

98-096-NR 46.15/16 - FOREST TRX 440

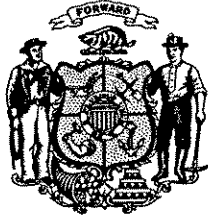
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

***RULES CLEARINGHOUSE***

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 98-096**

AN ORDER to repeal and recreate NR 46.15 (9); and to create NR 46.16 (8), relating to the definition of human residence as it pertains to the forest tax law landowners.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

06-30-98      RECEIVED BY LEGISLATIVE COUNCIL.  
07-24-98      REPORT SENT TO AGENCY.

RNS:MM:kjf;jt

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

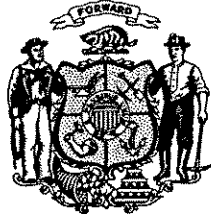
Comment Attached      YES       NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 98-096

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### 2. Form, Style and Placement in Administrative Code

In s. NR 46.16 (8) (b), quotation marks should be placed after "Stats." In sub. (8) (intro.), "all of the following" should be inserted after "include."

#### 4. Adequacy of References to Related Statutes, Rules and Forms

a. In the citation of statutory authority and statutes interpreted, the citations to ss. 77.82 (1) (b) 3. and 77.82 (1) (bn), Stats., should be followed by the designation "as created by 1997 Wisconsin Act 27."

b. The rule does not clearly state that a parcel that is developed for a human residence is not eligible for designation as managed forest land. In order to comply with s. 77.82 (1) (b) 3., Stats., this provision should be set forth clearly in the rule.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
REPEALING AND RECREATING, AND CREATING RULES

The State of Wisconsin Natural Resources Board proposes an order to repeal and recreate NR 46.15(9) and to create NR 46.16(8) relating to the definition of human residence at it pertains to the forest tax law landowners.

FR-16-98

The Legislature has directed the department in 1997 Wis. Act 27 to define "human residence" to include primary and secondary residences of forest tax law landowners. The present definition states the building must be a domicile or permanent residence. With the new definition, a landowner will be required to file a statement on the attributes of any buildings on the tax law lands. Once a building exceeds the minimum specifications for a "human residence", the land would be subject to withdrawal and assessed a penalty.

*AAA*

SECTION 1. NR 46.15(9) is repealed and recreated to read:

NR 46.15(9) "Developed for human residence" means land that contains a building for habitation that is constructed or used as a domicile or that has a minimum of 5 of the following 8 characteristics:

- (a) 600 sq. ft. or more in total area, using exterior dimensions of living space, including each level and not including porches, decks or uninsulated screen porches.
- (b) Indoor plumbing including water and sewer, piped to either <sup>a</sup>municipal or septic system.
- (c) Central heating or cooling, including electric heat, a furnace or heat with a circulation system.
- (d) Full or partial basement.
- (e) Electrical service, including solar or wind generated.
- (f) Attached or separate garage, not to include buildings for vehicles used primarily for work or recreation on the property.
- (g) Telephone service with local service, cellular phones are to be based on property.
- (h) Insulated using common insulation products.

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

SECTION 2. NR 46.16(8) is created to read:

NR 46.16(8) BUILDINGS. An owner who petitions the department to designate land containing a building with any characteristic listed in s. NR 46.15(9) shall include in the petition:

(a) A list of all s. NR 46.15(9) characteristics that the building possesses when the petition is submitted.

(b) The following statement: "I understand that using or improving a building on managed forest law land so that the land is developed for human residence as defined in s. NR 46.15(9) may cause the department to withdraw all or any part of the parcel from managed forest law designation under s. 77.88(1), Stats.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

The rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
George E. Meyer, Secretary

(SEAL)

State of Wisconsin  
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS  
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. FR-16-98

Legislative Council Rules Clearinghouse Number 98-096

Subject of Rules Definition of human residence  
as it pertains to forest tax law landowners.

Date of Transmittal to Presiding Officers September 28, 1998

**Send a copy of any correspondence or notices pertaining to this rule to:**

**Carol Turner, Rules Coordinator  
DNR Bureau of Legal Services  
LC/5, 101 South Webster**

**266-1959**

## REPORT TO LEGISLATURE

NR 46, Wis. Adm. Code  
Definition of human residence as it pertains  
to forest tax law landowners

Board Order No. FR-16-98  
Clearinghouse Rule No. 98-096

### Statement of Need

The Wisconsin legislature directed the Department to define by rule "human residence" to include a residence of the petitioner regardless of whether it is the petitioner's primary residence. This rule will establish a level of building acceptable under the Managed Forest Law which, if exceeded, will cause the Department to either deny entry of the land or withdrawal of the land with a penalty. A building with the proposed characteristics would be considered livable as a primary residence. If an individual lives as a permanent resident in a lesser building on Managed Forest Law lands, the land would still be ineligible to continue under the law.

