

BAYFIELD COUNTY FOREST COMPREHENSIVE LAND USE PLAN

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**CHAPTER 500**

**LAND MANAGEMENT AND USE**

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## **500 LAND USE**

### **500.1 OBJECTIVES**

1. To identify policies and procedures employed to effectively manage, utilize and sustain the resources of the County Forest.
2. To identify regulated management activities, land uses and special resource areas.
3. To layout proper permits needed for certain activities on the County Forest

## **505 TIMBER SALES**

Optimizing the production of timber products through the sustainable management of the County Forest is one of the primary objectives of the Department. Developing a program that establishes parameters, goals and objectives required to achieve desired results is a critical part of any forest management plan. As such, regulating the harvest of timber is essential to the goals and objectives of this Plan.

Annual sustainable timber harvest goals will be addressed in the Workplan (see the Appendix to review the Workplan). In general, harvest areas will be equally distributed throughout the County Forest, whenever practical and/or feasible, as determined by the Department, to address and/or accommodate such needs as biodiversity, wildlife, aesthetics, watershed protection and other biological needs.

A combination of data derived from WisFIRS (see the DNR Public Forest Lands Handbook for more information on WisFIRS), internal Departmental database analysis and Department knowledge and experience will be used for planning all timber harvests activities on the County Forest. All timber sales will be established, administered and reported using the DNR Timber Sale Handbook (2461) as guidance or when otherwise directed and/or required by the DNR (see the Appendix for a link to the Timber Sale Handbook).

All County Forest timber sales are to be advertised for public bidding, with the exception of small sales with an appraised value of \$3,000 or less; or sales that would qualify under

a salvage provision (s. 28.11(6)(c), Wis. Stats.). These sales may be sold direct without advertising.

#### 505.1 FIELD PREPARATION OF TIMBER SALES

The Department will assume the lead role, and coordinate with the DNR, to locate, designate and prepare harvest areas for sale, as per the annual Workplan. The Administrator, in collaboration with the DNR Liaison Forester, shall be responsible for ensuring that all planned field work is accomplished in a timely manner, as per this Plan and annual Workplan. The Administrator and Liaison will also jointly be responsible for ensuring that all proper and required documentation for each timber sale is accurate and complete.

#### 505.2 ADVERTISING FOR BIDS

After the field work for a timber sale is completed and all required and/or necessary reports have been received and approved by the Administrator and DNR, the Administrator shall present all timber sales to the Committee for review. If the sales are approved by the Committee, the Administrator shall prepare a timber sale prospectus (or bid letter) and make it available to logging contractors and the interested public.

Under s.28.11(6)(b) Wis. Stats, timber sale advertisements, at a minimum, will be made by classified ad in a newspaper having general circulation in the county. Ads shall be placed in the paper at least once, but preferably twice, with the first ad being placed generally the same week as the Committee meeting when timber sales were approved, and roughly a month before the scheduled timber sale bid opening. A longer advance time will be given when feasible, as determined by the Administrator. Written correspondence will also be sent to a logging contractor mailing list that is maintained by the Department, also generally a month before the scheduled timber sale bid opening. All timber sales and associated documents will also be listed on the Department's webpage and available for download.

In general, Bayfield County will require that all timber sale bids are submitted in a sealed

envelope, to be opened at a time and location listed in the timber sale prospectus (or bid letter).

Bayfield County will have at least two timber sale offerings per calendar year, with one generally occurring in the Spring (May) and the other in the Fall (November), or as needed, as determined by the Administrator and/or Committee.

### 505.3 PROSPECTUS (BID LETTER)

The following minimum information will be made available to prospective bidders:

1. Species to be harvested and estimated volume for each.
2. Map(s) of sale areas.
3. Special contract provisions.
4. Procedures for bidding.
5. Bid forms.
6. Timber sales bond and advance stumpage schedule/requirements.
7. Sample timber sale contract for review, if requested.

The standard prospectus/bid offering letter can be found in the Appendix. It should be noted that the bid letter may be modified, as determined by the Department, to address special or unique circumstances, make special announcements or when otherwise deemed necessary by the Department.

