



# Jeff Mursau

STATE REPRESENTATIVE • 36<sup>TH</sup> ASSEMBLY DISTRICT

## **Assembly Bill 561- Managed Forest Law Reform**

Assembly Committee on Environment and Forestry

December 8, 2015

Fellow Committee Members – thank you for the opportunity to testify before you today on legislation I've been working on for several sessions to update our Managed Forest Law statutes.

The Managed Forest Law was created in 1985 to replace the less popular Forest Crop Law. Both laws were intended to encourage sustainable forestry practices to ensure a constant stream of fiber for the second largest industry in Wisconsin, while at the same time providing recreational opportunities for the general public.

To participate in the MFL program, landowners designate property as “Open” or “Closed” to public access for recreation, and commit to a 25 or 50 year sustainable forest management plan. The plan sets the schedule for specific forestry practices, which landowners must complete. In return, MFL participants make a payment in lieu of regular property taxes plus a yield tax on harvested trees. Yield taxes go to the local municipality to help offset the annual property taxes that are deferred while properties are enrolled in the MFL.

According to the Wisconsin Economic Development Corporation, Wisconsin's forest product industry employs more than 52,000 people and is the number one employer in several Wisconsin counties. Our printing industry employs an additional 29,000 workers and Wisconsin is the number one paper-producer in the United States.

These figures highlight a need to encourage enrollment in MFL by private landowners. They own more than sixty-percent of all forest lands; and, two-thirds of the wood harvested in Wisconsin comes from their forestlands. Our timber industry wouldn't be what it is today without the commitment of private woodland owners to actively manage their woods for the ecological and economic health of our state.

To that end, this bill makes a number of changes to the existing MFL program which include:

- Removes cap of 160 acres of closed MFL in a single town for non-industrial owners.
- Provides greater clarity to private property owners who sign a contract when they enroll in the MFL program and allows them to leave the program if changes are made they do not support.
- Increases minimum acreage requirement for enrollment to 20 acres.
- Allows any owner to designate an additional parcel of land as MFL if it is at least 3 acres in size and is contiguous to any MFL land.
- Allows a landowner to remove between 1 and 5 acres to build a residence.

- Allows a landowner to withdraw land to meet productivity requirements in the case of a natural disaster.
- Directs that closed acreage fees go to the counties and municipalities where the parcel is located.
- Eliminates the severance and yield tax on merchantable timber at the time of harvest.

This bill continues to be a work in progress. I'm encouraged by the feedback I've received so far and the additional testimony we're likely to hear today. My goal is, and has always been, to pass meaningful reforms that support the sustainability of our forests while balancing the accessibility of the private lands to the public for recreational purposes. I'm confident that together we can find that proper balance and move this bill forward.

I would be happy to try to answer any questions you may have.



## AB 561 – Changes to Managed Forest Law

### Assembly Committee on Environment and Forestry

Department of Natural Resources Testimony  
James Warren, Public & Private Forestry Section Chief  
Division of Forestry  
December 8 2015

Mr. Chairman and Committee Members:

Good morning. My name is James Warren and I am the Public and Private Forestry Section Chief in the Department of Natural Resources' Division of Forestry. I appreciate this opportunity to appear before you to discuss AB 561. The Department is testifying for information only.

The Managed Forest Law (MFL), enacted in 1985, is the keystone tool available to encourage sound forest management of Wisconsin's privately owned forest lands. The law provides a property tax benefit in exchange for a long term commitment to practicing sustainable forestry. MFL has been a very successful tool and currently has nearly 50,000 entries encompassing approximately 3.3 million acres of private forest land.

These well managed lands provide significant benefits to all Wisconsin's citizens including wildlife habitat, recreational opportunities, protection of water quality, and a significant amount of the raw forest products produced on private lands that are critical to keep one of the largest sectors of Wisconsin's economy -- forest products -- strong.

The public receives benefits from a program that encourages land use decisions that maintain our forest land and provide an array of economic, environmental and recreational benefits. The challenge is to balance the incentive necessary for private landowners to make a long-term commitment providing these public benefits while assuring the public a positive return on their investment in these lands.

Some of the provisions of this draft legislation come from recommendations made in 2013 by the Wisconsin Council on Forestry; more specifically from the Council's report titled "The Managed Forest Law, A Summary of Recommended Program Revisions" dated June 19, 2013. I have provided you with a copy of the council's report.

The proposed legislation, if passed, will create some administrative efficiency while increasing administration in other areas. I will highlight some of the provisions of this bill to show how this bill will influence the MFL administration.

1. This bill broadens the types of individuals who can submit cutting notices that would not require DNR approval to include individuals with a 2- or 4-year degree who also have 5 years of experience preparing management plans or marking timber. This change would increase DNR administration necessary to collect individual education and work experience information to make exemption determinations. Currently, for the cooperating foresters and foresters accredited by the Society of American foresters, Wisconsin Consulting foresters, or the Association of Consulting foresters, DNR obtains objective lists of the accredited individuals from those organizations.

2. This bill requires DNR to notify the person who filed the cutting notice via certified mail or email of the approval or denial of a cutting notice no later than the end of the next business day of DNR's decision. This provision would increase DNR staff time necessary to send materials certified mail. DNR estimates over \$20,000 annually for the use of certified mail. Current standard operating procedures require DNR foresters to send the approved cutting notice to the landowner and a copy to the submitter upon approval. The landowner uses that original cutting notice to submit page two (the cutting report) after the harvest is complete. DNR's reading of the proposed language on page 17 would require the DNR forester to place the approval or denial notification into the mail by the end of the next business day.
3. This bill restricts DNR activities related to the Natural Heritage Inventory (NHI) program relating to private property only with the permission of landowners, and further prohibits DNR from restricting an approved cutting notice based on NHI. This provision could effectively limit DNR's ability to conduct Endangered Resources Reviews (ERRs) on private property including the potential to put Wisconsin out of compliance with aspects of the federal Endangered Species Act and Migratory Bird Treaty. Such an outcome could mean landowners would be required to work through federal processes which are currently unnecessary because the NHI program is considered an "adequate and active" state program for the conservation of listed species.
4. This bill eliminates the assessment of yield taxes (MFL) and severance taxes (Forest Crop Law) after timber harvesting occurs. This provision would reduce DNR administration because DNR would no longer need to develop invoices for the purposes of collecting these taxes, and would no longer need to return the monies to the municipalities/counties. It should be noted, however, that the Forest Crop Law (FCL) severance tax at 10% is higher than the MFL yield tax at 5%. FCL land is all required to be open to the public; therefore there are no closed acreage fees associated with FCL lands. In addition, the annual acreage share tax payments for FCL are lower than for MFL lands. These factors may cause the repeal of FCL severance taxes to have a significantly larger impact on towns and counties than the repeal of the MFL yield taxes.

The provision is unclear as to whether the intent is also to eliminate the FCL "termination tax" which is assessed when lands expire from the FCL program without enrolling into MFL. The current law under which termination taxes are assessed references the severance tax which is proposed for elimination.

Unless the elimination of the severance and yield taxes is made *prospective* only, this bill appears to render it unnecessary for the DNR to annually calculate regional stumpage values since the purpose of these values is to determine the yield and severance tax rates. However, stumpage rates are used for *citation purposes* to determine forfeiture amounts; perhaps that use still renders a need for DNR to calculate the stumpage rates annually. If stumpage rates no longer need to be calculated annually, this would be a reduction in administration by DNR because currently DNR collects the information, enters data, runs reports, validates data, creates reports, communicates with stakeholders, and completes web updates in order to successfully calculate the stumpage rates.

5. This bill eliminates buildings/improvements from being eligible to be enrolled in the MFL. This provision will likely increase DNR administration since it is prospective only. DNR staff will still have to continue to apply the laws in place prior to this change and apply those laws to buildings/improvements in place *prior* to this change.
6. This bill allows land to be added to an existing MFL order as an addition regardless of when the MFL order was enrolled; eliminating the withdrawal and re-designation process for 2004 and earlier orders. The understanding is that the reason additions are currently only allowed on MFL orders enrolled after 2004 relates back to when the legislature created a new formula for calculating the MFL tax rates in 2005. Since landowners from 2004 and earlier were paying a lower tax rate, an addition would cause lands to be added to that order at the post-2004 tax rate which would cause an order to have two different tax rates, being more cumbersome from an administration and taxation standpoint. The withdrawal and re-designation process for

2004 and earlier orders currently requires the landowner withdraw the land without a withdrawal tax and fee and re-enroll the existing land with the additional land for a new 25 or 50 year order period at the higher tax rates so that the existing and additional land is all being taxed at the same, higher rate.

This provision will reduce DNR administration because it eliminates the need for DNR to keep track of a provision tied to a specific date. It should also make this aspect of the MFL program easier for DNR, our partners, and our landowners to understand.

7. This bill causes MFL to be treated as a contract between the state and the landowner(s). This provision would increase DNR administration because it requires the landowner to actively confirm their desire to continue in the MFL program or voluntarily withdraw without the assessment of a withdrawal tax and fee when there is a change to statute or administrative code which materially changes the terms of an order. DNR will need to determine a method for efficiently communicating these types of changes to all 50,000 MFL landowners to allow them to make the decision whether to stay enrolled or withdraw.

With more options in this bill for landowners to voluntarily withdraw lands without a withdrawal tax and fee, this may increase the number of voluntary withdrawals. More voluntary withdrawals will increase DNR administration in the processing of such requests. More voluntary withdrawals also results in more lands being taken out of the program thereby reducing the benefits to the public and industry.

This provision may allow landowners, who may or may not have enrolled the property into MFL, when faced with a mandatory harvest to use a law change, even if it is something the landowner does not feel strongly about, as a means to withdraw from the program without a withdrawal tax and fee to local governments for property taxes forgone prior to enactment of this bill. This may reduce the amount of land harvested under the MFL program, reducing the amount of wood contributing to the forest products industry.

8. This bill states that for applications to renew enrollment into the MFL program, a new management plan would not need to be developed (the existing management plan would satisfy the requirement) if the existing management plan meets certain conditions. This provision still requires a landowner to hire a Certified Plan writer (CPW) to develop an MFL renewal application, but removes the requirement for the CPW to develop a management plan as part of the application. This means the CPW would not have to collect forest reconnaissance data or develop a schedule of mandatory harvests.

While DNR foresters will no longer need to review management plans that come in with renewal applications, this provision will likely increase DNR administration because the DNR forester will need to invest time in updating the management plans within five years of the renewal, and will also need to schedule practices beyond the order period. Currently practices are not scheduled beyond the current order period.

9. This bill allows an owner of closed MFL land to permit individual(s) to access their closed MFL land to conduct recreational activities if the individual(s) perform land management activities on the land. This provision provides a specific exemption to the current prohibition on leasing MFL lands. It may increase DNR administration because there may be additional investigation needed by staff to understand if the activities occurring on closed MFL land fall within the parameters of this provision.
10. This bill allows MFL landowners to sell/transfer any portion of their MFL order so long as the land transferred and the land remaining meet all of the MFL eligibility requirements. Illegal transfers of land are one of the most common causes for withdrawal from MFL. This provision should reduce the number of such withdrawals allowing more land to remain in the MFL program. The administration time from DNR may not ultimately be affected because while there may be fewer enforcement cases, there will likely be more transfers of ownership to process thus potentially resulting in no net change.

