



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 1

TO: MEMBERS OF THE SPECIAL COMMITTEE ON REVIEW OF THE MANAGED FOREST LAND PROGRAM

FROM: Rachel Letzing, Senior Staff Attorney, and Scott Grosz, Staff Attorney

RE: The Managed Forest Land Program

DATE: August 11, 2010

This Memo sets forth the major provisions of the Managed Forest Land (MFL) program administered by the Department of Natural Resources (DNR). The sections of this Memo are as follows:

- Legislative purpose.
- Entry of lands as MFL.
- Open and restricted areas, leasing prohibited, closed areas.
- Taxation of MFL.
- Forestry practices.
- Yield tax.
- Noncompliance assessment.
- Withdrawal; transfer of ownership; and nonrenewal.
- Distribution of moneys received.
- Other provisions.

LEGISLATIVE PURPOSE

The MFL program was created in 1985 by 1985 Wisconsin Act 29.

Section 77.80, Stats., sets forth the following legislative purpose for the MFL program:

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.

ENTRY OF LANDS AS MANAGED FOREST LAND

2009 Wisconsin Act 365 changed the statutory terminology used to describe the MFL program. First, the Act substitutes the words “applicant” and “application” for “petitioner” and “petition” throughout the MFL statutes in ch. 77, Stats. The Act also substitutes “prepared or completed” for “prepared” in reference to forestry management plans in certain MFL statutes.

Application and Eligibility

A parcel of land is eligible for designation as managed forest land only if it complies with all of the following requirements:

- It consists of at least 10 contiguous acres. If a lake, river, stream or flowage, a public or private road or a railroad or utility right-of-way separates any part of the land from any other part, this does not cause a parcel of land to be considered noncontiguous.
- At least 80% of the parcel must be producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year. If a part of a parcel of at least 10 contiguous acres is separated from another part of that parcel by a public road, that part of the parcel may be enrolled in the MFL program, even if that part is less than 10 acres, if it meets this requirement and is not ineligible under one of the conditions provided in the statute.

[s. 77.82 (1) (a), Stats.]

Current law provides that the following land is not eligible for designation as managed forest land:

- A parcel of which more than 20% consists of land that is unsuitable for producing merchantable timber, including water, marsh, muskeg, bog, rock outcrops, sand dunes, farmland, roadway or railroad and utility rights-of-way.
- A parcel that is developed for commercial recreation, for industry or for any other use determined by the department to be incompatible with the practice of forestry.

- A parcel that is developed for a human residence. The DNR is required to define “human residence” by rule to include a residence of the petitioner regardless of whether it is the petitioner’s primary residence. The definition may also include up to one acre surrounding the residence for a residence that is not the petitioner’s primary residence.

[s. 77.82 (1) (b), Stats.]

Section NR 46.15 (9), Wis. Adm. Code, specifies that “developed for human residence” means:

...land that contains a building for habitation that is constructed or used as a domicile or that has a minimum of five of the following 8 characteristics:

- 800 sq. ft. or more in total area, using exterior dimensions of living space, including each level and not including porches, decks or uninsulated screen porches.
- Indoor plumbing including water and sewer, piped to either municipal or septic system.
- Central heating or cooling, including electric heat, a furnace or heat with a circulation system.
- Full or partial basement, excluding crawl spaces and frost walls.
- Electrical service by connection to the lines of a power company.
- Attached or separate garage, not to include buildings for vehicles used primarily for work or recreation on the property.
- Telephone service based locally.
- Insulated using common insulation products.

Note: “Developed for human residence” is not meant to include storage or workshop buildings. If there is living space as part of such buildings, the living space will be compared against the 8 characteristics.

An application to enter the MFL program must include all of the following information:

- The name and address of each owner.
- The legal description or the location and acreage of each parcel of land.
- The legal description of the area in which the parcel is located.

- A copy of an instrument that has been recorded in the Office of the Register of Deeds of each county in which the property is located that shows the ownership of the land subject to the application.
- A description of the physical characteristics of the land, in sufficient detail to enable the DNR to determine if it meets the other eligibility requirements.
- A proposed management plan.
- A statement of the owner's forest management objectives for the production of merchantable timber, in sufficient detail to provide direction for the approval of the proposed management plan. The application may also state additional forest management objectives, which may include wildlife habitat management, aesthetic considerations, watershed management, and recreational use.
- Proof that each person holding any encumbrance on the land agrees that the application may be filed.
- A map, diagram, or aerial photograph showing the location and acreage of any area that will be designated as closed to the public.
- Whether the land will be designated as managed forest land for 25 or 50 years.
- If a proposed management plan is not filed with the application, a request that the DNR prepare a management plan. The DNR may decline to prepare the plan.

[s. 77.82 (2), Stats.]

An application must also include a nonrefundable application recording fee of \$20 unless a different amount for the fee is established by the DNR by rule at an amount equal to the average expense to the DNR for recording a managed forest land order. The DNR has specified by rule that the nonrefundable application fee is \$20 per county in which the land that is the subject of the application is located. [s. NR 46.16 (1) (e), Wis. Adm. Code.]

Management Plan

2009 Wisconsin Act 365 made several changes to the management plan provisions of the MFL program.

Under prior law, a petition for enrollment in the MFL program could be accompanied by a proposed management plan; or, if a proposed management plan was not submitted with the petition, the petition was required to include a request that the DNR prepare a management plan, though the DNR could decline to prepare the plan. If the DNR declined to prepare the management plan, a landowner was required to contract with an independent plan writer certified by DNR to prepare the plan. The qualifications required to become an independent certified plan writer are specified in administrative rule. [s. NR 46.165, Wis. Adm. Code.]