### 505.4 METHOD OF BIDDING

All timber sale bids will be collected, sorted and compiled by the Administrator. A sealed envelope showing the tract number, advertised number and/or timber sale name, as stated in the bid letter, and marked "Timber Sale Bid Sale #\_\_\_\_" shall be submitted, on a Department produced timber sale bid form, by the bidder, for each tract bid on, and shall contain, at minimum:

1. The bid price per species and per unit/product. The total value of the timber sale bid shall be indicated on both scaled and lump sum bids. The total bid value must meet or exceed the minimum acceptable bid value, as

documented in the timber sale form 2460. The bidder must meet or exceed the minimum advertised bid value per species and per product, as listed on the Department produced timber sale bid form, or as otherwise directed by the Department.

2. A minimum of 10% of the bid value of each tract must accompany the bid, to be used as a bid bond, payable to Bayfield County.

The standard timber sale bid form can be found in Appendix. It should be noted that the bid form may be modified, as determined by the Department, to address special or unique circumstances or when otherwise deemed necessary by the Department.

#### 505.5 AWARDING SALES

1. All timber sale bids will be opened during a Committee meeting, by the Administrator and/or other Department staff members, read aloud, and reviewed by the Committee, as scheduled in the prospectus. Bid openings will be open to the public.
2. In most circumstances, the high bidder will be awarded the timber sale contract; however, the Committee reserves the right to reject any or all bids and accept the bid offer most advantageous to the County. Grounds for rejecting a specific bid, or bids from a specific logging contractor, may include, but not be limited to:
  - a. Non-compliance with County Forest timber sale contract requirements or other agreements and/or contracts with Bayfield County.
  - b. Delinquent financial obligations.
  - c. Unsatisfactory past performances.
  - d. Actively banned from bidding on County Forest timber sales.
  - e. Providing insufficient information in the bid form or filling out the bid form incorrectly or incoherently.
  - f. The inability to demonstrate financial or professional capability.
    - i. Evaluation criteria on timber sales will be based on price and documented ability to satisfactorily complete the contract. Factors to be assessed may include proposed equipment and type of operation, references, proof of

financial stability, past performance and documented training completed.

- g. The award of a timber sale contract, to the successful bidder, as determined by the County, shall be based upon the bid determined, by the County, to be the most advantageous to the County.
3. In the event of a tie, the winning timber sale bid may be settled by the toss of a coin, if both parties are present during the Committee meeting when the bids are opened, and both are agreeable with the process. If neither party is present during the Committee meeting, then the Administrator, as directed by the Committee, will flip a coin to determine the winning bidder. If one or both parties is present during the Committee meeting and objects to the process, then the bids on that tract will be rejected and the sale re-advertised, at a time and location determined by the Committee.
4. Sales remaining unsold after being advertised for one bid opening may be sold direct, at not less than the advertised or appraised value (whichever is lower), even if the estimated sale value exceeds \$3,000. (a link to the DNR Timber Sale Handbook can be found in the Appendix).

#### 505.6 TIMBER SALE CONTRACTS

1. Timber sale contracts will be prepared, by the Administrator and/or other Department staff members, under the direction of the Administrator, with copies provided to the logging contractor, and with the original contract filed in the Department's office.
2. Contracts are to be signed by the successful bidder within 30 days of the bid opening or before cutting begins, whichever occurs first, with payment being made according to the County Timber Sale Bond and Advance Stumpage Payment Schedule. Failure to sign the timber sale contract within 30 days may result in forfeiture of the bid bond and a ban on bidding on future timber sales for a period of up to two (2) years, or as otherwise determined by the Committee (a copy of the Payment Schedule can be found in the Appendix).

## 505.7 TIMBER SALE PERFORMANCE BOND

1. Surety bonds, an irrevocable letter of credit, or other form of security deemed acceptable by the Committee, issued by a bank which is a member of the Federal Reserve System or insured by the Federal Deposit Insurance Corporation, may be used, in lieu of cash, as a performance bond on timber sales. The letter of credit or surety bond must be in effect for a period of time equal to the term of the contract, plus a sufficient time to allow for possible extension(s) and for closeout of the contract after cutting is completed (the bond is generally written to expire at least one month later/after the timber sale contract is set to expire).
  - a. The performance bond is generally 15% of the total value of the timber sale contract (see the various timber sale documents, as referenced throughout this Chapter, in the Appendix for more information on performance bonds).
2. The bid bond (generally 10% of the bid value) may be transferred to the performance bond, with the difference (typically an additional 5%) due within the required 30 day period.