11. This bill allows MFL landowners to voluntarily withdraw from the MFL program when their lands no longer meet productivity requirements as the result of a natural disaster. The provision indicates that if land is damaged by a natural disaster, the DNR shall establish a time period that the owner will have to restore the productivity. If the owner fails to complete the restoration, the owner may request that the department withdraw all or part of the lands without a withdrawal tax and fee. If unable to successfully complete the restoration, this provision creates an incentive for landowners to voluntarily withdraw because if the DNR involuntarily withdraws a landowner in this situation, the landowner would be subject to a withdrawal tax and fee.

This provision may not necessarily increase the number of withdrawals that occur due to productivity reasons but would decrease the acreage withdrawn. This provision may increase DNR administration because DNR foresters will have to spend more time evaluating productivity to determine what portion of parcels are eligible for continued enrollment whereas now DNR does not have to do that evaluation because the entire legal description is required to be withdrawn. This provision may not necessarily incentivize the landowner to restore the site because they will be able to withdraw without a withdrawal tax and fee if the restoration is not successful.

12. This bill contains two similar provisions which allow landowners to voluntarily withdraw from the MFL program when their lands are unsuitable for producing merchantable timber. The first provision indicates that a landowner may request a voluntary withdrawal without a withdrawal tax and fee for a portion of the MFL land if the land is unsuitable for producing merchantable timber so long as the remaining land meets the eligibility requirements.

The second provision indicates that a landowner may request a voluntary withdrawal without a withdrawal tax and fee for a portion of the MFL land if the land is unsuitable for producing merchantable timber due to environmental, ecological, or economic concerns or factors so long as the remaining land meets the eligibility requirements.

When it is determined that lands are unsuitable for producing merchantable timber, this provision creates an incentive for landowners to voluntarily withdraw because if the DNR involuntarily withdraws a landowner in these situations, the landowner would be subject to a withdrawal tax and fee.

This provision may not necessarily increase the number of withdrawals that occur due to productivity reasons but would decrease the acreage withdrawn. This provision may increase DNR administration because DNR foresters will have to spend more time evaluating productivity to determine what portion of parcels are eligible for continued enrollment whereas now DNR does not have to do that evaluation because the entire legal description is required to be withdrawn.

13. This bill allows MFL landowners to voluntarily withdraw one to five acres if the purpose of the withdrawal is for a land sale or construction. 2013 Wisconsin Act 20 allowed landowners who enrolled lands in MFL before October 11, 1997 to withdraw one to three acres of land in each parcel for the purpose of building a human residence. This provision would replace 2013 Wisconsin Act 20 and expand it by allowing a voluntary withdrawal for up to five acres, by making all landowners eligible to take advantage of this provision rather than just those orders from prior to a specific date, and by expanding the reason for withdrawal to include both land sales and "construction" which is more broad than simply human residences. Landowners who take advantage of this provision would be subject to a withdrawal tax and fee.

This provision will likely increase DNR administration because the number of voluntary withdrawals to be processed will likely increase as this is a provision landowners will take advantage of. Lands are being sold more often in tracts smaller than an entire legal description, and often times after the land sale occurs the new

owners are interested in building on that property. This provision allows one to five acres to be withdrawn which allows the remaining lands in the legal description to remain enrolled in the MFL program.

14. This bill creates a single withdrawal tax calculation to be used for all withdrawals regardless of the type of order and limits the withdrawal tax multiplier to a maximum of 10 years. This provision will reduce DNR administration in several ways. First, administration will be reduced by not having to keep track of different calculations for different types of orders making this aspect of the program simpler. Second, administration will be reduced because the DNR will not have to apply credits for taxes paid to the withdrawal taxes. Third, administration will be reduced because DNR will not have to complete a 5% estimate of the value of the merchantable timber to compare the past tax liability to.

There is a possibility that this could increase the number of withdrawals because as I have mentioned previously the withdrawal tax and fee currently serves as a deterrent for some landowners who do not want to be faced with what is typically a substantial payment. The reduced withdrawal tax may reduce/remove that deterrent for some landowners.

15. This bill allows landowners to close as much acreage from public recreation as desired, with the exception of "business entities" that would remain subject to a 160 acre closed acreage maximum. This provision removes the current closed acreage maximums which are 80 acres for lands enrolled before 2005 and 160 acres for lands enrolled after 2004. It can be expected that the number of closed acres will increase under this provision. This change may not have a significant effect on DNR administration. Note that there are no additional access requirements; closed acreage and closed acre fees will not be required for gerrymandered parcels blocking public access to parcels designated and taxed at the lower open rates.
16. This bill shifts the closed acreage fees from going to the conservation fund to going to the local municipality and county on an 80/20 split. Landowners who have lands closed to public recreation pay a closed acreage fee in addition to their annual acreage share tax. For lands enrolled before 2005, landowners currently pay an acreage share tax of \$0.79/acre and if closed, an additional \$1.08/acre for a total of \$1.87/acre for closed lands. For lands enrolled after 2004, landowners currently pay an acreage share tax of \$2.14/acre and if closed, an additional \$8.54/acre for a total of \$10.68/acre for closed lands. Landowners pay these amounts on their annual property tax bill to the local taxation district. Once collected, the local municipality sends the closed acreage share portion of the tax to DNR where it is deposited into the Conservation Fund. Under this provision, the municipality would keep the closed acreage fee and give 20% of it to the county. This will reduce DNR administration because the financial specialist will no longer need to collect the closed acreage fees and deposit them into the conservation fund.

This provision will have a substantial impact on the revenues coming into the Conservation Fund's Forestry Account.

While some towns/counties will experience increased tax revenues as a result of the closed acreage fees being retained locally, when coupled with the repeal of yield/severance taxes, there are some towns that may actually experience a decrease in tax revenue. This would occur for towns that have relatively low acreages of closed lands.

Further, with or without the \$1 million appropriated in the 2015-17 biennial budget, this provision will create a significant structural imbalance within the forestry account of the conservation fund. DNR estimates it will create a Fiscal Year 2017 closing balance of -\$6.8 million and a Fiscal Year 2019 closing balance of -\$12.6 million, challenging DNR's ability to directly and indirectly enhance Wisconsin's forests, waters, air and economy.

17. This bill changes the minimum acreage for enrollment into the MFL program from 10 to 20 acres. The provision allows landowners currently enrolled at less than 20 acres to continue enrollment and to be eligible for a one time renewal at the acreage less than 20. DNR administration may increase because the provision is allowing for one-time renewals of lands less than 20 acres. DNR staff will need to keep track of which orders came before this law change and have a mechanism in place to ensure those orders are allowed to renew. This may be perpetuated far into the future. If, for example, an order of 10 acres was just recently enrolled into the program in 2015 for a period of 50 years and then renews for 50 years at 10 acres, that 10 acre enrollment could be in the program through 2114.

This provision first applies to land designated as MFL by an order issued on the effective date of this provision. This means that the 20 acre requirement first applies to orders that will come into the program on January 1, 2017. Applications for 2017 enrollment have been coming in since June 2, 2015 so there are likely some applications at less than 20 acres for which DNR will have to deny the entry for not being at the new minimum acreage requirement.

18. This bill contains a provision which provides the DNR with emergency rule making authority for a specific provision within the bill. The DNR will have emergency rule making authority for specifying how hunting blinds will be evaluated to determine if they are considered an improvement. The provision I discussed earlier about improvements not being allowed on MFL lands indicates that hunting blinds are not considered improvements and are therefore eligible for enrollment. That provision directs the DNR to promulgate rules to further specify hunting blinds.

19. In addition to the MFL-related provisions within this bill, there are two non-MFL provisions, one related to the Wildlife Action Plan and one related to state forest master plans. The provision related to the Wildlife Action Plan indicates that the Wildlife Action Plan may not require action by property owners or the department and that the DNR may not require the plan be used as guidance on official DNR forms. Wildlife action plans are already voluntary, thus this provision will not increase or decrease DNR administration.

20. Finally, the bill requires DNR shall propose a variance to the master plans of all state forests except for southern state forests and Governor Knowles State Forest before March 1, 2017 so that 75 percent of all of the land is classified as a forest production area. There will be a slight and difficult to measure increase in DNR administration due to staff time to propose the variance and complete the variance process. There should not be any additional long-term administrative oversight needed.

Thank you, again, Chairman Mursau and committee members for the opportunity to testify on this bill. The Managed Forest Law is an important program that encourages sound forest management on private forest lands. The benefits of this program are far reaching.

I am happy to try answering any questions you may have.

**Table 11: Forestry Account Expenditures**

	2013-14 Actual	2014-15 Appropriated	2013-14 % of Total	2014-15 Staff
<b>Forestry Program Appropriations</b>				
State Forestry Operations	\$51,099,100	\$50,325,800	48.9%	460.58
Southern Forest Operations	5,036,300	5,281,700	4.8	43.25
Stewardship Debt service	13,500,000	13,500,000	12.9	0.00
Aids in Lieu of Taxes	5,922,200	5,924,100	5.7	0.00
FCL and MFL Aids	1,237,500	1,237,500	1.2	0.00
County Forest FCL and MFL	1,398,100	1,416,400	1.3	0.00
County Forest Loans	447,400	616,200	0.4	0.00
County Forest Project Loans	267,400	396,000	0.3	0.00
County Forest Loan Severance Payments	216,400	100,000	0.2	0.00
County Project Loans Severance Payments	334,800	350,000	0.3	0.00
County Sustainable Forestry Grants and County Forest Administrator Grants	1,641,900	1,576,900	1.6	0.00
Urban Forestry Grants	464,300	524,600	0.4	0.00
Forestry Management Plan Contracts	0	316,800	0.0	0.00
Wildlife and Forestry Recreation Aids	112,200	112,200	0.1	0.00
Recording Fees	147,600	89,100	0.1	0.00
Fire Emergencies - Other States	54,600	0	0.1	0.00
Reforestation	86,500	100,500	0.1	0.00
Wisconsin Private Forest Landowner Grants	723,200	1,147,900	0.7	0.00
Forest Fire Protection Grants	170,000	170,000	0.2	0.00
Assistance for NCOs and Private Conservation	224,100	227,600	0.2	0.00
Forestry Public Education Curriculum Development	462,500	350,000	0.4	0.00
Parks and Forests Campground Reservations	367,700	291,400	0.4	0.00
Timber Sale Contract Repairs	100,000	0	0.0	0.00
Forestry Education and Professional Development	45,400	448,500	0.0	0.00
Karner Blue Butterfly Habitat Conservation Plan Fees	26,700	9,900	0.0	0.00
Cooperating Foresters	33,300	0	0.0	0.00
<b>Split-Funded Appropriations</b>				
Administration and Technology Services	7,833,400	8,215,900	7.5	67.61
Customer Assistance and Employee Services	3,195,300	3,423,700	3.1	30.11
Land Program Management	144,300	137,200	0.1	1.00
Bureau of Facilities and Lands	3,013,700	3,202,900	2.9	33.03
Bureau of Science Services	663,800	706,600	0.6	4.90
Bureau of Endangered Resources	264,300	270,700	0.3	2.52
Administrative Facility Repair and Debt Service	997,600	2,420,300	1.0	0.00
Resource Acquisition and Development	1,312,800	1,429,600	1.3	0.00
Rent and Property Maintenance	173,500	128,400	0.2	0.00
Taxes and Assessments	25,000	65,700	0.0	0.00
Miscellaneous	2,700	0	0.0	0.00
<b>Other Agency Appropriations</b>				
Agriculture, Trade, and Consumer Protection	1,657,300	1,556,500	1.6	9.75
State Historical Society- Northern Great Lakes Center	61,100	50,200	0.1	1.00
University of Wisconsin System- WEEB	129,500	200,000	0.1	0.00
University of Wisconsin System	133,300	133,300	0.1	1.00
Kickapoo Reserve Management Board	703,100	694,600	0.7	2.75
Lower Wisconsin State Riverway Board	51,200	52,200	0.0	0.50
<b>Total</b>	<b>\$104,481,100</b>	<b>\$107,087,200</b>	<b>100.0%</b>	<b>657.45</b>



**Testimony on AB561  
Assembly Committee on Environment and Forestry**

**Wisconsin Alliance of Forest Owners  
December 8, 2015**

**Mr. Chairman and Committee Members:**

My name is Doug Duren and I'm representing the Wisconsin Alliance of Forest Owners, a newly formed trade association that represents the interests of Wisconsin's private woodland owners, including over 40,000 landowners who have MFL orders. We are tree farmers who manage 59% of Wisconsin's forest land and who provide 67% of the raw material needed to support Wisconsin's \$20 billion forest industry. Additionally, our woodlands are directly tied to two of the State's other biggest economic engines: our woods provide the beautiful backdrop for the Wisconsin tourism economy and also the wildlife habitat and hunting grounds for our State's hunting economy and heritage. No other rural land type offers more to Wisconsin's diverse economy, legacy and future than private woodlands.