Act 365 generally requires an applicant to submit a proposed management plan prepared by an independent certified plan writer with an application for enrollment in the MFL program. If a management plan is not filed with the application, the application must contain a request that the DNR prepare the plan. The DNR is allowed to decline to prepare the plan; however, if the DNR determines that the applicant is unable to have an independent certified plan writer prepare the plan, the DNR must prepare the plan. The Act requires the DNR to promulgate rules establishing the criteria that an applicant would need to meet in order for the DNR to determine that an applicant is unable to have an independent certified plan writer prepare the management plan. [s. 77.82 (3) (ag) and (am), Stats.]

Under both prior law and current law as affected by Act 365, if the DNR chooses to prepare a management plan, DNR staff may prepare the plan or contract with independent plan writers certified by DNR to prepare the plan. Under prior law, if the DNR prepared the plan, DNR was required to charge an applicant a “plan preparation” fee based on the comparable commercial market rate charged by independent certified plan writers. A proposed management plan prepared by an independent certified plan writer was exempt from this fee. Act 365 changes the term “plan preparation” fee to “management plan” fee and clarifies that if the DNR prepares the plan or agrees to complete a proposed plan that was submitted and not approved under the DNR’s initial review process, DNR must collect the fee from the applicant. In addition, the Act clarifies that a management plan is exempt from this fee if it is prepared or completed by an independent certified plan writer instead of by the DNR. These provisions will first apply to applications for enrollment in the MFL program beginning on the second June 1 after publication of the Act (June 2012). [s. 77.82 (2m), Stats.]

Act 365 specifies that a proposed management plan must cover the entire acreage of each parcel.

In order to qualify for approval, the management plan must include all of the following information:

- The name and address of each owner of the land.
- The legal description of the parcel or of the area in which the parcel is located.
- A statement of the owner’s forest management objectives.
- A map, diagram, or aerial photograph which identifies both forested and unforested areas of the land, using conventional map symbols indicating the species, size, and density of vegetation and the other major features of the land.
- A map, diagram, or aerial photograph which identifies the areas designated as open and closed.
- A description of the forestry practices, including harvesting, thinning, and reforestation, that will be undertaken during the term of the order, specifying the period of time in which each will be completed.
- A description of soil conservation practices that may be necessary to control any soil erosion that may result from the forestry practices specified in the item above.

[s. 77.82 (3) (c), Stats.]

The management plan may also specify activities that will be undertaken for the management of forest resources other than trees, including wildlife habitat, watersheds, and aesthetic features. [s. 77.82 (3) (d), Stats.]

The DNR, after considering the owner's forest management objectives provided in their managed forest land application, must review and either approve or disapprove the proposed management plan. If the DNR disapproves the plan, it must inform the applicant of the changes necessary to qualify the plan for approval. At the applicant's request, the DNR may agree to complete the proposed management plan that was prepared by an independent certified plan writer. The DNR is required to complete any proposed plan that the DNR has prepared. [s. 77.82 (3) (a), Stats.]

Under the MFL program, the landowner is required to follow the management plan throughout the period of the managed forest land order. However, a landowner and DNR may mutually agree to amend a management plan. [s. 77.82 (3) (e) and (f), Stats.]

Additions to Managed Forest Lands

An owner of land designated as managed forest land under an order that takes effect *on or after* April 28, 2004, may apply to the DNR to designate an additional parcel of land as managed forest land if the additional parcel is at least three acres and is contiguous to any of the owner's designated land. The application must include a nonrefundable \$20 application recording fee unless a different amount is established by the DNR by rule at an amount equal to the average expense to the DNR of recording a managed forest land order. The fee must be deposited in the Conservation Fund. An application must be submitted on a DNR form and must contain any additional information required by DNR. [s. 77.82 (4), Stats.]

If an owner of land designated as managed forest land under an order that takes effect *before* April 28, 2004, wishes to have an additional parcel of land that is at least 10 acres in size and that satisfies the other eligibility requirements be designated as managed forest land, the owner may file an application with the DNR for a new order covering the additional land. [s. 77.82 (4), Stats.]

If an owner of land that is designated as managed forest land under an order that takes effect *before* April 28, 2004, wishes to have designated as managed forest land an additional parcel of land that is at least three acres in size, that does not satisfy the MFL program eligibility requirements, but is contiguous to any of the owner's designated land, the owner may withdraw the designated land from the original order and may file an application with the DNR for a new order covering both the withdrawn land and the additional land. The withdrawal tax and the withdrawal fee do not apply under these circumstances. [s. 77.82 (4g), Stats.]

Conversion of Forest Croplands to Managed Forest Land

Current law provides a process for owners of land entered in the Forest Croplands (FCL) program to convert all or a portion of the land to managed forest land. A conversion application must be filed with the DNR and must specify whether the order designating the land as managed forest land will remain in effect for 25 or 50 years. A landowner who has filed a conversion application and for whom

the DNR is preparing or completing a management plan may withdraw the request and have it prepared by an independent certified plan writer if the owner determines that the DNR is not preparing or completing the management plan in a timely manner. [s. 77.82 (4m), Stats.]