## 505.8 CONTRACT PROVISIONS

All timber sale contracts, including all terms and provisions, will be in a format approved by the Committee and all conditions contained therein shall apply. A copy of the timber sale map will be attached and become a part of the contract. The following items are essential provisions that should be covered in each timber sale contract:

### 505.8.1 Contract Number

Every timber sale contract shall have a unique contract number or identifier. The contract number or identifier should be referenced on all documents associated with the timber sale.

### 505.8.2 Contract Parties

Timber sale contracts must have the name, address, and other pertinent contact information of the Purchaser.



### 505.8.3 Duration and Extension of Contracts

- A. All timber sale contracts begin on the date of signature by the Administrator. All contracts must have a specific end date. Most timber sale contracts will be written to expire two (2) years after the award date. Some timber sale contracts may be written to expire longer or shorter than the traditional two-year period, as determined by Administrator and/or Committee.
- B. When a timber sale contract is set to expire, but has not yet been completed, the County may consider a one-year contract extension. Timber sale contract extensions may be granted by the Administrator when deemed advantageous to the County. Generally, the first one-year extension will have a 5% increase in stumpage rates. Each successive one-year extension will generally have a progressive 10% increase in stumpage rates (i.e. 5% increase of the original winning stumpage prices on the first extension; 15% on the second extension; 25% on the third extension; and so on). A \$100 fee will also apply to each one-year extension.
- C. Generally, the maximum number of one-year extensions awarded over the duration of a timber sale contract, shall be two (2). Up to two (2) additional one-year extensions may be considered, if adequate justification is presented by the Purchaser, and if deemed warranted by the Administrator. Extensions beyond this period of time shall be considered by the Administrator, but only in the event of special circumstances and/or justification, and only if deemed acceptable by the Administrator. Special stumpage rate adjustments may also be made, as determined by the Administrator and/or Committee.
- D. If a Purchaser does not complete a timber sale by the expiration date and the County does not grant an extension for that sale, it will be closed, and the contract will be considered breached. Once breached, the County may then pursue all remedies available to it, within the terms of the timber sale contract, to address any damages that may have been incurred by the

County, as a result of the breach.

- E. The Purchaser may request a release of timber sale contract due to severe physical disability or other extreme extenuating circumstances. The Administrator and/or Committee shall determine whether a release shall be granted, whether or not the release would be classified as a breach, and may withhold all or a portion of the performance bond as damages.
- F. The County may also consider other extenuating circumstances when evaluating contract extensions and/or amendments, including market conditions and/or product marketability. In some situations, temporary or long-term fluctuations in market conditions may negatively impact a Purchaser's ability to complete a timber sale contract in a timely manner. If deemed advantageous to the County, as determined by the Administrator and/or Committee, the Administrator may consider and make one-time, non-precedent setting adjustments to stumpage prices, utilization and/or harvest restrictions, in order to accomplish the silvicultural objectives of the timber sale. Adjustments are to be considered on a case by case basis and only during demonstrated periods of significant market volatility, as determined by the Administrator and/or Committee.

#### 505.8.4 Termination of Contract by Seller

Contracts may be terminated upon a breach made by the Purchaser or at other times when deemed necessary by the Administrator, as per the terms of the timber sale contract.

#### 505.8.5 Performance Bond, Damages, Future Contracts

This section of the contract is to identify the dollar amount and the duration of the performance bond. Also covered under this section of the contract are items to which the performance bond may be used to cover damages. This section also addresses County powers should damages exceed the total amount of the performance bond. Examples of damages include:

1. Undesignated timber removed.
2. Removal of timber without payment.
3. Failure to make required stumpage payments.
4. Damage to residual timber, roads or other infrastructure.
5. Restoration of sale area.
6. Costs associated with the re-sale of cut and/or uncut timber.
7. Failure to comply with terms or complete specific requirements of the contract.
8. Other costs associated with the breach of the timber sale contract, as demonstrated by the County.