This effort has been necessary due to an increased number of landowners building homes they consider cabins on tax law lands which were eligible for entry and at a later date being used as domiciles and having to be withdrawn from the law. Under the Managed Forest Law, a municipality cannot tax the land the "homes" are on, only the buildings as personal property. Municipalities feel they are not getting a just tax from these lands. Existing entries (buildings and lands) entered under the Managed Forest Law prior to January 2, 1999 will be grandfathered under the new rule unless further violations develop. Additions to existing entries and new entries will be required to meet the new building specification rule.

### Modifications as a Result of Public Hearing

As a result of comments at the public hearings, the following modifications were made:

1. The maximum total area was increased from 600 to 800 square feet.
2. Basement now excludes crawl spaces and frostwalls.
3. Electrical service is only by connection to a power company rather than also including wind and solar energy.
4. Telephone service must be based locally.

### Appearances at the Public Hearings and Their Position

*August 11, 1998 - Appleton*

In support:

Daniel R. Lipke, 228 Plummer Avenue, Neenah, WI 54956  
Irving Partoka, W9414 Givens, Hortonville, WI 54944

In opposition:

Jack D. Emnott, Jr., 105 Hilltop Drive, Neenah, WI 54956  
James R. Watters, 1424 Cold Spring Road, Neenah, WI 54956  
Terry J. Sullivan, 1158 Meadow Lane, Menasha, WI 54952



Charles Muehlethaler, 1810 Aspen Lane, Green Bay, WI 54303  
Terry L. Magolski, 1817 Oshkosh Street, New London, WI 54961  
Edward L. Walter, 610 Hawthorne Drive, Apt. 102, Omro, WI 54963  
John Koerner, 5628 W. Fisk Avenue, Oshkosh, WI 54904

As interest may appear:

Thomas J. Ziolkowski, 2557 Cty. Road GG, Neenah, WI  
Charles R. Wagner, E1934 County Road S, Luxemburg, WI 54217-8844  
David R. Gruendemann, 35 Heritage Court, Appleton, WI 54915  
Bill Vander Heyden, 4302 W. Edgewood Drive, Appleton, WI 54915  
James Watters, Jr., 649 Trailsway Lane, Neenah, WI 54956

*August 11, 1998 - Spooner*

In support:

Jack E. Nesson, Nesson Lakeshore, Inc., 113A 16<sup>th</sup> Avenue, Turtle Lake, WI 54889  
Kevin Hagen, W5676 Hwy. 70, Spooner, WI 54801

In opposition - none

As interest may appear:

Gale B. Austin, 9889 W. State Road 77, Hayward, WI 54843  
Dorothy Harms, Box 2065, Mikana, WI  
Patricia Gilbertson, 2112 21<sup>1</sup>/<sub>4</sub> Street, Rice Lake, WI  
Richard Richardson, 6556 Hayden Lake Road, Danbury, WI  
Robert Reiter, 718 La Follette, Spooner, WI 54801  
W. Brett Heino, 760 Donald Street, Mayville, WI 53050  
Donald Monson, P.O. Box 327, Spooner, WI 54801-0327  
Jim Schweiger, P.O. Box 397, Cumberland, WI  
Eva Walker, 502 Vale Street, Spooner, WI 54801  
Forrest Meier, 12 E. Douglas Street, Rice Lake, WI 54868  
Marion C. Meier, 12 E. Douglas Street, Rice Lake, WI 54868  
John Haack, 317 1<sup>st</sup> Avenue, Shell lake, WI 54871

*August 11, 1998 - Waukesha*

In support:

James Bente, 38122 Sunset Drive, Oconomowoc, WI 53066

In opposition:

Joseph R. Meissner, N80 W27720 Plainview Road, Hartland, WI 53029  
John H. Owens, N8740 Stone School Road, East Troy, WI 53120  
Michael J. Bondar, 1900 N. Warren Avenue, Milwaukee, WI 53202

As interest may appear:

Roland Groddy, 3757 Nagawicka, Hartland, WI 53029  
Louis Liggio, S15 W32158 High Meadow Circle, Delafield, WI 53018  
Harry R. Lepianka, 4046 N. 90<sup>th</sup> Street, Milwaukee, WI 53222

*August 12, 1998 - Black River Falls*

In support:

James Troemner, 1821 Eagle Drive, Friendship, WI 53934  
Harold Topel, Stop Off Club, W4136 Eagle Lane, La Crosse, WI 54601