Thank you for the opportunity to provide testimony on this bill.

**THE MANAGED FOREST LAW IS NO LONGER COMPETITIVE WITH OTHER LAND USES**

Since its inception almost 30 years ago, tree farmers have embraced the MFL program as a means to allow them to sustainably grow trees and keep land in forest. In exchange for committing to keep their land as a productive forest for the next 25 years, they were provided a differential tax rate that recognized that growing a crop of trees requires a long term commitment. These tree farmers also agreed, in return, to follow a management plan that commits them to providing the raw material needed to sustain our forest products industry. But, as we can all agree, revisions to the program are needed. This bill takes some good steps in that direction.

**WAFO POSITIONS ON THIS BILL**

First, WAFO wants to acknowledge the work done on MFL by many fine people over the past several years. Awareness has increased on the need to revise the program and some good progress has been made on developing proposed changes.

**However, this bill, although a step in the right direction, needs language which would once again allow landowners to receive consideration in exchange for allowing others to recreate on their land before we could support its passage.**

### Elements of AB561 WAFO Supports

- **Eliminating the severance and yield tax.** No other harvested agricultural crop is subject to this special tax that costs timber producers approximately \$1.5 M every year.
- A provision that provides greater clarity to private property owners that they are **signing a contract** when they enroll in the MFL. If significant statutory changes are made, landowners must be given an option on whether or not they wish to continue to be in the program, similar to a process used by the USDA with CRP and other contracts.
- **Return closed acreage fees back to the counties and municipalities** where the parcel is located rather than have it being directed back to state government. (Currently closed acreage fees generate about \$6 M/yr.)
- Revising the archaic regulations on the **transfers and splitting of lands** enrolled in MFL.
- **Reduction in the withdrawal penalty**, although penalties proposed still greatly exceed those applied to other rural agricultural lands.
- Providing **recognition that natural disasters can affect tree production** and allowing landowners more flexibility to restore production or withdraw non-productive lands from the program.
- Provisions related to **small land withdrawals for construction purposes.**
- Allowing **additions of 3 or more acres of land to existing agreements.**
- Expanding the ability for some landowners to **close more than 160 acres** within any one municipality.

### What WAFO Does Not Support

- **This bill DOES NOT include language which would allow landowners to receive consideration for allowing others use of their land.** There is language in this bill (Section 36) that says “An owner of land designated as closed may permit a person who performs land management activities on the land to access the land for recreational activities” but this is **meaningless**. Landowners can permit access now, whether or not someone performs land management activities on their land. Importantly, this bill does not change **language under 77.83(2)(am) which still clearly states landowners CANNOT receive any consideration for use of their land.**

### Where AB561 Falls Short

- **No reduction of the special state closed tax landowners must pay.** WAFO strongly recommends that the growing of timber be recognized as an agricultural crop. MFL tax rates need to be compatible with those applied to other agricultural lands if we expect landowners to grow the fiber needed by our forest products industry in a profitable manner. While we support directing closed acreage fees to local governments, the current \$10.68/acre rate is excessive, greatly exceeding the average \$3.17/acre property tax paid on other agricultural lands. The \$10.68/acre rate will often prevent tree farmers from managing their crop as a viable business venture.
- **Limiting the amount of acreage “businesses” can close.** It would appear the intent of the authors was to limit the ability of large, industrial, landowners from being able to close significant amounts of their land. However, the definition of business owner includes trusts and LLCs, organizations many family landowners utilize for titling their land for tax and other family purposes. Consideration should be given to more specifically define who is an industrial land owner, whether it is a REIT, TIMO or other large business.
- **Clarification of **contract** language.** WAFO supports having MFL agreements being a contract. Proposed language refers to changes that affect the “order” or “management plan.” If broader statutory changes are made which do not directly change the order or plan but materially affect the contract, they also should be included as part of the contract.
- **Withdrawal penalty** has been limited to a maximum of 10 years with the penalty based upon the current forest tax rate times the number of years the land has been in the program. Unlike current law, landowners would not be given credit for taxes paid, i.e. they would not receive credit for the \$10.68/acre tax they paid which would be fairer. Although this is a positive change, it comes nowhere close to the 3 year penalty associated with taking other agricultural land out of production.

Thank you for this opportunity to testify. Please know we very much want to work with you and other stakeholders to make the MFL an improved and sustainable program.

Respectfully submitted,

Douglas J Duren  
Wisconsin Alliance of Forest Owners

Testimony on Assembly Bill 561  
December 8, 2015  
The Nature Conservancy

Rep. Mursau and Members of the Assembly Environment and Forestry Committee,

The Nature Conservancy in Wisconsin and its 20,000 members appreciate the opportunity to offer comments on Assembly Bill 561. Matt Dallman, TNC Director of Conservation, serves on the Governor's Council on Forestry which has debated many of the changes included in the bill and The Conservancy thanks the Council for its work over the past few years on Managed Forest Law (MFL) updates.

The Conservancy appears at this time for Information Only. While the bill contains provisions that will help make the MFL program even stronger to ensure its future, there are portions of the bill that we question at this time, and there were a number of provisions that the Council on Forestry suggested that are not in Assembly Bill 561. These recommended MFL revisions are included in the Council's testimony and The Conservancy believes that they should be fully considered and debated.

In addition, there are four provisions in the bill that we ask the committee to consider modifying:

1. Changing the minimum acreage for eligibility in the program for 10 to 20 acres. The Council recommended 15 acres as a minimum and we ask that you amend the bill to reflect the Council's recommendation.
2. The changes proposed affecting the Natural Heritage Inventory are unclear, but very troubling. At the least these changes make the program more complex; they may also raise the potential for endangered species to be inadvertently taken. We do not believe that is in the landowners' or state's best interest.
3. There is a provision in the bill that is intended to clean up some language that passed in the last state budget on the 75% State Forest production mandate. The Conservancy understands that this provision may be administrative in nature, but we strongly oppose the mandated "one size fits all" approach to managing our diverse State Forests.
4. The contract provision for when a new landowner enrolls in MFL is unclear about the degree of change that would warrant a withdrawal from the program without penalty. This ambiguity complicates the administration of the law and could allow a landowner an easy out to, for example, cut timber when the markets are high by claiming that a change materially affects their order.

We look forward to working with the Committee on AB 561 and please feel free to contact Paul Heinen at 316-6412 with any questions you may have.

Sincerely,



Mary Jean Huston  
State Director



# Wisconsin Woodland Owners Association, Inc.

P.O. Box 285, Stevens Point, WI 54481-0285

www.wisconsinwoodlands.org



## WWOA OFFICE EXECUTIVE DIRECTOR

Nancy C. Bozek  
P.O. Box 285  
Stevens Point, WI 54481  
715-346-4798  
wwoa@uwsp.edu

## WWOA OFFICERS BOARD OF DIRECTORS 2015-2016

### PRESIDENT

Paul Kienitz  
500 S. Center Avenue  
Merrill, WI 54452  
715-536-6823  
paul.kienitz@riversideathletic.com

### VICE PRESIDENT

Steven J. Ring  
W7004 Detention Rd.  
Shiocton, WI 54170  
920-735-9702  
sring@utilityssi.com

### SECRETARY

Mike Bohman  
N8109 Wolf River Dr.  
Algoma, WI 54201  
920-487-3197  
michaelfbohman@hotmail.com

### TREASURER

Arlene Roehl  
159 Lakeview Ave.  
Long Lake, MN 55356  
952-473-3036  
arcompliance@bigplanet.com

### DIRECTORS

David Congos  
N51562 Harriman Rd.  
Osseo, WI 54758  
715-597-2272  
dlcongoss49@gmail.com

Jack Kucksdorf  
W4415 Park Square S.  
Random Lake, WI 53075  
262-689-0602  
kucks4@execpc.com

Margaret H. Parsons  
1861 Ridge Road  
Junction City, WI 54443  
715-457-2470  
mparsons@tds.net

Steven Raether  
4530 CTH K  
Chippewa Falls, WI 54729  
715-723-9736  
raethertrees@gmail.com

Charles R. Wagner  
E1934 Cty. Rd. S  
Luxemburg, WI 54217  
920-837-7712  
wagnerc50@yahoo.com

Richard Wagner  
E5861 Clark St.  
Weyauwega, WI 54983  
715-281-7032  
richardwagner@centurytel.net

Randy Williams  
N1896 Cozy Lane  
Antigo, WI 54409  
715-623-5660  
willir2456@gmail.com

## December 8, 2015 WWOA Testimony to the Assembly Committee on Environment and Forestry in Support of AB 561

I am Nancy Bozek, Executive Director of the Wisconsin Woodland Owners Association (WWOA). I represent thousands of Wisconsin's private woodland owners. In Wisconsin, 56% of the forested land is privately owned. WWOA members lead private woodland owners in science-based sustainable forest management through education and by example. This assures that premium forest products are available to existing and future wood utilizing industries in Wisconsin.

The Managed Forest Law (MFL) program is unique, vital, and consistent with long-term sustainable forest practices as are our comments and recommendations. Many WWOA members currently hold Managed Forest Law (MFL) contracts with the WI DNR and many others are contemplating whether or not to enter or renew under this program.

WWOA supports AB 561. WWOA thanks Committee members for their consideration and inclusion of many of our comments provided during last year testimony regarding proposed MFL changes.

Specifically, WWOA supports the following provisions:

- Clarifying that MFL is a "contract" between MFL participants and the State in statute and allowing for landowners to accept "material changes" to the program and continuing under MFL or reject these changes and voluntarily withdrawing the land without penalty. MFL participants and those considering enrolling utilize existing criteria to decide if they can meet MFL's long-term commitments. Recognizing MFL as a contract fortifies confidence that the contract will be honored by both parties. We request two changes to this provision. Please consider including a third option under this provision, allowing the MFL landowner to continue under their existing contract provisions (pre-material changes) until the expiration of the contact period. Regarding "material changes" we request that in addition to changes made through statute and rule that DNR program guidance also be included.
- Ability of landowners with closed MFL acreage to permit a person who performs land management activities on the land to access the land to conduct recreational activities. WWOA request the Committee consider full reinstatement of the option to lease closed lands for uses compatible with the practice of forestry as found in AB 559.
- Reallocating MFL closed acre taxes to counties and towns to be spent as they see fit.
- Defining of natural disasters and we strongly encourage the Committee to consider adding "animals" to the definition. Animal populations greatly impact forest productivity throughout the state and private landowners have very little control over regulating these populations.