Once the contract is terminated, the County will determine damages, if applicable, as per the timber sale contract and/or other relevant County policies. If damages exceed the securities of the various bonds held by the County, the County can pursue legal action, as determined by the County.

The standard timber sale contract can be found in the Appendix. It should be noted that modifications to the contract may be necessary to address special or unique circumstances or when otherwise deemed necessary, as determined by the Administrator and/or Committee.

Also see the Appendix for the Department's Contract Termination Standard.

#### 505.8.6 Title to Timber

Title to timber cut under the timber sale contract shall remain in the Seller (Bayfield County) until the timber or forest products have been removed from the Seller's property in full accordance with all terms, conditions, and stipulations in the contract.

#### 505.8.7 Payment Schedule

All contracts shall include a payment schedule that will identify the

responsibilities of Bayfield County and the Purchaser for payments required as part of the timber sale contract. This payment schedule will vary based on sale type (lump sum v. scale sale).

A standard payment schedule is included in the Appendix. It should be noted that modifications to the payment schedule may be necessary to address special or unique circumstances or when otherwise deemed necessary, as determined by the Administrator and/or Committee.

#### 505.8.8 Utilization Specifications

All timber sale contracts shall include utilization specifications for the various products.

#### 505.8.9 Training Requirement

Logging contractors and sale operators are to be compliant with the Wisconsin SFI Training Standard as adopted by the Wisconsin SFI Implementation Committee. Valid documentation of compliance with the Forest Industry Safety and Training Alliance (hereafter, "FISTA") training standards must be on file with the County before cutting operations begin and during all operations.

#### 505.8.10 BMPs, Roads, Landings...

All timber sale contracts will contain requirements for governing location, use, and maintenance of forest roads. Contracts will also require compliance with Wisconsin's BMP's for Water Quality, as well as Invasive Species (see the Appendix for examples of the BMP manuals).

#### 505.8.11 Soil Disturbance and Rutting

All timber sale contracts require contractors to follow Bayfield County Forest's Soil Disturbance Policy.

The Department's Soil Disturbance Policy is included in the Appendix.

505.8.12 Liability and Workers Compensation Insurance

All timber sale contracts shall require proof of liability and workers compensation insurance. Proof of insurances shall be kept in the timber sale folder and/or other suitable location within the Department's office, and must be kept current during the entire period of the timber sale contract.

505.8.13 Scaling and Conversion Factors

All timber sale contracts, not sold by the ton, shall include weight conversion factors. For tons to cords conversions the "Bayfield County Cordwood Weight Conversion Factors" will be used.

Conversion of MBF (thousand board feet) to cords or cords to MBF shall be 2.44 cords per MBF for softwoods and 2.20 cords per MBF for hardwoods.

The most up to date version of the "Bayfield County Cordwood Weight Conversion Factors" is included in Appendix.

505.8.14 Forest Certification

Timber sale contracts will only include appropriate certificate numbers for the certifying organizations if required by the certifying body, or as otherwise directed by the DNR. However, all haul tickets, official Bayfield County wood scale forms (if applicable) and invoicing/payment forms will contain the appropriate certificate numbers for each certifying body (see Chapter 100 for more information of Forest Certification).

505.8.15 Other Contract Conditions

Timber sale contracts may contain many other provisions. Some examples of these are:

- A. Waste disposal.
- B. Stump height requirements.

- C. Zone/Units of completion.
- D. Slash requirements.
- E. Cleanup requirements of the sale area.
- F. Forest fire prevention.
- G. Survey monument restrictions.
- H. Indemnification.
- I. Independent contractor language.
- J. Assignment (sub-contracting) restrictions and/or requirements.
- K. Right of inspection by Seller (County).
- L. Applicable laws and regulations.
- M. Other conditions, as deemed appropriate and necessary by the County.

#### 505.8.16 Attachments to Contract

In general, there are three primary attachments to be included with a timber sale contract.