Notice of Application; Request for Denial

After receipt of an application for enrollment in the MFL program, conversion of forest cropland to a managed forest land or an addition to a managed forest land order, the DNR must provide written notice of the application to the clerk of each municipality (town, village, or city) in which the land is located. Within 15 days after the notice is provided, the governing body of any municipality in which the proposed managed forest land is located or a resident or property taxpayer of such a municipality may request the DNR to deny the petition on the grounds that the land fails to meet the managed forest land eligibility requirements, or that, if an addition is approved, the entire parcel will fail to meet those eligibility requirements. This request must be in writing and must specify the reason for believing that the land is or would be ineligible. [s. 77.82 (5), Stats.]

Investigation; Hearing

Current law directs the DNR to conduct any investigation necessary to reach a decision on a managed forest land application. If the DNR determines, after receiving a request for denial, or as a result of its own investigation, that further information is needed, it may schedule a public hearing to take testimony relating to the eligibility of the land.

At least 10 days before the date of the public hearing, the DNR must mail written notice of the date, time, and place of the hearing to the petitioner, each person who submitted a request for denial, and the clerk of each municipality in which the land is located. A public hearing may be adjourned; no notice of the adjourned hearing is required other than an announcement of the date, time, and place given at the initial hearing by the person presiding at the hearing. [s. 77.82 (6), Stats.]

Decision and Deadlines

Current law provides that after considering the testimony presented at the public hearing, if any, the facts discovered by its investigation and the land use in the area in which the land is located, the DNR must approve a new managed forest land application or a forest cropland conversion application if it determines all of the following:

- That the land meets the eligibility requirements.
- That all facts stated in the application are correct.
- That a stand of merchantable timber will be developed on at least 80% of the land within a reasonable period of time.
- That the use of the land as managed forest land is not incompatible with the existing uses of the land in each municipality in which it is located.
- That there are no delinquent taxes on the land.

A similar process applies to an application for adding a parcel of managed forest land. After considering the testimony presented at the public hearing, if any, and the facts discovered by its investigation, the DNR must approve an application for an additional parcel of land if it determines all of the following:

- That all facts stated in the application are correct.
- That the total parcel with the addition will meet the eligibility requirements.
- That there are no delinquent taxes on either the land originally designated or on the proposed additional parcel.
- That the owner agrees to any amendments to the management plan determined by the department to be necessary as a result of the addition.

Under prior law, the deadlines for managed forest land enrollment applications were different for petitioners seeking to enroll 1,000 acres or more, or less than 1,000 acres. 2009 Wisconsin Act 365 creates a uniform managed forest land enrollment application deadline of June 1. [s. 77.82 (7), Stats.]

Act 365 also alters the dates by which the DNR must act on a managed forest land enrollment application. Specifically, the Act provides that if an application is received on or before June 1 of any year, the DNR must investigate and either approve or deny the application before the following November 21. An application received after June 1 must be acted on by the DNR before the November 21 of the year following the year in which the application is received. However, the DNR must approve or deny an application for transferring forest cropland into the MFL program within three years from the date on which the application is filed with the DNR.

DNR Order

If the DNR approves a managed forest land enrollment application, forest cropland conversion application, or managed forest land renewal application, the DNR must issue an order designating the land as managed forest land for the time period specified in the application. If the DNR approves an application to add an additional parcel, the DNR must amend the original order to include the additional parcel. The DNR must provide an applicant with a copy of the order or amended order, file a copy with the Department of Revenue (DOR), the supervisor of assessments, and the clerk of each municipality in which the land is located, and record the order with the Register of Deeds in each county in which the land is located. [s. 77.82 (8), Stats.]

Current law specifies that a managed forest land order or amended order issued before November 21 of any year takes effect on the January 1 after the date of issuance. An order or amended order issued on or after November 21 of any year takes effect on the second January 1 after the date of issuance. [s. 77.82 (9), Stats.]

If the DNR denies an application, it must notify the applicant in writing, stating the reason for the denial. [s. 77.82 (10), Stats.]

Current law specifies that a managed forest land order remains in effect for the period specified in the application unless the land is withdrawn. An amendment to or repeal of the statutes relating to the MFL program does not affect the terms of an order or management plan, except as expressly agreed to in writing by the owner and the DNR and except as provided for orders on the land in the lower Wisconsin State Riverway. [s. 77.82 (11) and (11g), Stats.]

Renewal

A managed forest land owner may file an application with the DNR for renewal of their managed forest land order. 2009 Wisconsin Act 365 altered the dates by which a landowner must file an application for renewal of a managed forest land order and specifies that a renewal application must be filed no later than the June 1 before the order's expiration date. The application must specify whether the owner wants the order renewed for 25 or 50 years. The DNR may deny the application only if the land fails to meet the MFL program eligibility requirements, if the owner has failed to comply with the management plan, or if there are delinquent taxes on the land. If the DNR denies an application, the DNR must state the reason for the denial in writing. [s. 77.82 (12), Stats.]

OPEN AND RESTRICTED AREAS; LEASING PROHIBITED; CLOSED AREAS

Open and Restricted Areas

Current law requires that, except for areas specifically closed to public access, each managed forest land owner must permit public access for hunting, fishing, cross-country skiing, sightseeing, and hiking. However, a managed forest land owner may restrict public access to any area of open managed forest land which is within 300 feet of any building or within 300 feet of a commercial logging operation that conforms to the management plan. An owner may prohibit the use of motor vehicles, or snowmobiles, or both, on any open managed forest land; at a managed forest land owner's request, the DNR may provide assistance in enforcing this prohibition.

A managed forest land owner may post signs specifying the designation of or restrictions applicable to any area of managed forest land. The DNR may, by rule, specify design standards for these signs.

