

LINCOLN COUNTY FOREST FIFTEEN-YEAR COMPREHENSIVE LAND USE PLAN

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**CHAPTER 400**

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## **400 COUNTY FOREST BLOCKING**

### **OBJECTIVES**

- (1) To provide for the most efficient administration of the Forest by consolidating and blocking lands within established County Forest boundaries through purchase or trade as provided in §28.11 (3) (c), Wis. Stats., and to enter lands so acquired as County Forest, pursuant to §28.11 (4) (b), Wis. Stats.
- (2) To provide additional public benefits through the acquisition of unique or special areas that will be entered under §28.11 (4) (c) Wis. Stats. Special Use Classification.
- (3) To facilitate adequate land control on the County Forest by undertaking establishment and perpetuation of survey corners.

## **405 FOREST BLOCKING BOUNDARIES**

The County Forest blocking boundaries are established by the Committee and by subsequent approval of the Lincoln County Board and the DNR. A map of the official boundaries is found in Chapter 900.

## **410 LAND ACQUISITION**

Lands within the County Forest blocking boundaries or areas possessing special or unique values shall be recommended to the County Board for acquisition as they become available. Determination of a parcel's value to the County and the State of Wisconsin shall be made by the Committee in concert with the County Forest Administrator.

### **410.1 METHODS OF ACQUISITION**

Acquisition may be by outright purchase or trade based on competent appraisal of the value or values involved, or by gift, bequest or action to foreclose tax liens. The Administrator will be the agent of the Committee in making first contact with potential sellers and in carrying on acquisition activities. However, options for purchase must have the approval of the Committee and the Lincoln County Board of Supervisors.

## 410.2 FINANCING

Financing of land acquisition either within the Forest boundaries or special use lands outside, will come from the County Land Acquisition Account or other sources. The proceeds from the sale of any County Forest lands will be deposited in the land acquisition fund and be available for any future County Forest land purchases, or be deposited as the County Board directs. If funds are not available in the land acquisition account, advanced budgeting will be sought. State Forestry Aid Loans described in Chapter 215.2.1(1) may also be used for acquisition of lands to be entered as County Forest. County Forest project loans described in Chapter 215.2.1(2) may also be used for acquisition of lands to be entered as County Forest. Application for project loans will comply with NR.47.60, Wis. Adm. Code.

## 415 ENTRY OF LANDS

Lands to be entered under the regular classification of the County Forest Law must be suitable for forestry purposes and be within the County Forest boundary. Lands designated for classification as County Forest Special Use need not be contained within the County Forest boundary nor suitable or utilized for forestry purposes but they must be suitable for scenic, outdoor recreation, public hunting and fishing, water conservation or other multiple-use purposes.

### 415.1 TIME OF ENTRY

Application for entry of newly acquired lands under the County Forest Law will be made as soon as possible. Applications for entry will be prepared with the assistance of the DNR Liaison. The Administrator will secure the signatures of the proper County officials, and the County Clerk will then verify County ownership and transmit the application to the Department of Natural Resources, Box 7921, Madison, WI, 53707-7921, marked attention, "County Forest Specialist."

## 420 WITHDRAWAL OF LANDS FROM COUNTY FOREST LAW

Lands within the County Forest boundary will not normally be considered for withdrawal from the County Forest Law. Applications for the purchase of these lands by the private

sector will be discouraged by the Committee. If, in the opinion of the Committee and County Board, the land will be put to better and higher use and will benefit people of the County and State to a greater extent, the withdrawal procedure outlined in section 420.2 will be employed. The Public Lands Handbook also contains details on the application procedures for withdrawal. The legal means by which counties may apply for withdrawal of lands from county forest status is provided by §28.11, Wis. Stats. Initially the County Forest Administrator notifies the DNR Liaison forester of the Committee meeting at which the proposed withdrawal will be considered. At that meeting DNR personnel and the County discuss the proposed withdrawal and, if approved by the Committee, the withdrawal will be recommended by the Committee by resolution to the County Board. If approved by the Board by the necessary 2/3 majority, the application is prepared by the County and submitted to the appropriate DNR regional forester or designee. The DNR may ask for additional information from the County and will then coordinate the public notice and proceed with needed environmental studies. Pending the results of the environmental studies and any investigatory hearings deemed necessary, the DNR will act on the withdrawal application. If the application is denied, the County may appeal as stipulated in §28.11 (11) (a), Wis. Stats.

