Addendum to Lowell Klessig's presentation to MFL Study Committee 10/06

RE: The need for a customized appeal process for MFL landowners

During my presentation Rep. Hubler raised the question about whether *Sec. 77.90 Right to hearing* was sufficient protection against abuse of power in the MFL program. This addendum responds to that question.

In 15 years of countless (probably hundreds) of discussions of MFL conflicts with other landowners, consulting foresters, DNR foresters and DNR administrators, no one has ever mentioned a contested case hearing under Sec. 77.90 as an avenue to resolve these conflicts. Even though Chapter 227.42 provides for persons adversely affected, outside the rule making process, to request a hearing, the context is in regard to injury from a generic source in a state program. The general perception is that the hearing process is complicated and expensive and requires big gun attorneys. For example, industries might contest the administrative codes on water quality standards being developed pursuant to Clean Water legislation. In the case of MFL, Plum Creek might contest a change in the administrative codes or agency guidelines that prohibited buyers of open MFL lands from closing them during the balance of the "contract" period. That change in policy would be generic but would have a significant negative impact on land sales by large landowners.

In contrast, abuse of power and other deviant behavior by a public employee should be handled by the administrative chain of command. Contested case hearings were not designed for that function. For whatever reason and for many years there has been a failure of agency leadership in one or more of the basic personnel responsibilities: hiring, in-service training, supervision, discipline and retention. The result has been abuse of power by a significant minority of field foresters and collateral damage to the reputation of the majority of field foresters who have mutually respectful relationships with MFL landowners, consulting foresters and loggers.

A specific appeals process in the MFL statute would make it easier for DNR administrators to prevent abuse of power and for family forest owners to get timely recourse from abuse of power. A specific appeals process is needed because:

1. Private property rights are dearly held in American society and families develop strong emotional bonds to their woods.

2. MFL "contracts" prescribe land use and regulate landowner behavior more stringently than other governmental programs.

3. Under current law one individual (the DNR field forester) is party to the "contract", investigating officer regarding compliance, prosecutor of perceived violations, judge and jury. This structure guarantees abuse of power by some of the individuals holding that much power.

4. Family forest landowners will be more enthusiastic about sustainable forestry when they can manage their forest in partnership with their DNR forester. And they will be more likely to retain ownership rather than parcel and sell it at the end of the "contract".

5. The sheer existence of a specific appeals process in the MFL statute will dramatically reduce abuse of power by field foresters and encourage the department to deal forthrightly with abuses when they occur.

6. Harvesting decisions made under coercion cannot be undone. The consequences to a family, intimidated to carry out forestry practices contrary to their Management Plan, will often last for generations.

Draft language for such an amendment was provided in my presentation on October 6.

Thank you for considering this proposed change in public policy.