- Allowing MFL landowners the time to deal with a natural disaster/environmental concerns and reestablish productivity on the land. If productivity is unachievable to allow MFL landowners the opportunity to withdraw the necessary lands without a penalty. WWOA prefers that rules not be promulgated by WI DNR on what is a reasonable length of time but recommends allowing the forester and landowner to work together to determine a reasonable time period for recovery of productivity levels.
- Limiting and allowing partial or total voluntary withdrawals for the purpose of construction or small land sales while the remainder of the parcel continues in the MFL program. The ability to transfer or sell only necessary lands keeps more productive forest land in the program.
- Revised method of calculating the withdrawal tax creates a more transparent and administratively simplified procedure. A more equitable balance is created by capping the tax for a 10 year period.
- Clarifying that "recreational activities" on MFL lands need to be compatible with the practice of forestry.
- Ability of all MFL landowners to add smaller parcels of land to existing MFL orders simplifying the administrative process for the landowner and WI DNR. We request clarification of the inserted language by deleting the word "currently".
- Ability of MFL landowners to more easily transfer parcels of land while keeping them in the MFL program.

WWOA has concerns regarding other provisions within this bill:

- The elimination of the yield/severance taxes from the MFL program. Historically Wisconsin forest tax programs have included a harvesting tax allowing woodland owners to defer payment until an income is earned from their long-term crop. This has increased sustainable forest management of Wisconsin's forests by deferring taxes until there is income, lessening the need to high grade timber in order to pay annual property taxes. Timber managed sustainably over a longer period of time produces better quality and value resulting in higher stumpage fees and more dollars going to local governments. The collection of yield taxes allows the WI DNR to also collect information on the species and volume of wood harvested. This data is used by current forest industries and in attracting new forest products businesses to Wisconsin.
- Creation of § 77.06 (1)(b) 2.d. and 77.86 (1) (b) 2. d. defines a forestry technician and placement of this in statute will allow forestry technicians to act as foresters. Wisconsin has two universities offering a Bachelor of Science degree in forestry that are accredited by the Society of American Foresters (SAF) as do many other Midwest states. WWOA does not support allowing forestry technicians to advertise or act as foresters when they have not received this level of professional training. WWOA could accept allowing forestry technicians to do work for participating MFL landowners and on state lands if the legislation was changed to require the work be completed under the supervision and signature of a professional forester.

- The removal of buildings and associated improvements from MFL land. This is more restrictive than the current statute and does not speak to whether current MFL landowners with buildings will be grandfathered in? Definitions created for "improvements" raises some questions – how is "placed on the parcel for its benefit" defined? If fencing that "prevents the free movement of wildlife across the parcel" is considered an improvement then landowners will not be able to afford to regenerate forests in areas of high deer populations.
- Limiting enrollment in the MFL program to woodland owners with 20 or more acres. WWOA's experiences have found that landowners generally start with smaller tracts of land due to affordability and then as they become more engaged in sustainably managing their woodlands; they aspire to purchase more acreage. By doubling the minimum acreage requirement, from 10 to 20 acres, this may unintentionally exclude less affluent landowners and those owning woodlands in southern Wisconsin.
- Using the definition for "business entity" as listed under the Regulation of Lobbying subchapter to determine landowners that can close more than 160 acres. This definition would not allow most private woodland owners who per the IRS definition of a business/investment operate their tree farms with a profit motive to qualify for additional closed acreage. In addition, it would eliminate many types of woodland that are limited liability companies, partnerships, or trusts.
- Most woodland owners appreciate being made aware of natural, cultural, historical, or archeological features on their property through the Natural Heritage Inventory program. WWOA believes the WI DNR has the responsibility to restrict an approved cutting based on standards established under this program.
- WWOA believes it is unrealistic timeframe for the WI DNR to be required to notify the filer of the cutting notice by certified letter or electronic mail no later than the end of the next business day of the DNR's decision to approve or deny a cutting notice. Currently DNR has an approval rate of 87% for first time cutting notices submitted with an average time of 7.4 days. 97% received final approval rate within an average of 8.9 days. WWOA finds these rates acceptable. It takes years to grow a forest crop ready for harvesting. This decision is too important not to have sufficient time for review of this critical decision by the organization tasked with oversight and formal approval.

WWOA greatly appreciates the work of this Committee to strengthen the MFL program and create a more acceptable program for participation by private woodland owners. WWOA recognizes the value of the MFL program and is committed to working with the legislature, Council on Forestry, WI DNR and others so that our forests will continue to be sustainable, healthy, and productive while providing a high quality of life to our citizens and visitors alike.

Send completed form to the Department of Natural Resources Forester in the county where cutting will occur.

1. File this notice at least 30 days prior to cutting.
2. Cutting prescriptions must be approved by the Department<sup>1</sup> of Natural Resources before cutting may begin. DNR Foresters may attach additional requirements as a condition of approval.
3. Attach a map and additional pages to help describe proposed cutting.

**Notice:** Submittal of this form is required to assure compliance with these forest tax programs under s. 77.06 and s. 77.86, Wis. Stats. Failure to file a notice or report or intentional filing of a false report may be punishable by a forfeiture of up to \$1,000 and may result in withdrawal of the land from these programs.

Landowner Name and Address	County	Municipality
	Daytime Phone Number	Cell Phone Number (optional)
	Email Address (optional)	
Forester / Accreditation <sup>1</sup>	Phone Number	Select one: (Separate notice/report must be filed for each order.)  <input type="radio"/> Forest Crop Land: <input type="radio"/> Managed Forest Land
Logging Contractor	Phone Number	

**Cutting Prescription:** Describe the proposed cutting. Include the current timber type, silvicultural system (even-aged, uneven-aged, etc.), target stand condition and forest pest concerns. Identify marking paint colors used and what they represent (attach additional pages if needed).

**BMP for Water Quality Prescription:** Address prescriptions to mitigate water quality concerns. Guidelines can be found in the Wisconsin DNR BMP for Water Quality Manual.

**BMP for Invasive Species Prescription:** Address prescriptions to mitigate invasive species. Guidelines can be found in the Forestry Invasives BMP Manual.

**NHI Prescription:** Address any prescriptions to mitigate Natural Heritage Inventory (NHI) concerns.

**Archeological, Historical, Cultural Prescription:** Address any prescriptions to mitigate archeological, historical and cultural concerns.

### Cutting Notice

Complete page two of this form indicating estimated volumes of wood to be cut, sign here and submit to your local DNR Forester at least 30 days prior to cutting.  Landowner requests DNR review and approval<sup>1</sup>

Signature of Landowner(s)

Date Signed

Approved by DNR Forester<sup>1</sup>

Date Signed

<sup>1</sup>Cutting notices submitted by Wisconsin Cooperating Foresters or foresters accredited by Society of American Foresters, Wisconsin Consulting Foresters, or Association of Consulting Foresters do not require DNR approval. Landowners may request DNR review and approval of cutting notices when not required.



# The Managed Forest Law

## A Summary of Recommended Program Revisions

Prepared By:

The Wisconsin Council on Forestry

Date:

June 19, 2013

## Table of Contents

EXECUTIVE SUMMARY .....	1
BACKGROUND .....	2
PROCEDURE.....	3
RESULTS .....	4
MODIFICATIONS .....	5
<b>Tax Rates/Fee Structure</b> .....	5
<i>Proposed Revision 1: Change in rate or how rates are calculated for open/closed acreage.</i> .....	5
<i>Proposed Revision 2: Reduce/restructure withdrawal taxes and fees.</i> .....	6
<i>Proposed Revision 3: Change the procedure to allow counties to generate and collect financial transactions for MFL yield and withdrawal taxes.</i> .....	6
<i>Proposed Revision 4: Eliminate the 5% yield tax comparison requirement for determining withdrawal taxes.</i> .....	8
<b>Eligibility</b> .....	9
<i>Proposed Revision 5: Allow small acreage withdrawals without full description withdrawal.</i> .....	9
<i>Proposed Revision 6: Allow the sale or transfer of a portion of a MFL legal description without having to withdraw the entire legal description prior to ownership transfer.</i> .....	9
<i>Proposed Revision 7: Allow lands to remain in MFL or allow exempt withdrawal if natural events cause lands to no longer meet productivity requirements.</i> .....	10
<i>Proposed Revision 8: Allow exempt withdrawal of limited unproductive acreage, if splits in ownership cause lands to no longer meet productivity requirements.</i> .....	10
<i>Proposed Revision 9: Increase minimum acreage entry size allowed.</i> .....	11
<i>Proposed Revision 10: Allow additions to existing MFL entries regardless of entry year.</i> .....	11
<i>Proposed Revision 11: Eliminate lands containing improvements with assessed values.</i> .....	12
<b>Management and Management Plans</b> .....	13
<i>Proposed Revision 12: Shift the contents of s. NR 46.18 (4), Wis. Adm. Code (large owners), to the managed forest land subchapter of Ch. 77, Stats.</i> .....	13
<i>Proposed Revision 13: Require modified management plans for DNR designated large ownerships to include the establishment of allowable harvest calculations.</i> .....	14
<i>Proposed Revision 14: Allow for electronic signature/approval by DNR and landowners on revised management plan documents for existing participants.</i> .....	14
<i>Proposed Revision 15: Eliminate the application referral process.</i> .....	15
<i>Proposed Revision 16: Revise the current application process for renewal of MFL lands.</i> .....	16
<b>Leasing and Open/Closed</b> .....	17
<i>Proposed Revision 17: Allow small landowners to close lands regardless of acreage.</i> .....	17
<i>Proposed Revision 18: Require landowners to identify access for the public, equivalent to the landowner's access, to lands open to the public or deny the ability to enroll (or keep) MFL lands as open.</i> .....	17
<i>Proposed Revision 19: Repeal prohibition on recreational leasing for small landowners.</i> .....	18

<b>DNR Oversight</b> .....	19
<i>Proposed Revision 20: Modify DNR oversight in on-the-ground management for certified large owners.</i> .....	19
<b>Administration</b> .....	20
<i>Proposed Revision 21: Eliminate the study requirement for the MFL program after 5 years of its existence.</i> .....	20
<i>Proposed Revision 22: Update the provision for DNR to report to the legislature on the number of exempt withdrawals. Remove references to WTL and include references to tribal lands for FCL lands.</i> .....	20
<i>Proposed Revision 23: Eliminate statutory provisions related to Woodland Tax Law</i> .....	20
<i>Proposed Revision 24: Eliminate wording that directs the department to order MFL land withdrawn at the expiration of an MFL order period.</i> .....	21
<b>SUMMARY</b> .....	22

## EXECUTIVE SUMMARY

The following report contains 24 proposed revisions to the Managed Forest Law (MFL) that Wisconsin's Council on Forestry (CoF) reached consensus on and recommend for consideration by the legislature as modifications to the Managed Forest Law.

The level at which the Council members could reach consensus varies by issue. Some issues have fairly specific proposed modification, while on others, Council members agree the issue should be subject to more detailed legislative analysis. The ease or level at which the Council reached consensus on a given issue should not be misconstrued as an indicator of the importance of the individual issue for MFL modification, or as a scale of the extent of the benefits resulting from the proposed change.