#### 420.1 COUNTY OWNED LANDS OUTSIDE THE BOUNDARY

County owned lands outside the boundary may eventually be sold or exchanged as part of the effort to consolidate the ownership within the boundary. The County may retain certain rights to these lands in accord with County policy upon transfer of ownership.. The proceeds of such a land sale will be deposited in a non-lapsing, carryover Land Acquisition Account for the sole purpose of funding future County Forest land purchases within the County Forest block, or be deposited as the County Board directs.

#### 420.2 WITHDRAWAL PROCEDUREWithdrawal procedure will comply with Section 28.11(11)

Wisconsin Statutes, Public lands handbook. In general, the procedure is as follows:

- (1) The \_\_\_\_\_ Committee receives the request and/or application for withdrawal. The County Forest Administrator notifies the Committee Chairman who schedules a meeting for consideration of the withdrawal. (2) The County Forest Administrator gives notice to the Liaison Forester and Area Forester

of the committee meeting at which the withdrawal will be discussed. The next meeting shall be noticed. The notice shall include legal description of property and proposed use of land.

(11) If a withdrawal is denied, the county board, by resolution of two-thirds of its membership, may appeal to the review committee appointed, as provided by s. 28.11(11) Wisconsin Statutes.

The purpose of this procedure is to provide general information in formulating and

processing applications for withdrawal of County Forest lands under §28.11 Wis. Stats. and Ch. NR 48, Wis. Adm. Code.

The legal means by which counties may apply for withdrawal of lands from county forests is provided by §28.11(11) (a) Wis. Stats., This section states in part: “The County Board shall first refer the resolution to the County Forestry Committee which shall consult with an authorized representative of the department in formulating its withdrawal proposal.” §28.11(11) (a) Wis. Stats. also states: “The County Board shall not take final action thereon until 90 days after such referral or until the report thereon of the Forestry Committee has filed with the board.”

Consequently, if the County Board takes final action on a withdrawal application without referring it to the County Forestry Committee, the application is not valid. On the other hand, if the County Forestry Committee does not report to the County Board within 90 days after receipt of the referral, the Board may act upon the application without a Committee recommendation.

The Regional Forestry Leader is designated as the authorized representative of the DNR who shall consult with the Forestry Committees in formulating withdrawal proposals. The Regional Forestry Leader may appoint designees to represent them if circumstances warrant. All DNR communications concerning withdrawal of County forestlands shall be coordinated through the Regional Forestry Leader. The final decision for requests for withdrawal presently rests with the DNR’s Division of Forestry.

County Forest Administrator

1. Notifies DNR Liaison Forester to the County Forest of the date and place of the

County Forestry Committee meeting, at which time the proposed withdrawal will be considered for formulation of a withdrawal application. Such notice shall include pertinent details of the withdrawal proposal including legal description of the lands involved and purpose of the withdrawal. The Liaison Forester shall review Ch. NR 48 with the County Forest Administrator to ensure all the required information is identified for the application. NOTE: In the event a withdrawal exchange is involved, it is very important that the County postpones final financial negotiations with the owner of the land involved in the exchange until the Department has established the minimum values of the land as required in §28.11(11) (a) Wis. Stats. To protect the County interest, the necessary preliminary negotiations should also be made conditional upon approval of the withdrawal by both the County Board and DNR as provided by statutes.

#### DNR Liaison Forester

1. Advises their supervisor and regional forestry leader immediately of the proposed withdrawal and Committee meeting date.
2. Takes action necessary to be acquainted with the proposal.
3. Consults with the Public Lands / County Forest Specialist, Bureau of Forest Management concerning the proposed withdrawal.
4. Attends County Forestry Committee meeting and consults with the Committee on proposed withdrawal.

