the hunting seasons. Another is that the quality of some recreational activities is directly related to density of recreationalists. For example, 50 spring turkey hunters on a 50-acre parcel is not going to provide much of a hunting experience at all, and the safety issue is enormous.

Lands in the “closed” designation of MFL are closed to recreational use by the public. Landowners may close a maximum of 160 acres. To circumvent the 160-acre closure limitation, some landowners owning more than 160 acres divide their property into multiple ownerships in order to maximize the amount of closed acres and to limit the acreage to unrestricted access by the public. This practice dramatically increases the workload of state foresters because a forest management plan must be developed for each subdivided parcel. Lands that are in the closed category do not necessarily mean that there is in fact no public access. However, we currently have no information about the extent of public access on closed acres.

Coupling a forest practices program on private forestlands (MFL) with the desire for public access for recreational purposes needs to be re-examined. If the trend to close acres continues, higher levels of recreational activity will continue to be concentrated on “open” forest lands, potentially resulting in more closed acres and further increasing workloads in preparing forest management plans, perhaps to unmanageable levels. Ultimately, this situation may limit the total number of acres that could potentially be enrolled under MFL in either open or closed category. The 2007 Wisconsin Act 20 created section 77.895 of the State Statutes entitled “Grants for land acquisition for outdoor activities” in an attempt to offset the high number of acres being enrolled as “closed” to public access in MFL. However, funding for this program was removed during development of the current state budget due to a difficult fiscal environment.

## **11. Rollover**

Management plans written in the early years of MFL have been identified by Tree Farm and FSC certification auditors as not meeting certification standards. This same problem exists for Forest Stewardship standards administered by the U.S. Forest Service.

In those cases, landowners would need to amend these plans to bring them into compliance with MFL program requirements, certification and Forest Stewardship standards.

For those meeting all requirements, there is no provision for automatic rollover of MFL agreement when it expires. Automatic roll-overs may eliminate the need for creating a new management plan whose cost is born by both the forest landowner (to have it done) and the DNR (to allocate time for administrative approval)<sup>1</sup>.

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<sup>1</sup> Landowners whose MFL entries are expiring may re-enroll their lands under a new 25- or 50-year order period. The new MFL must have a management plan that is no older than five years at the time of application.