The package of 24 issues presented here comprises, what the Council feels, is a well-balanced group of modifications. Attempts to single out certain issues could have consequences with interconnected issues or may impact support for the overall process. More detailed analysis of the issues and proposed modifications follows.

The four issues listed under the Administration group (Proposed Revisions 20-24) were deemed to all be reasonable and generally without concern to advance. The Council without too much difficulty or concern reached consensus on the proposed modifications on 17 of the issues. These 17 issues included:

- *Reduce/restructure withdrawal taxes and fees* – Proposed Revision 2
- *Change the procedure to allow counties to generate and collect financial transactions for MFL yield and withdrawal taxes* – Proposed Revision 3
- *Eliminate the 5% yield tax comparison requirement for determining withdrawal taxes* – Proposed Revision 4
- *Allow small acreage withdrawals without full description withdrawal* – Proposed Revision 5
- *Allow the sale or transfer of a portion of a MFL legal description without having to withdraw the entire legal description prior to ownership transfer* – Proposed Revision 6
- *Allow lands to remain in MFL, or allow exempt withdrawal if natural events cause lands to no longer meet productivity requirements* – Proposed Revision 7
- *Allow exempt withdrawal of limited unproductive acreage if splits in ownership cause lands to no longer meet productivity requirements* – Proposed Revision 8
- *Increase minimum acreage entry size allowed* – Proposed Revision 9
- *Allow additions to existing MFL entries regardless of entry year* – Proposed Revision 10
- *Eliminate lands with improvements with assessed values* – Proposed Revision 11
- *Shift the contents of s. NR 46.18 (4), Wis. Adm. Code (large owners), to the managed forest land subchapter of Ch. 77, Stats* – Proposed Revision 12

- *Allow for electronic signature/approval by DNR and landowner on revised management plan documents for existing participants* – Proposed Revision 14
- *Eliminate the application referral process* – Proposed Revision 15
- *Revise the current application process for renewal of MFL lands* – Proposed Revision 16
- *Require landowners to identify access for the public that is equivalent to the landowner’s access to lands open to the public or deny the ability to enroll (or keep) MFL lands as open* – Proposed Revision 18
- *Repeal prohibition on recreational leasing for small landowners* – Proposed Revision 19
- *Modify DNR oversight intensity in on-the-ground-management for certified large owners* – Proposed Revision 20

The Council, after more lengthy discussion and in some cases after reworking the specific proposed modification, was able to reach general consensus to move these three remaining issues forward:

- *Change in the rate for open/closed acreage* – Proposed Revision 1  
 For any individual issue or proposed modification, the level of agreement, or importance of the modification being made to the MFL, typically varies by stakeholder, individual, or group. Adjusting the per acreage fee, and if so to what degree, is a modification where this is especially true. This, at least in part, played a role in the Council’s difficulty in reaching consensus on a specific direction for this issue. The CoF concluded that the rates, how they are calculated and how the fees are distributed needs to be examined further.
- *Require modified management plans for DNR designated large ownerships to include the establishment of an allowable harvest calculation* – Proposed Revision 13  
 The CoF reached a consensus on the recognition that the continued production of timber on large ownerships be addressed within the parameters, requirements, and intent of the MFL to include considerations for timber volume and the time component of timber being on the market. The CoF consensus included awareness that this issue may warrant further analysis.
- *Allow landowners to open or close lands regardless of acreage* – Proposed Revision 17  
 The CoF hesitantly, by consensus, agreed that this modification addresses the process of “gerrymandering” ownerships to increase closed acreage. The CoF also agrees with the value of MFL lands open for public use and as such recognizes the conflict with this and the proposed modification

## **BACKGROUND**

In 2012 the Council on Forestry undertook an effort to identify and assess potential modifications to Wisconsin’s Managed Forest Law. The intent was to generate a set of modifications that could be introduced through legislative procedures to ultimately amend the MFL. The alterations, as determined through the procedure described below, focused on efforts to modernize and streamline MFL, and maintain overall program viability. More specifically, any modifications should ideally accomplish the following criteria:

- *Reduce DNR administration cost, conflict, and/or law complexity*
- *Maintain public, non-MFL stakeholder, understanding and support*
- *Maintain municipality and local government support*

- *Support the core MFL purpose of sound forest management and commercial timber production (as ref. Wis. Stat. 77.80)*
- *Encourage continued program enrollment and discourage non re-enrollment*
- *Address concerns of MFL forest land owner stakeholder groups*
- *Address concerns of industry stakeholder groups*

This document provides a summary of the potential modifications agreed to by members of the Council on Forestry. An analysis of the current situation and the proposed modifications are included.

## PROCEDURE

The proposed modifications contained herein were in part the result of the efforts of a committee established by the CoF in 2012 to address concerns expressed by selected forestry stakeholders regarding numerous issues related to the DNR administration of the program and MFL landowner participation. Individuals participating in the committee's efforts include:

- ❖ Richard Wedepohl – CoF Member, Wisconsin Woodlands Owners Association (Chair Phase 1)
- ❖ Tom Hittle – CoF Member, Steigerwaldt Land Services, Inc. (Chair Phase 2)
- ❖ Henry Schienebeck – CoF Chair – Great Lakes Timber Professionals Association
- ❖ Representative Jeff Mursau – CoF Member
- ❖ Representative Fred Clark – CoF Member
- ❖ Nancy Bozek – Wisconsin Woodlands Owners Association
- ❖ Kim Quast – CoF Member, Wisconsin Consulting Foresters – Quast Forestry Consulting
- ❖ Troy Brown – CoF Member, Lumber Industry Representative – Kretz Lumber
- ❖ Bill O'Brion – Plum Creek
- ❖ Richard Stadelman – Wisconsin Towns Association

### Technical Advisory/Non-voting members

- ❖ Mark Paulat – Wisconsin Department of Revenue
- ❖ Robert Mather – Department of Natural Resources - Staff technical advisor
- ❖ Kathy Nelson – Department of Natural Resources - Staff technical advisor

The Department of Natural Resources, consistent with the Secretary's ongoing directive to provide technical assistance, but not policy advice, on any and all issues within the purview of the legislature, provided members to the committee for technical assistance only, and in furtherance of its obligations to provide technical assistance in support of the work of the Council. None of the proposals or conclusions represents the formal policy position of the Department, since formal policy determinations are generally within the scope of the authorities granted to the Natural Resources Board or the Secretary. Nothing in this document should be interpreted as the Department of Natural Resources support or policy advice, particularly considering the multiple user groups, stakeholders and natural resource impacts that were not represented as part of the deliberations in the generation of this document (Tribes, hunting, fishing, water quality, recreational access, etc.).

At the February 1, 2013 CoF meeting Council members were presented with a list of issues compiled by the DNR which contained those identified by the MFL Committee and additional administrative efficiency issues identified by the DNR in their capacity as a technical advisor. Council members were asked to select the top five issues of concern to be addressed as possible amendments to the MFL. Selections were tallied and summarized and for this document grouped into the following categories:

- \* Tax Rates and Fee Structures (1-4)
- \* Management and Management Plans (12-16)
- \* DNR Oversight (20)
- \* Eligibility (5-11)
- \* Leasing and Open/Closed Acreage (17-19)
- \* Administration (21-24)

Issues occurring at least three times in the Council member's list of their "top 5" were selected for additional analysis. Certain issues were broken down further from the initial description for individual consideration and analysis.

## **RESULTS**

This report provides an analysis of each issue agreed to by the CoF. A brief narrative covering the current situation and proposed modifications is presented along with indication as to if the change would be retroactive (in effect for lands already enrolled *and* new enrollments) or prospective (only in effect for new entries after MFL amendment).

The report prepared by the MFL Committee, including all potential modifications considered and those removed from consideration, can be found in the CoF meeting materials for the April 22, 2013 meeting located at <http://Council.wisconsinforestry.org/meetings.php>.

The package of 24 issues presented here comprises what the CoF feels is a well-balanced group of modifications. Attempts to single out certain issues could have consequences with interconnected issues or may impact support for the overall process.

# MODIFICATIONS

## Tax Rates/Fee Structure

### ***Proposed Revision 1: Change in rate or how rates are calculated for open/closed acreage.***

**Current Situation:** MFL landowners pay an acreage share tax in place of regular property taxes. MFL landowners who close land to public recreation also pay a closed acreage fee. There are two acreage share and closed acreage fee formulas, depending if lands were enrolled in MFL in 2004 and earlier or 2005 and later. Statewide data is used to determine the acreage share tax rate and closed acreage fees for both sets of formulas. Since assessed values, equalized values, tax rates, and other tax values differ depending upon land location within the state, using a statewide value can show greater MFL tax rate benefits in some parts of the state and lower MFL tax rate benefits in other parts of the state. Conversely, some local municipalities may see that property tax revenues are greatly reduced with lands being enrolled in MFL, while other municipalities see a minimum reduction in property tax revenues. The open and closed per acre rates are summarized as follows looking back to 2003 and ahead to 2017.

	Enrolled 1987 - 2004		Enrolled 2005 or Later	
EFFECTIVE DATES	OPEN	CLOSED	OPEN	CLOSED
2003 - 2007	\$0.83	\$1.95	\$1.46	\$7.28
2008 - 2012	\$0.67	\$1.57	\$1.67	\$8.34
2013 - 2017	\$0.79	\$1.87	\$2.14	\$10.68

Open Acreage share tax = 5% of average statewide tax on productive forest land (\$42.70/acre)  
Closed acreage fee = 20% of average statewide tax on productive forest land (\$42.70/acre)

Under current law, local municipalities normally keep 80% of the open acreage tax and the remaining 20% is remitted to the County. The entire amount of the closed acreage fee is remitted to the County, who then remits the entire amount to the State's Forestry Account for allocation by the Legislature.

Current MFL Open Acres ±: 1,107,000 acres (82% enrolled 1987 – 2004)  
Current MFL Closed Acres ±: 2,138,000 acres (65% enrolled 1987 – 2004)  
Total MFL Acres: 3,245,000 acres

Concern has been expressed by some that the current closed acreage fee in particular is too high and can lead to landowners seeking other tax treatments or pursuing land management which can have negative impacts on forest sustainability. Property taxes on land categorized for taxation purposes as Agricultural Forest can be lower than the MFL per acre closed rate in parts of Wisconsin. Concern has also been expressed by some that per acre property tax rates much above the open rate are not conducive to economically and sustainably managing forested properties for timber. There is also concern regarding tax revenue amount and shifting of tax burdens if rates were lowered.

**Retroactive / Prospective:** The 2005 and later tax formula was made effective for all lands enrolled or re-enrolled in MFL on or after April 28, 2004, setting some precedent that any new tax rate or formula also be made prospective after the effective date of the law change, although there is no recommendation on this from the CoF.

**Conclusion:** The CoF concluded that the rates, how they are calculated, and how the fees are distributed needs to be examined. There was Council consensus that consideration should be given to allocating some portion of the closed acreage fee to local municipalities. In the end CoF believes MFL rates need to be attractive to landowners to incentivize enrollment and foster sustainable forest management while at the same time providing the public with a return consistent with their investment in the program.