Any person who fails to comply with these public access requirements or the rules regarding sign standards no more than \$500. [s. 77.83 (2), (3), and (4), Stats.]

Leasing Prohibition

The MFL program was modified in the 2007-08 state budget to provide that, effective January 1, 2008:

- No person may enter into a lease or other agreement for consideration if the purpose of the lease or agreement is to permit persons to engage in a recreational activity. "Recreational activities" is defined to include hunting, fishing, hiking, sight-seeing, cross-country skiing, horseback riding, and staying in cabins.

- A person who had a lease or other agreement for consideration that permitted persons to engage in a recreational activity was required to terminate the lease before January 1, 2008 in order to continue receiving the benefits of the MFL program.

[s. 77.83 (2) (am), Stats.]

The DNR, by rule, defines “consideration” for purposes of the leasing prohibition, as follows:

“Consideration” means a benefit to the promisor or a detriment to the promisee, including the receipt of cash, goods, or in-kind services. Consideration does not include payments received from a governmental body or non-profit organization where the purpose of the payment is to provide public access for a recreational activity.

Note: This definition clarifies the legislative intent of 2007 Wisconsin Act 20 which prohibits receiving consideration for recreation on MFL land. The definition of “consideration” is not meant to prohibit landowners, neighbors, and friends from assisting each other in property management activities, such as clearing and maintaining fences, watching each other’s properties, or sharing land management activities (such as conducting timber stand and wildlife habitat improvement projects where several parties could collectively supply the proper equipment). The definition of “consideration” is also not meant to prohibit hunters and other recreational users from thanking landowners for recreating on their lands or providing a gift for the use of the land, as long as the gift is reasonable and given freely. DNR encourages friendly hunter-landowner relationships. The definition of “consideration” is meant to prevent landowners from requiring cash, goods, and services from recreational users as a condition for using lands under the MFL program for recreational uses. In other words, landowners are prohibited from requiring that a recreational user pay cash (for example pay a lease on non-MFL lands, a hunting lodge or cabin, vehicle parking space, or making a donation to a charity or fund raiser), provide a material good (for example an ATV, culvert, gravel, television, or any other household or non-household item), or provide a service (for example shingle and put siding on a house, build a wildlife pond, restore an antique automobile, bail hay or harvest grain, etc.) as a condition for permitting recreation on their MFL land. [s. NR 46.15 (3m), Wis. Adm. Code.]

Any person who violates the leasing prohibition must forfeit an amount equal to the total amount of consideration received by the person as a result of the violation or \$500, whichever is greater.

The prohibitions on leases and agreements related to recreational activity do not apply if the consideration involved solely consists of reasonable membership fees charged by a nonprofit organization and the lease or agreement is approved by the DNR.

On October 6, 2009, Judge Sarah O’Brien of Dane County Circuit Court, held that the leasing provision as applied to leases existing before January 1, 2008 between Tigerton Lumber Company and

its lessees was an unconstitutional impairment of contract. [*Tigerton Lumber Company v. State of Wisconsin and Wisconsin Department of Natural Resources*, Case No. 08CV4426, October 6, 2009.] Wisconsin Circuit Court decisions, unlike Wisconsin Court of Appeals or Wisconsin Supreme Court decisions, do not set legal precedent. While Tigerton prevailed on this issue of impairment of contract between Tigerton and Tigerton's lessees, it did not prevail on its claim of impairment of contract between Tigerton and the DNR or on its takings claims. At this time, it is uncertain whether Tigerton will appeal this decision; however, the DNR does not intend to appeal.

Closed Areas

A landowner is permitted to designate land subject to a managed forest land order as closed to public access. The closed area may consist of either:

- Up to 160 acres in each municipality (town, village, or city), of which no more than 80 acres in each municipality may be land designated as managed forest land before April 28, 2004.
- One or a combination of any two of the following in each municipality:
 - A quarter quarter section.
 - A government lot as determined by the U.S. government survey plat.
 - A fractional lot as determined by the U.S. government survey plat.

If any area of an owner's managed forest land is already designated as closed, an addition to the land may be designated as closed only under the following conditions:

- The addition does not result in increasing the closed portion of the land to an area greater than that permitted under the provisions noted above.
- The additional area is contiguous to the area that is already designated as closed.

If all or any part of an owner's closed managed forest land is withdrawn or transferred under the terms of the MFL program, the owner may designate a different or an additional closed area if it meets the requirements listed above. [s. 77.83 (1), Stats.]

Modification of Closed or Open Designation

Current law specifies that for a managed forest land order that takes effect *on or after* April 28, 2004, the owner of the managed forest land may modify the designation of a closed or open area two times during the term of the order.

For a managed forest land order that takes effect *before* April 28, 2004, the owner of the managed forest land may modify the designation of a closed or open area two times during the period beginning on April 28, 2004, and ending with the expiration date of the order, regardless of whether the owner has previously modified the designation as authorized by DNR rule. [s. 77.83 (1m), Stats.]

TAXATION OF MANAGED FOREST LAND

Tax Roll; Payments

Except as provided under the MFL program, no tax may be levied on managed forest land, except that any building on the land is subject to taxation as personal property under ch. 70, Stats.

MFL Orders Effective Prior to April 28, 2004

Each owner of managed forest land must pay to the municipal treasurer an acreage share on or before January 31. Originally, this acreage share was **\$.74** per acre. In addition to this amount, each owner was required to pay **\$1** for each acre that is designated as closed under s. 77.83, Stats.