#### County Forestry Committee

1. A Committee meeting is held to evaluate the proposal and to consult with DNR regional forestry leader or designee and either:
  - a. Undertakes further study of the proposal; or
  - b. Rejects applicants request for withdrawal, or
  - c. Prepares resolution for County Board action recommending approval or disapproval of application.

#### County Board of Supervisors

1. Upon receipt of the recommendation of the County Forestry Committee, or 90 days

after referral to the Committee, whichever is first, acts on resolution to approve, disapprove or modify the withdrawal application, or refer it back to the County Forestry Committee for further study.

2. If approval for withdrawal given by two-thirds vote of membership, authorizes and directs County Clerk and County Forest Administrator to prepare and submit the County Forest Withdrawal Application (Form 2453-3) for withdrawal to appropriate Department regional forestry leader.

#### Regional Forestry Leader (or designee)

1. Upon receipt of County Forest withdrawal application, acknowledges receipt of the application to the County Clerk with copies to the Department Liaison Forester to County Forestry Committee, County Forest Administrator, the Liaison Forester's supervisor and Bureau of Forest Management in Central Office. Requests additional information from the County as necessary to provide adequate detail for Department processing of the application. This request must be sent to the County within 60 days as identified in NR 48.03(2), Wis. Adm. Code.
2. Consults with Public Lands / County Forest Specialist regarding specifics of the proposal.
3. Directs DNR Liaison Forester to contact the regional environmental impact coordinator to determine if an environmental assessment (EA) or environmental impact statement (EIS) is required under M.C. 1606.1 or if an Environmental Impact Report should be requested from the County. If required, prepares environmental documents. If an EIS is required, notifies the Bureau of Integrated Science Services to proceed in accordance with M.C. 1610.1
4. Coordinates public notice and certifies environmental proposal is in compliance with Wisconsin Environmental Policy Act (WEPA)
5. Transmits on copy of County application, approved EA/EIS, if required, and the regional recommendation to the County Forest Specialist in the Bureau of Forest Management, Division of Forestry.

#### Division of Forestry

##### Public Hearings

1. Coordinates with Bureau of Legal Services for scheduling of public hearing(s) if requested in writing by the County or if determined by the Department of Natural Resources to be necessary or if required as part of the WEPA procedure. Hearings are not a requirement for all withdrawals.
2. Coordinates with the Bureau of Integrated Science Services the preparation of an EIS if required.
3. The format of the public hearing is quite different depending on which agency requests the hearing.
  - If the County requests the hearing (must be a written request), the hearing is considered a “Contested Case” hearing as defined in §227.01(3), Wis. Stats. The hearing procedures and format are as directed by subch. III, ch. 227, Wis. Stats., and ch. NR 2, Wis. Adm. Code. An Administrative Law Judge will be appointed, and upon completion of the hearing, the Administrative Law Judge normally makes and issues a decision approving or rejecting the withdrawal application.
  - If the Department of Natural Resources decides to conduct an “Investigatory” Hearing, the format of the hearing is less formal and is normally facilitated by a DNR employee. Following an Investigatory Hearing (or if neither agency requests a hearing), the following procedure applies.

#### Regional Forestry Leader (or designee)

1. Prepares a “DRAFT” decision including Findings of Fact, Conclusions of Law and Order and Notification of Appeal Rights and sends draft to the Public Lands / County Forest specialist. The draft shall, at the minimum cover the items identified in NR 48.04, Wis. Adm. Code. *Note: This draft is NOT a public record. It may not be released to the public upon request.*

#### Division of Forestry

1. Reviews and modifies draft documents as necessary. Upon completion of Department of Natural Resources investigation of the withdrawal application, prepares a final draft decision including Finds of Fact, Conclusions of Law and Order and Notification of Appeal Rights, for the Administrator, Division of Forestry. *Note: This draft is NOT a public record. It may not be released to the public upon request.*

Administrator, Division of Forestry

1. Issues the final decision on the withdrawal application. §28.11(11)2, Wis. Stats. provides the County the right to appeal withdrawal applications that are denied either by the DNR or an Administrative Law Judge. The appeal process is pursuant to §28.11(11)(a), Wis. Stats.