## ***Proposed Revision 2: Reduce/restructure withdrawal taxes and fees.***

***Current Situation:*** Landowners who withdraw lands from MFL early are required to pay a withdrawal tax and fee based upon the assessed value of the land in the year prior to withdrawal, the net town tax rate, and the number of years under the law. All acreage share and yield taxes are subtracted. A \$300 withdrawal fee is added. Some withdrawal taxes can be high if lands were re-assessed while enrolled in MFL. The withdrawal tax does a variety of things: (1) reimburses local municipalities for lost tax revenue, and (2) provides an incentive to keep forests as working forests. In each scenario, landowners who withdraw early may not be providing timber products and other public benefits for the 25 or 50 year term in which they enrolled. The MFL withdrawal tax was originally designed to reimburse municipalities for unpaid property tax, however the longer the lands are enrolled in the MFL program the more chance that lands have been re-assessed. The reassessment has the effect of increasing the size of the withdrawal tax payment since the withdrawal tax formula uses the assessed value in the year prior to withdrawal and then uses that value for the entire length that lands were enrolled in MFL, which can result in a withdrawal cost exceeding the actual value of the property. Previously paid acreage share and yield tax amounts are subtracted from the withdrawal fee owed by the landowner withdrawing the MFL lands.

Withdrawal penalties for converting agricultural use value taxed lands range from 5 to 10 percent of adjusted land values, unless left fallow for one year prior to development after which no penalties are assessed for conversion. Penalties for lands under the Farmland Preservation Program rezoned for development were eliminated by the legislature in 2011 because they were thought to be excessive. More information on the assessment of agricultural properties can be found here: <http://www.revenue.wi.gov/pubs/slf/pb061.pdf>

***Proposed Modifications:*** Modify the current withdrawal tax formula to reduce the amount due on lands if voluntarily or involuntarily withdrawn. Establishing a maximum number of years to be used in the withdrawal tax formula would acknowledge the amount of time a landowner was enrolled in MFL and remained in compliance with the program before withdrawing. The procedure of subtracting the paid acreage share and yield taxes from the withdrawal fee would be eliminated. (This also provides for the elimination of the need to report harvest volumes on cutting reports by legal description.) The calculation of the withdrawal fee could be based on the individual parcel ad valorem tax for the year prior to withdrawal and a maximum number of years rather than the total years the lands were enrolled.

***Retroactive:*** This modification is envisioned to be retroactive for all existing and future MFL enrollments.

***Conclusion:*** The CoF concluded that determining a reasonable maximum number of years to be used to calculate withdrawal tax will require further analysis in order for it to be appropriate to encourage continued MFL participation of enrolled lands along with new enrollments.

## ***Proposed Revision 3: Change the procedure to allow counties to generate and collect financial transactions for MFL yield and withdrawal taxes.***

### ***Current Situation:***

***MFL Yield Tax:*** The DNR bills landowners for yield tax every one to two months following completion of a timber harvest on MFL lands and the submittal of a cutting report by the landowner. DNR calculates amount owed (volume harvested by forest product multiplied by an average annual zonal rate). There are 13 zones in the state to better reflect market conditions. The landowner is given until the end of the month following billing to pay the invoice and the state can charge 12% interest on late payments. The

DNR collects monies, including interest, and is required by statute to pay the local municipality annually. (Normally this payment is done quarterly). The local municipality is then required to pay the County 20% of amount collected annually. This occurs in 71 counties with a total of approximately 2,000 invoices statewide annually. The number of invoices by county varies widely from a couple invoices per year to several hundred.

**MFL Withdrawal Tax:** The DNR determines which lands are no longer in compliance with the law. The landowner is provided an opportunity to come into compliance and if they fail to do so the DNR issues an Order of Withdrawal. Copies of that Order are sent to the County and local municipality. The DNR then works with the Department of Revenue (DOR) to determine the MFL withdrawal tax amount (DOR determines the "net property tax rate" value). DNR credits any yield and acreage share taxes paid for that specific parcel, adds a \$300 administration fee, generates the bill, collects the funds, and pays the local municipality once payment has been received. The DNR keeps the \$300 administration fee and sends the remainder to the local municipality. The local municipality currently keeps 80% and sends 20% to the County.

***Proposed Modifications:*** Have the counties take over the MFL yield and withdrawal billing and collection.

**MFL Yield Tax:** The DNR would continue to ensure timber is harvested sustainably and determine the amount of the yield tax owed. The DNR would enhance their computer system to compute the bill amount and make information available for a county to download via electronic file. Counties would be given access to DNR computer database in order to facilitate timely and simple access to those records for which an invoice needs to be prepared. Counties would invoice and collect yield taxes from landowners. They would also be able to charge interest on late amounts. Counties would then be required to split those funds with the local municipality as required by law. (20% county/80% local municipality). Counties would handle any unpaid invoices as a special charge on the property tax bill as currently authorized by Statute. Local DNR foresters would be made available for landowner or municipality questions regarding an individual yield tax account.

**MFL Withdrawal Tax:** The DNR would still determine when to issue an Order of Withdrawal. The county would determine and collect the withdrawal tax due. The DNR would seek to have the withdrawal tax rate formula simplified to be the actual property tax rate for that specific parcel the year prior to withdrawal as previously described. This change would make the calculation simpler and better reflect the actual taxation rate that would have been paid had the land not been enrolled in the MFL. Once the withdrawal tax is collected, the County would send the local municipality their share. The DNR would seek to allow the county to bill and keep the \$300 administration fee and would also seek to not have the landowner receive credits for any MFL acreage share or yield taxes paid while enrolled in the law.

***Retroactive:*** This proposed process would be used for all existing and future MFL and FCL entries/landowners.

***Conclusion:*** Council members have had some communication with county representatives and concluded there is interest on their part to examine this further. The CoF reached consensus to move this issue forward for legislative consideration.

***Proposed Revision 4:* Eliminate the 5% yield tax comparison requirement for determining withdrawal taxes.**

***Current Situation:*** Landowners are required to pay the higher of two withdrawal tax calculation formulas, based on (1) an amount based on assessed value, net town tax rate and number of years in the MFL program, or (2) 5% of the established value of timber based on tree species, volume and product within the established market zones. In 90% of cases the formula based on assessed value is used. DNR determines the 5% yield tax calculation based on forest reconnaissance data contained in the DNR computer database. If the two withdrawal tax calculations are close, DNR requests DNR foresters to obtain new forest reconnaissance data before making the final determination of which calculation to use.

***Proposed Modifications:***

- Eliminate the comparison of the 5% yield tax with the assessed value calculation.
- Eliminate the need for a court ordered estimate if landowners disagree with the 5% yield tax calculation when determining withdrawal taxes.
- Use the withdrawal calculation process in Proposed Revision 2.

***Retroactive:*** This proposal would need to be made retroactive to all MFL landowners in order to create efficiencies in MFL administration.

***Conclusion:*** The CoF agreed to move this issue forward for legislative consideration.

## Eligibility

### ***Proposed Revision 5: Allow small acreage withdrawals without full description withdrawal.***

**Current Situation:** Landowners are allowed to withdraw lands from MFL if they are (1) an entire parcel of MFL lands (not necessarily the same as a tax parcel), (2) all MFL lands within a quarter-quarter section, or (3) all MFL lands within a government lot or fractional lot. Lands that are transferred to a new owner must meet MFL eligibility requirements. Transferred lands not meeting these criteria must be withdrawn from MFL. Most MFL withdrawals are due to splits in ownership and the transfer of parcels less than 10 acres in size.

#### **Proposed Modifications:**

- Allow landowners to withdraw small acreage to be used for building site or land sale without impacting remaining MFL land eligibility provided remainder meets minimum acreage eligibility.
- Limit the number of times a small acreage can be withdrawn during an order period (in part to prevent withdrawal as subdivision developments) to a maximum of 1 withdrawal for lands under a 25 year MFL order and 2 withdrawals for lands under a 50 year MFL order.
- Landowner would pay normal withdrawal tax, as proposed in the “*Reduce/restructure withdrawal taxes and fees*” modification but only on acres removed.
- Allowed withdrawals would be in whole withdrawal acres and limited in size to 1.0 to 5.0 acres and meet minimum zoning requirements.

**Retroactive:** In effect for all present and future MFL entries.

**Conclusion:** The CoF agreed to move this issue forward with recognition this be allowed to a limited extent per MFL order.

### ***Proposed Revision 6: Allow the sale or transfer of a portion of a MFL legal description without having to withdraw the entire legal description prior to ownership transfer.***

**Current Situation:** Lands transferred to new owners during the order period must meet all eligibility requirements in place for initial enrollment. The lands must also be transferred as an entire quarter-quarter section, fractional or government lot, or an entire parcel. Lands that do not meet all of the eligibility criteria must be withdrawn from the MFL program. An owner looking to sell a portion of a MFL description is required to withdraw the entire legal description and pay the withdrawal fees.

#### **Proposed Modifications:**

- Eliminate provisions requiring only entire legal descriptions be transferable while still in the MFL.
- Coordinate continued MFL eligibility requirements for transferred and retained portions of the legal description with proposed modifications related to minimum eligibility size and the provision to *Allow exempt withdrawal of limited unproductive acreage if splits in ownership cause lands to no longer meet productivity requirements.*

**Retroactive:** This will be retroactive for all existing entries.

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

***Proposed Revision 7: Allow lands to remain in MFL or allow exempt withdrawal if natural events cause lands to no longer meet productivity requirements.***

***Current Situation:*** MFL lands must meet eligibility requirements for initial enrollment and continued eligibility, including (1) 10 or more acres, (2) at least 80% productive forest, (3) no more than 20% unsuitable/unproductive forest, (4) not developed for commercial recreation, industry, trade, or other land use incompatible with the practice of forestry, (5) not developed as a human residence. Lands that do not meet these criteria must be withdrawn from the MFL program. The number of withdrawals due to lands not meeting productivity requirements after natural events is low, however it is expected that the number may increase as a result of invasive species such as the Emerald Ash Borer.

***Proposed Modifications:***

- Establish the ability for lands to exceed the non-productive level for a designated amount of time to provide for restoration of forest productivity levels, and/or allow exempt withdrawal if reason for the lands exceeding non-productivity levels is due to a natural event (flooding, insect, disease, etc., to be further defined by DNR in administrative code).
- At the end of enrollment period (25 or 50 years) any lands not meeting productivity requirements would not be allowed to be re-enrolled.
- Administrative code could identify the amount of time allowed for MFL lands to be brought back into compliance with eligibility requirements.

***Retroactive:*** This will be retroactive for all existing and future entries.

***Conclusion:*** The CoF agreed to move this issue forward for legislative consideration.

***Proposed Revision 8: Allow exempt withdrawal of limited unproductive acreage, if splits in ownership cause lands to no longer meet productivity requirements.***

***Current Situation:*** MFL lands must meet eligibility requirements for initial enrollment and continued eligibility, including (1) 10 or more acres, (2) at least 80% productive forest, (3) no more than 20% unsuitable/unproductive forest, (4) not developed for commercial recreation, industry, trade, or other land use incompatible with the practice of forestry, (5) not developed as a human residence. Lands that do not meet these criteria must be withdrawn from the MFL program. Lands that were enrolled as larger ownerships with orders that met productivity requirements at the time of entry occasionally no longer qualify after a land transfer and MFL order division.

***Proposed Modifications:***

- Maintain provisions requiring transferred (sold and still under MFL) lands must meet the 80/20 productivity eligibility requirements, but allow exempt withdrawal of the minimum acres needed in order for the parcel to meet productivity requirements.
- Require that only the minimum amount of unproductive acres be allowed to be withdrawn in order to allow remaining parcel(s) to meet 80/20 productivity eligibility requirements. This would be an exempt withdrawal.