- A. Timber sale map(s).
- B. Payment schedule.
- C. Harvest requirements and/or specifications.

A sample timber sale map and list of harvest requirements is included in Appendix. It should be noted that timber sale maps and associated harvest requirements vary per timber sale. These documents are included as an example. For a review of actual timber sale maps and harvest requirements, see the timber sales section of the Department's webpage.

#### 505.9 TIMBER SALE RESTRICTIONS

1. To minimize resource damage, the types of logging equipment, methods of harvest, and times (season) of operation used on sale areas may be restricted by the Department, as determined by the Department.
2. Special restrictions may be required in accordance with the Department's aesthetic policy, if applicable.

3. Seasonal restrictions may be applied to protect roads and/or trails, minimize potential conflicts with recreation, benefit wildlife management, avoid endangered, historical and/or cultural resources and/or concerns, minimize the impacts of insect and disease, to assist in fire protection or as otherwise deemed appropriate by the Department.

#### 505.10 TIMBER SALE ROADS

1. Generally, the County will be responsible for securing legal access to sale areas across private or other non-county ownerships.
2. The Contractor (Purchaser) will generally be responsible for securing permission to conduct logging activities within town, federal, county or state road rights-of-way (e.g. decking, skidding). The County may also secure permissions, if deemed more practical by the Department. Such activity must also be approved by the County.
3. Department personnel will approve the lay-out of all roads and make other necessary special provisions within the timber sale contract.
4. Skidding, decking, or other logging activity is not allowed on County Forest roads or ditches unless approved by the Department. These areas will be kept free from logging debris. County Forest access roads will be maintained by the logger and returned to a state that is at least as good the original, pre-sale condition at the close of the sale. Roads will be inspected by Department personnel to ensure minimal resource damage.
5. A timber sale purchaser may request permission to temporarily block a timber sale access road. The Department may authorize this request only as it pertains to prohibiting motorized traffic, for safety reasons. The timber sale area will otherwise remain open to the public.

See Chapter 700 for more detailed information on timber sale roads and other road infrastructure.

## 505.11 SUPERVISING SALES

Timber sale inspections will be performed by the Department on a routine and regular basis, at a level determined to be adequate by the Department. DNR forestry personnel may also occasionally inspect timber sales, as requested by the Department.

## 505.12 FOREST PRODUCTS ACCOUNTABILITY

### 505.12.1 Scaling Merchantability

1. Sawlogs will be scaled by the Scribner Decimal C. log rule.
2. The standard unit of measure for cordwood is measuring 4' x 4' x 8' of unpeeled wood. A pulpwood tree contains at least one (1), 8' stick, to a minimum top diameter as defined in the timber sale contract.

### 505.12.2 Utilization Standards

Utilization standards will be specified on individual contracts to provide maximum utilization of all merchantable timber.

### 505.12.3 Methods of Accountability

Wood harvested from the timber sale area must be accounted for and payment made in accordance with terms outlined in the timber sale contract. One or more of the following may be used on an individual timber sale:

1. The ticket system utilizes serialized tickets. One ticket must accompany each load of wood to the mill and one must be placed in a County lock box or similar secured ticket box. Mill scale will generally be accepted for volume determination.
2. Wood may also be scaled, by Department staff, on the landing. This method is generally used for sawlogs.
3. Lump sum timber sales may be utilized and divided into cutting units, when practical, as determined by the County. Payment for a cutting unit must be received in full before any cutting begins in that unit, following terms and conditions as outlined in the timber sale contract.
4. Scaled sales are generally paid for in increments equal to 25% of the



value of the sale. Purchasers have the option to supply an irrevocable letter of credit issued by a bank, which is a member of the Federal Reserve System or insured by the Federal Deposit Insurance Corporation, to temporarily secure these payments.

#### 505.13 SPECIAL FOREST PRODUCT PERMITS

Permits to collect or harvest firewood, Christmas trees, boughs, cones or other special forest products are available through the Department.

Permits will be issued for a specific product and will be valid for a period of one year from the date of issuance. Where appropriate, as determined by the Administrator, a permit may be issued for a specific or designated area on the County Forest.