Beginning in 1992 and in each fifth year thereafter, the DOR adjusts the amounts of tax by multiplying the original acreage shares specified by a ratio using as the denominator the DOR's estimate of the average statewide tax per acre of property classes under s. 70.32 (2) (b) 4., 5., and 6., 1993 Stats. (agricultural, swamp, or waste and productive forest land), for 1986 and, as the numerator, the DOR estimate of the average tax per acre for the same classes of property for the year in which the adjustment is made. **Based on this adjustment, the current acreage share is \$.67 per acre of open land and \$1.57 per acre of closed land.** [s. 77.84 (2) (c), Stats.]

MFL Orders Effective on or After April 28, 2004

For managed forest land orders that take effect on or after April 28, 2004, each owner of managed forest land must pay to each municipal treasurer, on or before January 31, an amount equal to 5% of the average statewide property tax per acre of property classified as productive forest land under s. 70.32 (2) (a) 6., Stats., for each acre of managed forest land.

In addition to this amount, each owner must pay to each municipal treasurer, on or before January 31, an amount equal to 20% of the average statewide property tax per acre of property classified as productive forest land under s. 70.32 (2) (a) 6., Stats., for each closed acre of managed forest land.

In 2004, 2007, and each fifth year thereafter, the DOR is required to determine the average statewide tax per acre of productive forest land by multiplying the average equalized value of productive forest land by the average tax rate determined under s. 76.126, Stats. **Based on this determination, the current acreage share is \$1.67 per acre of open land and \$8.34 per acre of closed land.** [s. 77.84 (2) (cm), Stats.]

Delinquency

The statutory procedures specified for the collection of delinquent taxes apply to taxes returned delinquent under the MFL program. Immediately upon the expiration of two years after the date the county acquires a tax certificate, the county clerk must take a tax deed as provided under ch. 75, Stats. The county clerk must certify to the DNR that a tax deed has been taken and must include the legal description of the land subject to the tax deed.

Immediately after receiving the certification of the county clerk that a tax deed has been taken, the DNR must issue an order withdrawing the land as managed forest land. The notice requirement under s. 77.88 (1), Stats., does not apply to the DNR's action. The DNR must notify the county treasurer of the amount of the withdrawal tax, as determined under s. 77.88 (5), Stats., and the withdrawal fee under s. 77.88 (5m), Stats., and the amount of the tax and fee is payable to the DNR under s. 75.36 (3), Stats., if the property is sold by the county. The amount must be credited to the Conservation Fund. [s. 77.84 (3), Stats.]

State Contribution

The DNR must pay before June 30 annually the municipal treasurer, from the appropriation under s. 20.370 (5) (bv), Stats., \$.20 for each acre of land in the municipality that is designated as managed forest land and for each acre of tribal land in the municipality that has been withdrawn from the MFL program under s. 77.885, Stats., but for which payments under s. 77.84 (2), Stats., are being made. [s. 77.85, Stats.]

FORESTRY PRACTICES

Regulation of Cutting

Except for an owner who cuts wood on managed forest land for use as fuel in the owner's dwelling, no person may cut merchantable timber on managed forest land on which the payments to the municipality are delinquent. If the owner fails to timely file a report under s. 77.86 (4), Stats., the department must determine the value of the merchantable timber cut for the assessment of the yield tax. The department must mail a copy of the certificate of assessment to the owner at the owner's last-known address.

Also, except for an owner who cuts wood on managed forest land for use as fuel in the owner's dwelling, an owner who intends to cut merchantable timber on managed forest land must, at least 30 days before the cutting occurs, on a form provided by the DNR, file notice of intent to cut and request approval of the proposed cutting from the DNR.

If the proposed cutting is in conformity with the management plan and sound forestry practices, the DNR must approve the request. However, if the proposed cutting does not conform with the management plan or is not consistent with sound forestry practices, the DNR is required to assist the owner in developing an acceptable proposal before approving the request. [s. 77.86 (1), Stats.]

Bond; Limits; Reporting Requirements

The DNR is authorized to require an owner who intends to cut merchantable timber on managed forest lands to file with the DNR a noncancelable bond, furnished by a surety company licensed to do business in Wisconsin, in the amount that is expected to be required as payment of the yield tax. [s. 77.86 (2), Stats.]

All cuttings specified in the owner's "Notice of Intent to Cut" must be commenced within one year after the date the proposed cutting is approved. The owner is required to report to the DNR the date on which the cutting is commenced. [s. 77.86 (3), Stats.]

Within 30 days after completion of any approved cutting, the owner must report to the DNR a description of the species of wood, kind of product, and the quantity of each species cut as shown by the scale or measurement made on the ground as cut, skidded, loaded, or delivered, or by tree scales certified by a forester acceptable to the DNR if the wood is sold by tree measurement. [s. 77.86 (4), Stats.] If the owner fails to timely file a report under s. 77.86 (4), Stats., the department must determine the value of the merchantable timber cut for the assessment of the yield tax. The department must mail a copy of the certificate of assessment to the owner at the owner's last-known address.

Any person who fails to file the required notice, who fails to file a report, or who files a false report with the DNR is required to forfeit *not more than \$1,000*. Any owner who cuts merchantable timber in violation of s. 77.86, Stats., is subject to a forfeiture of **20%** of the current value of the merchantable timber cut, based on the stumpage values of the timber.

Grazing Restricted

An owner of managed forest land may not permit domesticated animals to graze on managed forest land. [s. 77.875, Stats.]

YIELD TAX

Taxes

The DNR is required to assess a yield tax against each owner who cuts merchantable timber. This tax is required to equal 5% of the value of the merchantable timber cut, based on the stumpage value of the timber. [s. 77.87 (1), Stats.]

