



Comments on Revisions to NR46 Related to the Managed Forest Law

Wisconsin Alliance of Forest Owners
February 12, 2019

The Wisconsin Alliance of Forest Owners (WAFO) appreciates the opportunity to offer comments on NR 46, the draft DNR rule that provides details on implementation of the Managed Forest Law.

We commend the Department for the effort they put into this rule and are supportive of it -- with a few exceptions. Below are changes we believe need to be made:

We recommend that language which would allow the Department to change a landowner's management plan -- without the landowner's concurrence -- be eliminated.

WAFO strongly disagrees with language proposed under NR 46.18 (10) which states that owners **may be required** to amend their management plan to maintain compliance for various reasons including being in compliance with "sound forestry." Should landowners not agree to amend the plan, the Department can order that the land be withdrawn with penalties.

NR 46.18 (10) AMENDING A MANAGEMENT PLAN. Owners may need to amend their management plan under s. 77.82 (3) (f), Stats., to maintain compliance with the provisions of this chapter and subch. IV of ch. 77, Stats., when taking actions in accordance with an existing management plan may conflict with program requirements. The land may be withdrawn under s. 77.88 (1), Stats., if the owner does not make necessary amendments to the plan. Reasons for amending a plan may include:

- (a) Landowner requests a change that maintains the management plan's compliance with the provisions of this chapter and subch. IV or ch. 77, Stats.
- (b) The original plan is inaccurate or missing information.
- (c) On the ground conditions have changed since the time of entry to the extent that the prescribed practices in the plan are no longer considered sound forestry practices
- (d) Changes in silvicultural research and practices, including invasive species management, to the extent that the prescribed practices in the plan are no longer considered sound forestry practices.

While we understand that forest conditions can change over a 25 year period, and that management plan changes are often desirable, we believe these changes should only be made with the concurrence of the landowner.

Landowners have long considered that when they signed the management plan, they were entering into a contract with the State, a contract that can only be changed by agreement of both parties.

We believe the statute is clear on this. Changes were made with passage of Act 358 to more clearly identify that the management plan is considered a contract. Specifically s.77.82 (11) states, in part, that **an order shall constitute a contract and the department may not amend or otherwise change the order or management plan.**



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s.77.82 (11) DURATION; EFFECT OF CHANGES. An order issued under this subchapter shall constitute a contract between the state and the owner and shall remain in effect for the period specified in the application unless the land is withdrawn under s. 77.84 (3) (b) or 77.88. Except as provided in subs. (3) (f) and (11m), the department may not amend or otherwise change the terms of an order or management plan to conform with changes made to any provision of this subchapter subsequent to the date on which the order was entered or the plan was approved.

This is further elaborated on in sections s.77.82(3)(e) and (f) which states **management plans shall be signed by the owner and a Department representative and can be changed if the Department and the landowner mutually agree to amend the plan.**

s.77.82(3)(e) A management plan shall contain a statement that the owner agrees to comply with all of its terms and with the conditions of this subchapter and shall be signed by the owner and a representative of the department.

s.77.82(3)(f) An owner and the department may mutually agree to amend a management plan.

The law cannot be clearer in stating that the management plan is a contract which the Department may not unilaterally change without the landowner's concurrence. **NR 46.18(10) should be removed.**

We recommend that the Department identify a storage shed as a structure needed for sound forestry

Although improvements on MFL land are limited, the statute, under s.77.82(1)(bp)2.g., allows for structures and fixtures needed for sound forestry practices to be located on land enrolled in the MFL. We believe that a storage building used solely for storage of equipment needed to manage a landowner's forest land, should fall under this structure exemption.

s.77.82 (1) (bp) 2. An improvement does not include any of the following:

- a. A public or private road.
- b. A railroad or utility right-of-way.
- c. A fence, except as provided in subd. 3.
- d. Culverts.
- e. Bridges.
- f. Hunting blinds, as specified by rules promulgated by the department.
- g. Structures and fixtures that are needed for sound forestry practices.

Many landowners do not reside on land where their woodland is located. Active management of woodlands is a requirement of the MFL and to do so, equipment such as saws, vehicles, chemicals, etc. are needed to accomplish these tasks. Without the ability to store equipment on-site, landowners may not be able to effectively manage their woodlands.

We believe that NR46.17 (3) (c) and NR 46.15 (1m), which do not allow storage structures, should be broadened to allow for placement of a structure for the storage and maintenance of equipment necessary for conducting forest management practices.

NR 46.17 (3) (c) Structures and fixtures needed for sound forestry. Structures and fixtures placed on land enrolled in managed forest law for this purpose shall be removed following the completion of the practice. Structures and fixtures needed for sound forestry may not include those that meet the definition of a building.



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NR 46.15 (1m) “Building” means any structure that is used for or able to be used for sheltering people, machinery, animals, or plants, for storing property, or for gathering, working, office, parking, or display space. Camping trailers and recreational vehicles that are not connected to utilities or set upon a foundation, in whole or in part, for more than a temporary time and that are used as temporary living quarters for recreation, camping, or seasonal purposes are not considered buildings for the purpose of the managed forest law program.

If a structure is allowed it would still require that local building permits be obtained. These structures would also be subject to local property taxes.

We believe it would be straightforward to simply allow special use structures to be placed on MFL land that complied with MFL productivity requirements and local zoning rules. Equipment is essential to implement practices required to meet the management objectives necessary for sound forest management.

Broaden the Allowance for Land Additions

Current law, s.77.82 (4), allows for addition of land to an existing parcel if that land is at least 3 acres in size and is contiguous to that land.

s.77.82(4) ADDITIONS TO MANAGED FOREST LAND. An owner of land that is designated as managed forest land may file an application with the department to designate as managed forest land an additional parcel of land if the additional parcel is at least 3 acres in size and is contiguous to any of that designated land.

NR 46.16 (7) ADDITIONS. An owner may apply to the department to add land to a current MFL order. To be eligible, the addition shall be a parcel that is at least 3 acres in size and that is contiguous to land that is designated as managed forest land.

We ask that the Department consider broadening the definition of “parcel” to allow for at least 3 or more acres of land to be enrolled as long as the total addition to the parcel is at least 3 acres. Past practice often led landowners to leave out a 2 acre parcel for a possible future building site. If an additional 1 or more acres of land is available, it may or may not be contiguous to that 2 acre area.

In conclusion, recent changes to update the MFL have resulted in more landowners willing to commit to the program and its objectives of sustainable forestry. We hope to see this trend continue by implementation of a rule that recognizes the important role private landowners play in sustaining Wisconsin’s woodland resources.

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

Respectfully submitted,

Wisconsin Alliance of Forest Owners