*Retroactive:* This would be in effect for existing and new MFL lands.

*Conclusion:* The CoF agreed to move this issue forward for legislative consideration.

### ***Proposed Revision 9: Increase minimum acreage entry size allowed.***

*Current Situation:* The minimum acreage for enrollment in MFL is 10 contiguous acres. Of these 10 acres, 80% of the lands must meet productivity requirements, and no more than 20% of the lands can be unsuitable for producing timber products. None of the lands can be developed for commercial recreation, industry, trade or a human residence. The minimum size of 10 acres was established because the expired Woodland Tax Law (WTL) had a 10 acre minimum.

*Proposed Modifications:* Increase the minimum size requirements for new MFL entry or parcel size to 15 acres. Maintain the 10 acre minimum eligibility requirement.

*Prospective:* The proposal would affect new entries and re-enrollments only.

*Conclusion:* The CoF agreed to move this issue forward with recognition that further analysis may be warranted to examine impacts in certain areas of Wisconsin where small woodlots are prevalent and important to maintain.

### ***Proposed Revision 10: Allow additions to existing MFL entries regardless of entry year.***

*Current Situation:* Landowners who enrolled lands in MFL in 2004 and earlier are unable to add lands to these MFL Orders. The legislature addressed the inability to add lands to a 2004 or earlier MFL Order by creating the ability to withdraw the 2004 and earlier entry, and re-enroll those same acres with the additional acreage to be added under a 2005 and later MFL entry. A withdrawal tax is not issued in these situations. Landowners are taxed using the 2005 and later formulas. A new 25 or 50 year term would be in effect. Withdrawal taxes include the time the lands were enrolled in the 2004 and earlier order until the time the original MFL Order would normally have expired. DNR is required to track past withdrawals and re-designations.

#### ***Proposed Modifications:***

- Modify the references to the 2005 change in the MFL program when the change in tax calculation formula became effective.
- Modify the requirements that after April 28, 2004 lands that meet eligibility requirements must be enrolled as new entries. Any additions to an existing entry would expire the same year as the original order. Eliminate the withdrawal and re-designation application process.
- Acreage added to an existing MFL entry is taxed at same rate as the initial acreage and treated the same for withdrawal fee calculations.
- Additions would only be for contiguous acreage and not for acreage able to stand alone and still be eligible to be entered into the MFL.

*Retroactive:* Changes in how to process withdrawal taxes would be made retroactive to reduce the tracking of Withdrawals and Re-designation MFL Orders, and the additional withdrawal tax calculations needed if lands are withdrawn early from the MFL program. This provision allows for new additions to existing MFL orders.

**Conclusion:** The CoF agreed to move this issue forward subject to it being limited to otherwise ineligible, contiguous lands.

**Proposed Revision 11:** Eliminate lands containing improvements with assessed values.  
Except those improvements for land management purposes  
(culverts, fences, bridges, roads).

**Current Situation:** Landowners may enroll lands with buildings that are used for working or recreating on the MFL property. Buildings are taxed as personal property. DNR withdraws lands from MFL if personal property taxes become delinquent. Buildings used for a human residence must not exceed 4 of the 8 building characteristics as outlined in NR 46, Wis. Admin. Code, except that buildings created prior to 2004, when DNR announced in the Forest Tax and Stewardship Newsletter that landowners enrolled in MFL prior to the 1997 statute change and who had not already built a human residence needed to abide by the NR 46 building requirements. Previously existing structures on MFL lands exceeding the NR 46 building requirements have been allowed to remain in the MFL program until expiration. Many cabins are upgraded or homes built new to allow for human residences and habitation. This has the appearance of lands not being compatible with the practice of forestry, making it difficult for the public to support. Buildings meeting the building criteria and landscaped also provide difficulties in determining if MFL lands with buildings can remain in the MFL program.

**Proposed Modifications:**

- Change statutory provisions to eliminate entry of lands with improvements.
- Eliminate references to the building requirements. Will need to keep this provision for those MFL entries that are already enrolled and will be grandfathered up to a specific date identified in the statute.
- Include wording on the property tax rolls to show lands with improvements are not allowed after the effective date of the MFL change. Similar wording would be added to statutory provisions for withdrawal of lands for failure to pay personal property taxes.
- Set whole acre exclusion area surrounding any buildings.

**Prospective:** This would be in effect for all new entries.

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

## Management and Management Plans

**Proposed Revision 12:** Shift the contents of s. NR 46.18 (4), Wis. Adm. Code (large owners), to the managed forest land subchapter of Ch. 77, Stats.

**Current Situation:** DNR allows landowners meeting the criteria of a large landowner to keep management plans and forest reconnaissance data for their properties in their own ownership or office, and provide DNR with a commitment to follow their management plan. DNR has the authority to audit the large landowner's management plan and reconnaissance data. DNR has given consideration to large landowners in the management of their properties in that a large landowner is not required to have site specific management plans, but rather a general plan on the management of their overall property. Large landowners have a forester on staff or retained, have reconnaissance data for their property and management criteria on when to harvest and update forest reconnaissance data. DNR may audit management plans and systems to determine continued eligibility under the MFL program.

**Proposed Modifications:** Copy the wording for large ownership requirements from NR 46, Wis. Admin. Code and place it into ch. 77, Wis. Stats. While the proposed change has little effect on large or small landowners, moving the NR 46 wording to statute allows for the statute to reflect different changes for large landowners. (See below for the specific text of NR 46.18 (4).)

**Retroactive/Prospective:** This proposal has no effect on large or small landowners, either retroactively or prospectively.

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

### **s. NR 46.18 (4), Wis. Adm. Code:**

#### **(4) LARGE OWNERSHIPS.**

- (a)** The requirements of this section for management plans may be modified by the department for ownerships exceeding 1,000 acres after consideration of the following:
1. Other land of the owner entered as managed forest land, forest crop land or other forest tax law programs administered by the department.
  2. The number of counties in which lands proposed for entry or renewal or the owner's existing managed forest land and forest crop land and woodland tax law lands lie.
  3. The existence and availability for review of a management plan prepared by or for the owner and acceptable to the department.
  4. Submission of a written commitment from an owner to provide, upon department request, information from the management plan for review or audit. The commitment shall describe the management plan and outline the procedure used to update and amend the management plan.
  5. An owner's demonstrated consistent accessibility to competent technical forest management assistance through staff or consultant services.
- (b)** A management plan under s. 77.82 (3), Stats., shall be developed by owners who no longer qualify as a large ownership in sub. (4) (a). All items listed in s. NR 46.16 (2) (f), (g), and (h) must be submitted to the department for approval within one year after being notified by the department of no longer meeting the requirements in sub. (4) (a).

***Proposed Revision 13:* Require modified management plans for DNR designated large ownerships to include the establishment of allowable harvest calculations.**

***Current Situation:*** Landowners who qualify as a large landowner are expected to follow their own written management plans. DNR can audit those plans and other program criteria to ensure lands enrolled continue to meet conditions of the MFL program. Harvesting occurs according to the landowner's management plan.

***Proposed Modifications:*** Require a calculated allowable harvest be established for large landowner properties. This modification would provide for multiple accepted approaches to calculating allowable harvests and allow harvest levels that can vary to some definable degree over time. The calculated allowable harvest would require DNR approval to ensure compliance with statutory requirements. Administrative code would be developed to identify what is required in allowable harvest analysis.

***Retroactive/Prospective:*** The CoF remains silent as to whether or not requirements to address this topic be retroactive or prospective.

***Conclusion:*** The CoF reached a consensus on the recognition that the continued production of timber on large ownerships be addressed within the parameters, requirements, and intent of the MFL to include considerations for timber volume and the time component of timber being on the market. The CoF consensus included awareness that this issue may warrant further analysis.

***Proposed Revision 14:* Allow for electronic signature/approval by DNR and landowners on revised management plan documents for existing participants.**

***Current Situation:*** In the past, forest management plans for MFL properties were hand written and required the signature of both landowner and DNR forester. The signatures on the management plan acknowledged that both the landowner and DNR forester agreed with forest management prescriptions. Changes have occurred with the development of WisFIRS and computer generated management plans. Currently landowners submit their proposed management plan to DNR for approval as an attachment to their MFL application. The MFL application includes a landowner signature. DNR approves the management plan along with approving the application.

DNR requires all management decisions to consider current stand conditions, current science, current landowner goals and new MFL program requirements when implementing scheduled forest practices. This requirement allows sound forestry to be practiced on all MFL lands, regardless of specific wording contained in management plans. DNR foresters are required to adjust management plans based on new landowner goals, current forest conditions and current science, and program requirements.

Future updates to management plans will be facilitated with WisFIRS. As forest practices are completed, new forest reconnaissance data is collected and practices are entered into WisFIRS generating a new plan for the landowner. DNR foresters on occasion have struggled in the past to complete updated management plans since the current process to obtain a landowner's signature can be very time consuming.

**Proposed Modifications:** Allow DNR personnel to obtain landowner approval and acknowledgment of a revised management plan by electronic means using e-mail or other electronic formats.

**Retroactive:** Updated management plans currently being written through WisFIRS do not have a space for landowner or DNR signature. (The signatures are a part of the application process for new enrollees into MFL.) Updated management plans will need to be developed with a method to allow for electronic approval of the revised plan. This change will be for updates to existing plans.

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

### **Proposed Revision 15: Eliminate the application referral process.**

**Current Situation:** DNR is required to have a referral system and a process to determine if services from a Certified Plan Writer (CPW) are not available. The process requires landowners to have submitted a written request for plan writing services through the Forestry Assistance Locator. If by January 1 in the year an MFL application is due, landowners who have not been contacted by a CPW may request the DNR prepare the MFL application. Area DNR forestry supervisors will then contact each CPW in the county in which the lands lie and verify that CPWs received the request and have either denied or not offered services. CPWs may make an offer at this time. If CPWs do not respond to the area forestry supervisor or have replied that they are not interested in providing service, the area forestry supervisor may assign the development of that MFL application to a DNR forester. DNR is required to prepare MFL applications for landowners if services from a Certified Plan Writer (CPW) are not available. As of 2013, there are 178 CPWs statewide. DNR has not developed an MFL application for 2 years, with DNR developing an annual average of 1 to 2 MFL applications over the past 4 years. The CPW program continues to grow, making it less likely that landowners will be unable to find services from a CPW.

#### **Proposed Modifications:**

- Eliminate the need to develop and manage a referral list.
- Eliminate the collection of a management plan fee.
- Eliminate the need to determine when services from a CPW are not available.
- Eliminate the contracting of MFL applications by the Department.
- Elimination of the referral system would mean that DNR Foresters would not develop any new MFL applications or charge landowners for MFL applications that it develops. DNR would continue to collect information on fees charged by CPWs as a way to determine cost-share rates for plan development under the Wisconsin Forest Landowner Grant Program (WFLGP).

**Prospective:** This provision would be prospective.

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

***Proposed Revision 16:*** Revise the current application process for renewal of MFL lands.

***Current Situation:*** Landowners may re-enroll lands in the MFL program at the expiration of their current 25 or 50 year term. Landowners are required to hire a Certified Plan Writer (CPW) to develop a new application, and create a new forest management plan. Through statute, special notification provisions to municipalities and counties have been removed for a renewal. Because there are fewer statutory requirements for a renewal than a new entry, it is reasonable for DNR to treat renewals differently than new entries. Landowners and foresters have noted that if forest reconnaissance and land management plans are current, and there have been no changes in land ownership, location, acreage, land use, etc., a renewal can be done without developing a new MFL plan and application.