For a managed forest land order that takes effect on or after April 28, 2004, the owner of the managed forest land is exempt from the payment of the yield tax for the first five years of the managed forest land order. However, the exemption does not apply to any of the following:

- An order converting forest cropland to managed forest land.
- A renewal order for managed forest land.
- An order that designates forest cropland, subject to a contract under s. 77.03, Stats., as managed forest land.
- An order that combines additional land to an existing managed forest land order under s. 77.82 (4g) (b), Stats.

Within a year after a report on the timber cut, the DNR, after notifying the owner and providing the owner with the opportunity of a hearing, may determine whether the owner's report is accurate. If the DNR determines that the quantity of merchantable timber cut exceeded the amount on which the tax was originally assessed, the DNR is required to assess a *supplemental tax* on the additional amount at the same 5% rate. [s. 77.87 (2), Stats.]

Payments

The tax assessed by the DNR is due and payable to the DNR on the last day of the month following the date the certificate of assessment is mailed to the owner. The DNR is required to collect interest at the rate of 12% per year on any tax that is paid later than the due date. All the amounts received are credited to the Conservation Fund.

Under current law, the owner is personally liable for any yield tax assessed. An unpaid tax becomes a lien against merchantable timber that was cut. If this merchantable timber cut is mingled with other wood products, the unpaid tax becomes a lien against all of the wood products while they are in the owner's possession or in the possession of any other purchaser for value without notice in the usual course of business. [s. 77.87 (4), Stats.]

If a yield tax is not paid on or before the last day of the August following the date the taxes are due, the DNR must certify to the taxation district clerk the description of the land and the amount due for the tax and interest. The taxation district clerk must enter the delinquent amount on the property tax roll as a special charge.

NONCOMPLIANCE ASSESSMENT

Assessment

To each municipality in which managed forest land is located, DNR must certify an owner's failure to complete a forestry practice during the period of time required under an applicable management plan, and the municipality must impose a noncompliance assessment of \$250 against the owner for each failure. The department must mail a copy of the certificate of assessment to the owner at the owner's last-known address and to the municipality. [s. 77.876 (1), Stats.]

Payment

A noncompliance assessment is due and payable to the municipality on the last day of the month following the date the certificate is mailed to the owner. The municipality must collect interest at the rate of 12% per year on any assessment that is paid later than the due date. [s. 77.876 (2), Stats.]

The owner is personally liable for a noncompliance assessment. An unpaid assessment becomes a lien against the merchantable timber cut. If the merchantable timber cut is mingled with other wood products, the unpaid assessment becomes a lien against all of the wood products while they are in the owner's possession or in the possession of any person other than a purchaser for value without notice in the usual course of business. [s. 77.876 (3), Stats.]

If a noncompliance assessment is not paid on or before the last day of the August following the date specified under s. 77.876 (2), Stats., the municipality must certify to the taxation district clerk the description of the land and the amount due for the assessment and interest. The taxation district clerk must enter the delinquent amount on the property tax roll as a special charge. [s. 77.876 (4), Stats.]

WITHDRAWAL; TRANSFER OF OWNERSHIP; AND NONRENEWAL

Withdrawal

Land may be withdrawn from the MFL program. The DNR may, in response to a request by the owner of the managed forest land or of the governing body of any municipality in which any managed forest land is located, or at its own discretion, investigate to determine whether the designation of the managed forest land should be withdrawn. The DNR is required to notify the owner of the land and the chairperson of the town, president of the village, or mayor of the city in which the land is located of this investigation. If a city or village is managed under subch. I of ch. 64, Stats., the DNR is required to notify the president of the city council or village board instead of the city mayor or village president.

The DNR may order the withdrawal of all or any part of a parcel of the managed forest land for any of the following reasons after an investigation is conducted:

- Failure of the land to conform to an eligibility requirement.
- The owner's failure to comply with the MFL program or the management plan.
- Cutting by the owner is violation of s. 77.86, Stats.
- The owner's development or use of any part of the parcel for a purpose which is incompatible for the purposes of the MFL program.
- The owner's posting of signs or otherwise denying access to open managed forest land.

If the DNR determines the land should be withdrawn, it must issue an order withdrawing the land as managed forest land and assess the withdrawal tax and withdrawal fee against the owner.

Sale or Transfer of Ownership

It is possible to sell or transfer ownership of a managed forest land. An owner or seller may sell or otherwise transfer ownership of all or part of the owner's managed forest land if the land transferred is one of the following:

- An entire parcel of managed forest land.
- All of an owner's managed forest land within a quarter quarter section.
- All of an owner's managed forest land within a lot or fractional lot as determined by the U.S. government survey plat.

If the land transferred does not meet the MFL program eligibility requirements, the department must issue an order withdrawing the land from managed forest land designation and must assess the withdrawal tax and withdrawal fee against the owner. [s. 77.88 (2) (am), Stats.]

If the land remaining after the transfer is contiguous and meets the MFL program eligibility requirements, it must continue to be designated as managed forest land until the expiration of the existing order, even if the parcel contains less than 10 acres. However, an owner may not petition the DNR for renewal of the order if the parcel contains less than 10 acres. Further, no withdrawal tax or withdrawal fee may be assessed when the remaining land is withdrawn at the expiration of the order. [s. 77.88 (2) (b), Stats.]

When the remaining land does not meet the eligibility requirements for inclusion in the program, the DNR must issue the order for withdrawing the land and assess the withdrawal tax and withdrawal fee against the owner. The owner is not entitled to a hearing on an order withdrawing land under this provision. [s. 77.88 (2) (c), Stats.]