Division of Forestry

1. Keeps the Division Administrator's and Secretary's Office informed of all developments in the appeal process.

**425 LAND SURVEYING**

The importance of survey corner monumentation is recognized in the interest of avoiding the problems of trespass both by and against the County, facilitating the settlement of those cases which would occur, and aiding in the proper transfer of property.

**425.1 LEGAL SURVEYING**

Of prime importance are the forest boundaries and property lines in common with other owners. All such surveying shall be under the supervision of a registered surveyor. When the office of the County Surveyor is not staffed, the Committee will comply with the provisions of Chapter 59, Wisconsin Statutes by hiring registered surveyors to perform the necessary running of property lines. Section corners, one-quarter corners and forty corners (1/16 corners) will be reestablished where needed and Certified Land Corner Restoration forms filled out in duplicate as time permits, under the direction of registered land surveyor.

**425.2 LOCATION OF LINES BY OTHER THAN LEGAL SURVEY**

Forestry personnel who are not registered surveyors may, with all possible prudence, establish lines for forest management purposes including property those necessary for ordinary management activities such as timber sales and road / trail locations using available equipment including, but not limited to, air photos, quadrangles, County Surveyor's records and known corners. In the absence of known corners, lines abutting other ownership may be established by mutual agreement to avert trespass claims.

## 425.3 PRESERVATION OF LANDMARKS, MONUMENTS AND CORNER POSTS

### 425.3.1 DESTRUCTION OF MONUMENTS

In the course of regular duties, forestry personnel will perpetuate corners and witness monuments now existing. Should a corner be in need of replacement, the procedure indicated in paragraph 425.1 of this section will be followed. When monuments are found, brush and debris will be cleared from the monument where necessary. Monuments, bearing trees, and other identification markers will be pointed out to loggers and other contractors to avoid their accidental destruction §59.74, Wis. Stats., provides:

1. Penalties for destruction of landmarks, monuments and corner posts established by government survey, the County Surveyor or a surveyor or public record.
2. A procedure for notification of intent to destroy such surveying evidence and referencing prior to destruction.
3. The assignment of enforcement responsibility to the Department of Natural Resources.

All personnel with land management responsibilities are directed to:

1. Make a reasonable search for the above mentioned surveying evidence prior to implementing any soil moving or cover type manipulation projects, including timber sales, that could result in covering, destruction or removal of such evidence.
2. In the event such evidence is found:
  - a. If practical, redesign the project so that the evidence will not be disturbed or
  - b. If destruction is unavoidable, notify the County Surveyor at least 30 days prior to destruction giving the legal description of the monument and the reason for destruction or other obliteration. If the County Surveyor does not re-reference the evidence within 30 days notice, the project supervisor will determine if the evidence has future value to the state and, if it does, will arrange for a re-reference by a registered surveyor or engineer.
3. If reasonable search fails to uncover survey evidence in the suspected vicinity, conduct an additional search if he / she sees fit.

4. In order to further reduce the possibility of inadvertent destruction of invaluable survey evidence:
  - a. Each forester with County Forest responsibilities should discuss with County Administrators the need for including adequate protective clauses in easements, rights-of-way, timber sale contracts, and other agreements that might result in destruction of monuments.
  - b. Personnel advising landowners regarding forestry or other land management practices should alert such owners to possible monument destruction that may be caused by them.
  - c. Any instances of potential or accomplished obliteration of survey monumentation discovered in the course of field operations should be brought to the County Surveyor's attention.

#### 425.4 DESTRUCTION OF MONUMENTS

When destruction occurs the administrator will be notified. In accordance with Section 59.635, Wisconsin Statutes, corners and witness monuments will not be covered, removed or destroyed unless the county surveyor is notified in advance in writing. In the absence of a county surveyor, and when destruction occurs on county lands, the administrator will be so notified. The County Legal Counsel will be notified in cases where a violation occurs in order to effect prosecution pursuant to Section 59.635 Wisconsin Statutes