***Proposed Modifications:*** Renewals of MFL agreements would eliminate the need for landowners to develop new management plans, and ultimately the review of those plans by DNR staff. DNR would deny a renewal only if (1) the lands fail to meet eligibility requirements, (2) the landowner has failed to comply with the management plan in effect on the date the application for renewal is filed, (3) there are delinquent taxes on the land, (4) ownership and entry acreage has changed, (5) forested acreage has not had an inspection/update date in WisFIRS within the last 5 years or has not been updated to reflect any recently completed management activities, and (6) the management plan does not contain scheduled mandatory practices for the duration of the new entry period. Tax rates for renewals would be based on the 2005, or later rate schedule.

***Prospective:*** This provision would be prospective since landowners who have already re-enrolled lands into the MFL program would not benefit from this modification.

***Conclusion:*** The CoF agreed to move this issue forward for legislative consideration.

## Leasing and Open/Closed

### ***Proposed Revision 17: Allow small landowners to close lands regardless of acreage.***

***Current Situation:*** Under current law, landowners enrolled in the MFL are allowed to close 160 acres of land to public recreation, of which only 80 acres or two legal descriptions per municipality may be lands enrolled in 2004 or earlier. This acreage limitation encourages landowners to subdivide property into different ownerships in order to legally close as much land as possible. In some situations, lands are subdivided and land-locked properties are created. The land-locked properties are taxed under MFL as open to public recreation; however there is no legal entry into the lands, making it inaccessible to the public. Landowners whose intent is to close as much land to public recreation as possible have many legal means to create different ownerships in order to close 160 acres per ownership per municipality. The ability to create different ownerships results in the majority of lands enrolled in MFL by non-industrial private landowners to be closed to public recreation. The additional number of owners in entities such as LLCs, Trusts, Partnerships, etc. also increases the number of MFL applications.

***Proposed Modifications:*** Eliminate the closed acreage limitation. The provision to remove the closed acreage limitation would allow landowners the ability to close lands to public recreation without having to create LLCs, trusts, other non-natural entities, or combinations of natural persons.

Even though this modification is contrary to the original intent of the law, it addresses the issue generating the largest number of complaints to the DNR; MFL participants navigating around the closed acreage limit.

***Prospective:*** This provision would apply to landowners who are entering or renewing lands into MFL. Landowners already in the MFL would not benefit from this modification.

***Conclusion:*** The CoF hesitantly, by consensus, agreed that this modification addresses the process of “gerrymandering” ownerships to increase closed acreage. The CoF also agrees with the value of MFL lands open for public use and as such recognizes the conflict with this and the proposed modification.

### ***Proposed Revision 18: Require landowners to identify access for the public, equivalent to the landowner’s access, to lands open to the public or deny the ability to enroll (or keep) MFL lands as open. (Small landowners who cannot provide access to open lands would lose their MFL-open tax status.)***

***Current Situation:*** Landowners may close up to 160 acres of land to public recreation with the intent remaining lands are open to public recreation. Many landowners have learned to create multiple ownerships in order to close lands to public recreation. However; some of these ownerships are developed in a manner where lands open to public recreation are surrounded by other ownerships closed to public recreation, even though the same landowner or groups of landowners may have interests in both ownerships. This situation allows for lands open to public recreation to be effectively land-locked, making it difficult for the public to realize the benefits of recreating on MFL – Open lands.

***Proposed Modifications:*** Create a provision requiring a landowner to identify access to lands open to public recreation equivalent to the access the landowner uses, or deny them the ability to enroll or maintain lands as “MFL-Open”. (Landowners who cannot provide evidence of legal access to open lands

would lose their open tax status and be required to pay the closed MFL acreage rate.) This would apply to any land-locked MFL legal description.

MFL ownerships categorized by the DNR as large landowners would be provided with a mechanism to allow exceptions given the inherent possibility that over large acreages managed for timber production that a small amount of land may have access limited to the occurrence of forest management activities. This exception would also recognize the large acreage of publically accessible lands associated with these owners. In addition, designated large landowners would not be allowed the option to close lands to public use (other than as currently provided by the MFL for temporary periods).

***Retroactive:*** Retroactive for existing landowners in the MFL program and prospective for new enrollments.

***Conclusion:*** The CoF agreed to move this issue forward for legislative consideration.

### ***Proposed Revision 19: Repeal prohibition on recreational leasing for small landowners.***

***Current Situation:*** MFL landowners are not allowed to receive consideration for recreation activities on MFL lands. Consideration can be in the form of cash, goods or services. Recreational users, including hunters, may give MFL landowners gifts as a thank you for recreating on private lands. The leasing prohibition was effective on January 1, 2008. Many MFL landowners who leased lands for recreation lost income with the January 1, 2008 leasing prohibition. Between 1986 and 1992, leasing of MFL lands for recreation was not allowed since leases were determined to be akin to having commercial recreation. In 1992, a change in Wis. Admin. Code allowed lands to be leased since most leases did not affect the development of the lands, and lands were left in a natural state, continuing to be managed for forestry purposes.

***Proposed Modifications:*** Permit leasing including other agreements for consideration (reimbursement) allowing persons to engage in a recreational activity. This provision would reverse the 2008 legislation, allowing small landowners the ability to lease lands again.

This reinstatement would exclude DNR designated large ownerships where leasing would not be allowed consistent with the previous revision requiring large ownerships to be open for public use.

***Retroactive:*** This provision would be retroactive.

***Conclusion:*** The CoF agreed to move this issue forward for legislative consideration.

## **DNR Oversight**

### ***Proposed Revision 20: Modify DNR oversight in on-the-ground management for certified large owners.***

***Current Situation:*** MFL landowners are required to submit a cutting notice at least 30 days prior to cutting. DNR Foresters review the cutting notice and approve or deny the cutting plan within 30 days. Review of the cutting notice may, and often does, include a DNR forester site visit to the property.

***Proposed Modifications:*** The intent of this modification is to clarify recognition that DNR designated large landowners with professional forest management staff and that are third party certified are not required to have each and every harvest approved via the current cutting notice process. As presented here it is contingent on the DNR establishing a credible audit procedure to assure management occurring on MFL lands meets the program intent of sound forest management as defined in Wis. Stat. § 77.80.

***Retroactive:*** This provision would be retroactive and affect all large landowners who are 3<sup>rd</sup> party certified.

***Conclusion:*** The CoF agreed to move this issue forward for legislative consideration with the understanding DNR and large landowners are able to work to streamline a process focusing on an outcome based approach model and allow DNR authority to assure MFL compliance.

## Administration

***Proposed Revision 21:*** Eliminate the study requirement for the MFL program after 5 years of its existence.

***Current Situation:*** The requirement for a review of the MFL program after 5 years of MFL program has been completed.

***Proposed Modifications:*** This provision cleans up wording that is no longer pertinent.

***Prospective/Retrospective:*** NA

***Conclusion:*** The CoF agreed to move this issue forward for legislative consideration.

***Proposed Revision 22:*** Update the provision for DNR to report to the legislature on the number of exempt withdrawals. Remove references to WTL and include references to tribal lands for FCL lands.

***Current Situation:*** DNR is required to report to the legislature the amount of lands that are withdrawn from MFL, Forest Crop Law (FCL) and Woodland Tax Law (WTL) as an exempt withdrawal if the number of withdrawals exceeds 1% of the total acreage of lands in the programs.

***Proposed Modifications:*** This provision needs updating to reflect the ending of the WTL program and the beginning of the exempt withdrawal for tribal lands for lands owned by the tribes in FCL, similar to the Wis. Stat. s. 77.885 MFL provisions.

***Prospective/Retrospective:*** NA

***Conclusion:*** The CoF agreed to move this issue forward for legislative consideration.

***Proposed Revision 23:*** Eliminate statutory provisions related to Woodland Tax Law

***Current Situation:*** The Woodland Tax Law (WTL) has expired with the last WTLs expiring on December 31, 2001. Statutes continue to reference WTL and should be updated.

***Proposed Modifications:*** Eliminate statutory provisions related to WTL.

***Prospective/Retrospective:*** NA

***Conclusion:*** The CoF agreed to move this issue forward for legislative consideration.

**Proposed Revision 24: Eliminate wording that directs the department to order MFL land withdrawn at the expiration of an MFL order period.**

**Current Situation:** DNR notifies local municipalities of lands that have expired from the MFL program similar to the expiration notices used for Forest Crop Law (FCL). DNR has not issued formal Orders of Expiration, however; DNR does notify local municipalities of lands expiring from MFL, similar to FCL expirations. Municipalities are accustomed to receiving these types of notices from DNR, so keeping the notifications similar for both programs is important. This provision allows DNR to continue using current processes rather than the formal Order of Expiration process.

**Proposed Modifications:** DNR would be required to provide a list of lands expiring from the MFL program similar to the notification provided for the FCL program

**Prospective/Retrospective:** NA

**Conclusion:** The CoF agreed to move this issue forward for legislative consideration.

## SUMMARY

It is the CoF's belief this package contains a reasonable balance of outcomes across various stakeholder groups and proposed modifications adequately and reasonably addresses all seven of the initial criteria. Attempts to segregate out individual modifications or otherwise significantly alter the proposed modifications could upset this balance. The CoF process and issues brought forth by the department have been guided by the desire to focus on efforts to modernize and streamline MFL, and maintain overall program viability.

For the DNR, this package significantly addresses the streamlining and efficiencies goals through numerous efforts, some of which can be highlighted as follows:

- ✓ The re-design of the withdrawal and yield tax calculations and collections procedures
- ✓ Modifications to disallow structures
- ✓ Continued emphasis on using WisFIRS (digital plan signatures approval etc.)
- ✓ Streamlining MFL renewal and application referral procedures
- ✓ Numerous small administrative and law modifications

There are also several proposed modifications that should facilitate continued forest landowner interest and support for the MFL, some of which are as follows:

- ✓ The adjustments made to withdrawal fees and allowance for small acreage withdrawals
- ✓ Modifications to minimize impacts due to forest productivity standards
- ✓ Allowance for additions to existing neighboring MFL entries
- ✓ Altering the MFL renewal procedures for easier to re-enrollment
- ✓ Reinstatement of leasing (for small landowners)
- ✓ Removal of the limit on acreage for closed lands
- ✓ Streamline DNR oversight (for large landowners)

From the public and local government perspective it is anticipated the following proposed MFL modifications will yield continued support for the program:

- ✓ Requirement that open lands are truly open and accessible and all large ownerships remain open to public recreational use
- ✓ The elimination of provisions allowing structures on newly enrolled MFL lands
- ✓ Streamlined collection process for yield and withdrawal taxes connecting tax monies with local government more directly, and allowing collection of processing fees
- ✓ Modifications to withdrawal procedures and MFL minimum acreage eligibility which may place more lands on the regular tax role

The Managed Forest Law, with an origin dating back to 1985 has evolved over the years as necessitated to adjust to changes in a wide range of areas including in part, increasing property tax rates, digital technologies, forest certification, and an ever increasing list of desired program objectives and outcomes. Along with this came an expansion of the number and diversity of direct and indirect stakeholders. The MFL has thus evolved into a "one size fits all" program which has the potential of not being a perfect fit for any one stakeholder. Yet, to be a viable program going forward, there needs to be an acceptance of this general fit and the willingness by many to support the MFL for all of its combined benefits.