Within 30 days after transfer of ownership, the transferee must, on a form provided by the DNR, file with the DNR a report of the transfer signed by the transferee. This report must be accompanied by a \$100 fee, which is deposited in the Conservation Fund.

The transferred land remains managed forest land if the transferee, within 30 days after the transfer, certifies to the DNR an intent to comply with the existing management plan and with any amendments to the plan and provides proof that each person holding any encumbrance on the land agrees to the designation. In addition, the transferee may designate an area of transferred land closed to public access. If the transferee does not provide the DNR with this certification, the DNR must issue an order withdrawing the land and must assess the withdrawal tax and withdrawal fee against the new owner. The transferee is not entitled to a hearing on an order withdrawing land under this provision. [s. 77.88 (2) (e) and (f), Stats.]

Voluntary Withdrawal

The law provides that the owner may voluntarily withdraw from the program. An owner may request that the DNR withdraw all or any part of the owner's land meeting one of the requirements specified under the sale or transfer of ownership provision above. If any remaining land meets the eligibility requirements for initial inclusion, the DNR is required to issue an order withdrawing the land subject to the request and must assess the withdrawal tax and withdrawal fee against the owner. [s. 77.88 (3), Stats.]

If an owner does not petition the DNR to renew a managed forest land order, the DNR is required to order the land withdrawn at the expiration of the order. In this situation, no withdrawal tax or withdrawal fee may be assessed. [s. 77.88 (4), Stats.]

Withdrawal for Failure to Pay Personal Property Taxes

If an owner of managed forest land has not paid the personal property tax due for a building on managed forest land before the February 20 settlement date, the municipality in which the building is located must certify to the department that a delinquency exists and include the legal description of the managed forest land on which the building is located in the certification. Immediately after receiving the certification, the department must issue an order withdrawing the land as managed forest land and must assess the withdrawal tax and withdrawal fee against the owner. The owner is not entitled to a hearing on an order withdrawing land under this provision. [s. 77.88 (3m), Stats.]

Withdrawal Tax

Calculation of withdrawal tax depends on the time elapsed since an initial managed forest land order was issued, as well as whether an order has been expanded or renewed.

Generally, withdrawal tax is the higher of the following:

- An amount equal to the past tax liability multiplied by the number of years the land was designated as managed forest land, less amounts paid for the acreage share and yield tax.
- Five percent of the stumpage value of the merchantable timber on the land, less amounts paid for the acreage share and yield tax.

For *land that is withdrawn within 10 years* after an initial managed forest land order was issued, the withdrawal tax is the higher of the following:

- The amount calculated above as a general withdrawal tax.
- The amount calculated under s. 77.10 (2), Stats., related to the withdrawal of forest croplands, that would have been applied to the land on the date on which the managed forest land order was issued.

If any land designated as managed forest land under an *expanded order* is withdrawn before the expiration of the original order, the withdrawal tax is the sum of the following:

- For the land designated under the original order, an amount equal to the product of the total net property tax rate in the municipality in the year prior to the year in which the expanded order is approved and the assessed value of the land for the same year, as computed by DOR, multiplied by the number of years the land was designated as land under the expanded order, less amounts paid for the acreage share and yield tax during the time the land is designated as managed forest land under the original order.
- An amount equal to the product of the total net property tax rate in the municipality in the year prior to this withdrawal and the assessed value of the land for the same year, as computed by the DOR, multiplied by the number of years the land was designated as land under the expanded order, less amounts paid for the acreage share and yield tax during the time the land is designated as managed forest land under the expanded order.

For land withdrawn after the *renewal of a managed forest land order*, the withdrawal tax is the higher of the following:

- An amount equal to the past tax liability multiplied by the number of years since the renewal, less amounts paid for the acreage share and yield tax.
- Five percent of the stumpage value of the merchantable timber on the land, less amounts paid for the acreage share and yield tax.

[s. 77.88 (5), Stats.]

Upon request of an owner of managed forest land, DOR, with assistance of the department, must prepare an estimate of the amount of withdrawal tax that would be assessed if the department were to issue an order to withdraw the land. A request for an estimate of withdrawal tax must be accompanied by a nonrefundable fee that is the higher of the following:

- \$100.
- The total number of whole and partial acres of managed forest land multiplied by \$5.

[s. 77.88 (5q), Stats.]

Withdrawal Fee

The withdrawal fee assessed by the department is \$300. [s. 77.88 (5m), Stats.]

Determination of Stumpage Value

In determining the stumpage value of merchantable timber, either an estimator agreed upon by the parties or, if no agreement is reached, a forester appointed by a judge of the circuit court in the county in which the land is located, must estimate the volume of merchantable timber on the land. This estimate must be final. The DNR must determine the current stumpage value of the merchantable timber, based on administrative rules of the DNR. The owner must pay the entire cost of obtaining the estimate. [s. 77.88 (6), Stats.]

Payment of Withdrawal Tax and Withdrawal Fee

The withdrawal tax and withdrawal fee is due and payable on the last day of the month following the effective date of the withdrawal order. All amounts received are credited to the Conservation Fund. If the owner of the land fails to pay the tax or fee, the DNR must certify to the taxation district clerk the amount due and the taxation district clerk must enter the delinquent amount on the property tax roll as a special charge. [s. 77.88 (7), Stats.]

