

## **BACKGROUND OF DNR TO ENFORCE MFL PROGRAM REQUIREMENTS**

The Managed Forest Law (MFL) allows landowners to pay MFL taxes in lieu of general property taxes if lands meet the eligibility requirements of the MFL program, including:

### **Statutory Requirements (Ch. 77, Stats.)**

- A minimum of 10 acres of land
- 80% of the enrolled acreage is producing or capable of producing 20 cubic feet of commercial timber per acre per year
- No more than 20% of the lands are unsuitable for producing merchantable timber, including water, marsh, muskeg, bog, rock outcrops, sand dunes, farmland, roadway or railroad and utility rights-of-way.
- There are no lands that developed for commercial recreation, for industry or for any other use determined by the Department of Natural Resources to be incompatible with the practice of forestry.
- There are no parcels that are developed for a human residence.

Since the earliest forest tax law program (Forest Crop Law) was created in 1927, the eligibility requirements have been strictly adhered to in an effort to ensure to the public that only productive forest lands are enrolled in the MFL program. The reason for strict adherence to the eligibility requirements stems from the property tax codes that all lands in Wisconsin must be taxed equally. In order for the forestry tax law programs to be in existence a constitutional amendment was approved by Wisconsin's Legislature, however they put strict eligibility requirements for enrollment to ensure to the public that enrolled lands produced timber crops and that property taxes would be paid when timber is harvested in the form of a yield tax. It was only through this assurance that the Wisconsin Legislature allowed the difference in taxation for woodland owners.

### **REQUIREMENTS TO WITHDRAW LANDS FROM MFL**

DNR would be required to withdraw any lands that do not meet the eligibility requirements of the MFL program. The authority is provided in statute, while the mechanism is provided in administrative code.

#### **Statutory Requirements (Ch. 77, Stats.)**

s. 77.88(1)(b)1., Stats. requires DNR to withdraw any lands that fail to conform to an eligibility requirement under s. 77.82(1). DNR has a long history of working with landowners to get lands back into compliance with the MFL program requirements and will evaluate individual situations prior to ordering withdrawal of lands.

#### **ADMINISTRATIVE CODE REQUIREMENTS (NR 46, ADMIN. CODE)**

NR 46.21(1), Wis. Admin. Code requires DNR to withdraw the minimum amount of lands to get the remaining lands back into compliance with the eligibility criteria. Lands would be withdrawn based on the following:

- a. An entire quarter-quarter section, government lot or fractional lot of managed forest land under the same order.
- b. An entire parcel of managed forest land.

### **Emerald Ash Borer (EAB) Scenario**

If EAB were to kill ash on an MFL property, DNR would likely take the following steps. Please note that DNR has not yet withdrawn any lands from MFL due to an EAB infestation.

#### **1. Evaluate the land management options for individual landowners.**

- c. **Change the Management goals of the property.** Woodlands that may suffer loss of ash due to EAB and that could be managed for other tree species (like maple, basswood, birch, white pine, etc.) would be considered productive forest land, even if planting, harvesting, site prep for natural regeneration, release of hardwoods or conifers, or other management practices will need to ensure that a productive stand of trees is created. The mandatory practices are identified in NR 46.18(2), Wis. Admin. Code.

- d. **Designate lands under the 20% unsuitable category.** Certain landowners may have the ability to designate their ash stands as part of the 20%, especially if they have not previously designated any acreage in this category.
- e. **Re-allocate lands under the 20% unsuitable category.** Certain landowners may have the ability to currently designated unsuitable lands to productive forest lands under certain situations:
  - i. Open lands or idle farm fields may be planted if previously enrolled as part of the 20% unsuitable category. If these lands are planted, the ash stands could be designated as part of the 20%. A new management plan and map would need to be developed.
  - ii. Productive forest lands that were previously designated to be old growth or passively managed for aesthetic, recreational or other reasons could be designated as productive forest land and the ash stands designated as part of the 20%. A new management plan and map would need to be developed.

2. **If options under #1 are not feasible, determine the extent of lands that would need to be withdrawn.**

DNR would withdraw the minimum amount of lands to get the remaining lands back into compliance with the eligibility criteria. Lands would be withdrawn based on the following, following the conditions of NR 46.22(1), Wis. Admin. Code:

- a. An entire quarter-quarter section, government lot or fractional lot of managed forest land under the same order.
- b. An entire parcel of managed forest land.

**Legislative Options to Help Landowners**

DNR has only the authorities granted to it in statute, so the following provisions cannot change except if the MFL statute changes. These are items that DNR does not have the authority to change.

- Eligibility requirements.
- Authority to keep lands in the MFL program if eligibility requirements are not met.
- Issuance of withdrawal taxes.

DNR has some ability to determine how much of the lands can be withdrawn if an investigation is conducted under s. 77.88(1), Stats. Under this provision DNR is authorized to withdraw lands from MFL if it determines that the land should be withdrawn, however the statute does not expressly state which lands should be withdrawn. The authority on how much land to withdraw is identified in NR 46.22, Wis. Admin. Code. DNR could begin the process to change administrative code to create different criteria on how much land to withdraw so that something less than an entire quarter-quarter section, government lot or fractional lot of managed forest land under the same order, or something less than an entire parcel of managed forest land is withdrawn.

Withdrawal taxes must be issued for any lands that are withdrawn early from the MFL program. There would be no ability through administrative code to allow lands to be withdrawn as an exempt withdrawal.

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