In opposition - none

As interest may appear:

LaVern R. Meyer, 1105 Blaley Street, Neillsville, WI 54456  
Juds Elliott, 9 Commerce Street, Holman, WI 54636

*August 12, 1998 - Dodgeville*

In support - none

In opposition - none

As interest may appear:

Bill Hitzemann, 2401 Cty. E, Mt. Horeb, WI 53572  
L.B. "Nick" Nice, 1403 Wisconsin Avenue, Boscobel, WI 53805  
Lawrence Ketchum, 202 W. Division Street, Dodgeville, WI  
Olga Ketchum, 202 W. Division Street, Dodgeville, WI 53533  
Patrick O'Neill, 1522 16<sup>th</sup> Avenue, Monroe, WI 53566  
Don Faivre, 10634 N. Long Road, Brooklyn, WI 53521  
F. Paul Kooiman, Hwy. 130, Lone Rock, WI 53556  
William P. Young, 1239 Wellesley Road, Madison, WI 53705

*August 12, 1998 - Rhinelander*

In support - none

In opposition:

Elmer Rose, N3797 Hwy. H, Antigo, WI 54409  
Mike Umland, 4703 Business Hwy. 8E, Rhinelander, WI  
Sy Deininger, 701 Town Line Road, Wausau, WI  
Robert & Ellen Coulthurst, 3645 County Road Y North, Stevens Point, WI 54481

As interest may appear:

Dale Dallmann, 850 Abrams Street, Green Bay, WI 54302  
Nadine M. Wilson, Oneida Co. Zoning Land Use Specialist  
Dave Huber, P.O. Box 937, Minocqua, WI 54548  
Rodney M. Knapstein, Box 409, Woodruff, WI  
Marlene Deininger, 701 Town Line Road, Wausau, WI 54403  
Dean Dallmann, 1998 Joan Lane, Sobieski, WI 54171  
Norman R. Larson, 1121 Emerald Drive, Plover, WI  
Elva Larson, 1121 Emerald Drive, Plover, WI 54467  
William Korrer, Jr., P.O. Box 168, Minocqua, WI 54548

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

This rule does not affect small business. Small private forest landowners and forest industries enrolled under the Managed Forest Law will be required to meet the new building specifications on lands entered under the Managed Forest Law after January 1, 1999 and pay withdrawal penalties when the specifications are exceeded.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
REPEALING AND RECREATING, AND CREATING RULES

The State of Wisconsin Natural Resources Board proposes an order to repeal and recreate NR 46.15(9) and to create NR 46.16(8) and 46.17(3)note relating to the definition of human residence at it pertains to the forest tax law landowners.

FR-16-98

Statutory authority: ss. 77.82(1)(bn) as created by 1997 Wis. Act 27 and 227.11(2)(a), Stats.  
Statutes interpreted: s. 77.82(1)(b)3. as created by 1997 Wis. Act 27 <sup>3</sup>

The Legislature has directed the department in 1997 Wis. Act 27 to define "human residence" to include primary and secondary residences of forest tax law landowners. The present definition states the building must be a domicile or permanent residence. With the new definition, a landowner will be required to file a statement on the attributes of any buildings on the tax law lands. Once a building exceeds the minimum specifications for a "human residence", the land would be subject to withdrawal and assessed a penalty.

SECTION 1. NR 46.15(9) is repealed and recreated to read:

NR 46.15(9) "Developed for human residence" means land that contains a building for habitation that is constructed or used as a domicile or that has a minimum of 5 of the following 8 characteristics:

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

Note: "Developed for human residence" is not meant to include storage or workshop buildings. If there is living space as part of such buildings, the living space will be compared against the 8 characteristics. This definition does not apply to entries in effect January 1, 1999 except that those entries must adhere to the domicile definition.

SECTION 2. NR 46.16(8) is created to read:

NR 46.16(8) BUILDINGS. An owner who petitions the department to designate land containing a building with any characteristic listed in s. NR 46.15(9) shall include all of the following in the petition:

(a) A list of all s. NR 46.15(9) characteristics that the building possesses when the petition is submitted.

(b) The following statement signed: "I understand that using or improving a building on managed forest law land so that the land is developed for human residence as defined in s. NR 46.15(9) may cause the department to withdraw all or any part of the parcel from managed forest law designation under s. 77.88(1), Stats.

SECTION 3. A note following NR 46.17(3) is created to read:

Note: Additional clarification of buildings ineligible for designation is covered in s. 77.82(1)(b)3., Stats., and s. NR 46.15(9).

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on September 23, 1998.

The rule shall take effect on January 2, 1999 after publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
George E. Meyer, Secretary

(SEAL)