No withdrawal tax or withdrawal fee may be assessed against an owner who transfers ownership of managed forest land for a public road, railroad, or a utility right-of-way. Also, no withdrawal tax or withdrawal fee may be assessed against an owner who transfers ownership of managed forest land for a park, recreational trail, wildlife or fish habitat area or a public forest to the federal government, the state, or a local unit of government. No withdrawal tax or withdrawal fee may be assessed on the transfer or lease of not more than 10 acres of managed forest land to a county, city, village, or town for siting a public safety communications tower. The DNR may not order withdrawal for the land remaining after one of these transfers or leases unless the remainder fails to meet the eligibility requirements for original inclusion of the land. [s. 77.88 (8), Stats.]

Other Withdrawal Provisions

Every withdrawal order must include the legal description of the land withdrawn. The DNR must notify the owner in writing of a withdrawal stating the reason for the withdrawal. The DNR must

mail a copy of the withdrawal order to each person entitled to receive a copy of the original petition (generally, DOR and local officials).

A withdrawal order issued before December 15 of any year takes effect on the January 1 after the date of issuance. A withdrawal issued on or after the December 15 of any year takes effect on the second January 1 after the date of issuance. If less than a total parcel of managed forest land is withdrawn, the DNR is required to amend the order and the management plan to correct the description of the remaining land. [s. 77.88 (9), Stats.]

Chapter 70, Stats., Property Tax, applies to any land withdrawn from the managed forest land program. Withdrawal does not affect the liability of the owner for previously levied taxes under s. 77.84 or 77.87, Stats. [s. 77.88 (10) and (11), Stats.]

Withdrawal of Tribal Lands

Upon request of an Indian tribe, the department must order withdrawal of land that is owned in fee that is designated as managed forest land from the MFL program. No withdrawal tax or withdrawal fee may be assessed against the tribe if all of the following apply:

- The Indian tribe provides the department the date of the order to transfer the land to the United States to be held in trust for the tribe.
- The tribe and the department have in effect a written agreement under which the tribe agrees that the land must continue to be treated as managed forest land until the date on which the managed forest land order would have expired.

[s. 77.885, Stats.]

DISTRIBUTION OF MONEYS RECEIVED

No later than June 30 of each year, the DNR must pay 100% of each payment received under s. 77.84 (3) (b) (delinquency payments), 77.87 (3) (yield tax), or 77.88 (7), Stats. (withdrawal tax), to the treasurer of the municipality in which the land is located. [s. 77.89 (1), Stats.]

Each municipal treasurer must pay 20% of each payment received from the DNR or directly under ss. 77.84 (2) (a) and (am) (payment for closed land), 77.85 (state contribution for managed forest land acreage), and 77.876, Stats. (noncompliance assessments), to the county treasurer and must deposit the remainder in the municipal treasury. The payment to the county treasurer for money received before November 1 of any year must be made on or before November 15 after its receipt. For money received on or after November 1 of any year, the payment to the county treasurer must be made on or before November 15 of the following year. [s. 77.89 (2) (a), Stats.]

The municipal treasurer also must pay to the county treasurer all amounts received under s. 77.84 (2) (b) and (bm), Stats. (payment for closed land). The county treasurer must, by June 30 of each year, pay all amounts received under this provision to the DNR. All amounts received from the DNR must be credited to the Conservation Fund and reserved for land acquisition, resource management activities, and grants for land acquisition for outdoor activities. [s. 77.89 (2) (b), Stats.]

OTHER PROVISIONS

An applicant for participation in the MFL program or an owner of managed forest land who is adversely affected by a decision of the DNR is entitled to a contested case hearing under ch. 227, Stats. [s. 77.90, Stats.]

The procedures set forth in ss. 23.50 to 23.85, Stats., apply to actions to recover forfeiture brought under the MFL program. [s. 77.905, Stats.]

Each year the DNR is required to establish reasonable stumpage values for the merchantable timber grown in the municipalities where forest land is located. If the DNR finds that stumpage values vary in different parts of the state, it is authorized to establish different zones and specify the stumpage value for each zone. The stumpage value takes effect on November 1 of each year. DNR may not promulgate or have in effect rules that establish stumpage values. [s. 77.91 (1), Stats.]

The DNR, with the cooperation of the University of Wisconsin (UW)-Extension, is required to publish and distribute information about the MFL program, including the applicable taxes and penalties and the forestry and resource management practices that are acceptable as part of a management plan. The DNR must prepare, update annually, and by March 31 of each year, offer for sale to the public information describing the location of managed forest lands designated as opened under the law.

The DNR and the UW-Extension were required to study and evaluate the first five years the operation of the MFL program to determine whether it has achieved the statutory purposes of the programs. A report of the findings and recommendations of this study was required to be submitted before January 1, 1992 to the chief clerk of each house of the Legislature. [s. 77.91 (2) and (3), Stats.] This report was completed and submitted to the chief clerks on December 5, 1991.

In addition, beginning with calendar year 1992, the DNR is required to calculate for each year whether the amount of land exempt from penalty or tax under the FCL, the Woodland Tax Law, or the MFL program that is withdrawn or declassified exceeds 1% of the total amount of land that is subject to contracts or orders under those laws on December 31 of that calendar year. If the amount of exempt land exceeds 1%, the DNR is required to make a report of its calculations to the Governor and to the Legislature. [s. 77.91 (3m), Stats.]

Generally, the DNR's expenses for the administration of the MFL program are paid from the appropriation for general program operations—state funds. [s. 77.91 (4), Stats.] A separate appropriation pays for recording fees incurred by the department. [s. 77.91 (5), Stats.]

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