Appropriate restrictions will be made part of the permit and subject to modification, as determined by the Administrator and/or Committee. In some cases, a fee will be charged for the permit, as determined by the Administrator and/or Committee. Fees and terms will be reviewed periodically by the Administrator. Recommended modifications to permit fees and conditions will be presented by the Administrator to the Committee for further review and action.

A summary of special forest products permits issued by the Department will be included in an annual accomplishment report, as prepared by the Administrator and presented to the Committee.

The Administrator may issue written permits to harvest miscellaneous/special forest products, including, but not limited to:

1. Firewood. For personal use only. Commercial operations (re-sale) is addressed as part of a timber sale.
2. Christmas trees.
3. Balsam Fir boughs.
4. Birch stems.

5. Birch twigs.
6. Birch bark. From down trees on commercial logging jobs only, or as otherwise approved by the Administrator.
7. Princess pine.
8. Sheet moss.
9. Pine/spruce cones.
10. Hardwood seed.
11. Sap collection (i.e. maple syrup).
12. Edible forest products.
13. Other unique requests will be considered, by the Administrator, on a case by case basis. Fees, if any, will be developed, by the Administrator and/or Committee in a defensible manner consistent with past practice.
14. Permits for community type projects, loosely defined as a project that involves members of more than one immediate family or more than eight people, whichever is greater, will be considered by the Committee and addressed on a case by case basis. Recommended fees, if applicable, and terms and/or conditions of a community type permit will be presented by the Administrator to the Committee for review and action.

The Administrator has the authority to temporarily suspend the issuance of any permit, if determined, by the Administrator and/or Committee, that the harvest of said special forest product is unsustainable, has the potential to cause damage to the natural resources of the County Forest, has the potential to negatively impact the management goals of the County Forest, or is otherwise determined to no longer be in the best interest of the County.

A special forest products permit form, including fees, if applicable, and all pertinent terms and conditions, for each common special forest product eligible for collection, can be found in the Appendix.

Stumpage for most commercially viable forest products like fuelwood, firewood, posts

and poles, as well as other similar special forest products, that will be re-sold, will be addressed as per a regular timber sale, similar contract or agreement deemed appropriate by the County.

#### 505.14 GATHERING NON-TIMBER FOREST PRODUCTS (NTFP)

For the purposes of this section, NTFP's will be referred to as plants, parts of plants, fungi, or other biological material, excluding commercially sawn timber products, sap collection (i.e. tapping trees for syrup production) or other products that require a permit in compliance with the Bayfield County Forest Products Ordinance, that are harvested for personal, non-commercial, use.

NTFP's allowed for harvest under this section will be restricted to edible plants, berries and seeds/nuts from plants only. Under State and Federal Laws (State Statute 29.604 & Administrative Rule NR 27), it is illegal to process any plant that is listed as threatened or endangered. Examples of NTFP's may include, but are not limited to, berries, nuts, mushrooms, plant roots, tubers, and bulbs.

No permit will be required for an individual to gather said products for personal use, however, all material must be harvested in a sustainable and ecologically conscious manner. In addition, the harvesting of NTFP's must not inhibit the reproductive capabilities or capacity of the plant population being considered for harvest. Any material harvested for commercial use (re-sale) must be approved by the Administrator, generally via a special forest products permit or similar written agreement. A reasonable fee may also be assessed on the permit, in an amount as determined by the Administrator.

The Administrator has the authority to prohibit the collection of any NTFP if harvesting has been determined to be environmentally destructive or if said harvest is considered, by the Administrator, to be unsustainable. Refer to the Appendix for a complete description of the Bayfield County Forest Products Ordinance.

## **510 TIMBER THEFT**

All cases of alleged timber theft on the County Forest shall be investigated and resolved promptly. An allegation of theft by cutting and/or removing timber from the County Forest does not alleviate the County from payment under s. 28.11 (9) Wis. Stats. The County will collect damages pursuant to s. 26.05 Wis. Stats. and may also pursue criminal charges under s. 943.20 Wis. Stats. and/or seek civil damages.

### **510.1 TIMBER THEFT INVESTIGATION**

The following procedure should be used in all cases of alleged timber theft:

1. Determination of Theft
  - A. Gathering facts - The County, through its Sheriff's Department and along with assistance of the DNR liaison, rangers and/or wardens, will ascertain the facts pertinent to the alleged theft, including determination of the damages to the County. Legal counsel representing the County should be involved in all aspects of investigation. Property involved in the alleged theft may be seized pursuant to s. 26.064 Wis. Stats. for use as evidence.
  - B. Boundary determination - If property boundaries are involved, the County shall conduct a legal survey of the boundary in question.

## **515 ENCROACHMENTS**

The County will actively investigate all suspected cases of encroachments on the County Forest. To ensure the integrity and continuity of County Forest land, all cases will be dealt with promptly and in a consistent manner, with the recognition that each case may likely present a unique set of circumstances.

The following procedures will be used in all cases of suspected encroachments (though the County reserves the right to address each case in a manner deemed most advantageous to the County, as determined by the County):

1. The County will establish property boundaries; if necessary, a legal survey will be conducted.
2. The Administrator will gather all facts.

3. The Administrator will present facts to the Committee, including recommendations to address the encroachment.

4. The Committee, in consultation with the Administrator and, if necessary, County legal counsel and the DNR, will make a decision as to the disposition of the case.

Options to consider may include, but not be limited to:

a. All above ground encroachments that are movable will be removed from County property.

b. Permanent type facilities, such as homes, garages, and septic systems shall be addressed individually and may be removed or handled by a land use agreement, direct sale or trade.

c. The sale or transfer of land involved in the encroachment should remain an option depending on the circumstances involved and/or the viability of an adverse possession claim (s. 893.29 Wis. Stats.).

d. A land trade, with the County receiving property of equal or greater value, preferably located within the Blocking, may also be considered.

e. Provisions in the land use agreement, if that option is pursued, may include granting the encroacher permission to encroach on the County Forest with the following stipulations: no other encroachments will be allowed; the permit is non-transferable; the county must be notified once encroachment is terminated; the County continues full ownership and control of the property; permittee agrees to waive any rights to any future declaration of ownership or interest in the encroached County property; the County reserves the right to cancel the permit and the permit is to be filed in the office of the Department; other conditions as determined by the County; and all fees related to the land use permit shall be paid by the permittee (encroacher).

5. In all cases, the County will determine the method to address an encroachment that is deemed most advantageous to the County, as determined by the County. The encroacher will be held accountable for most or all of the costs associated with addressing the encroachment, including, but not limited to: legal fees; administrative fees, including salaries and mileage; survey costs; recording fees; and/or other similar costs or fees associated with addressing the encroachment.

## 520 SPECIAL USES

1. Recognizing the vast potential for a variety of special uses of the County Forest by governmental units, businesses, organizations or individuals, the Committee may designate specified areas for special uses. Specific management methods are to be considered on these areas. Uses must be consistent with the intent and purposes of the County Forest Law.
2. All requests for specialized uses of any County Forest lands will require a permit or agreement authorized by the Committee.
3. Currently, there are no designated Special Use Areas on the County Forest. If a future designation occurs, a listing of the area(s) can be found in the Appendix.

### 520.1 SAND AND GRAVEL

Sand and gravel pits located on the County Forest may be used only by units of government or contractors performing public works. Use of existing pits and the opening of new pits by entities other than the Department will require Committee approval and be authorized by permit only. The condition of such permits may include, but are not be limited to:

1. Requiring the pit and its access road to be screened from view from any public highway.
2. Severing trees from the stump.
3. Disposition of brush and dirt spoil by leveling or hauling away.
4. Sloping to prevent steep banks.
5. Filing with the Department an annual written report of gravel and sand removed.

Other conditions may be set at the discretion of the Administrator and/or Committee.

The Committee may also set fees for materials removed. Other non-metallic materials will be addressed on a case by case basis.

All active, non-metallic mine sites greater than one acre in size, including those on the County Forest, are also subject to the provisions of the Non-metallic Mining Reclamation Program, Chapter NR 135, Wis. Adm. Code. The Department shall work with the local

permit coordinator (often county or local zoning office) in obtaining the necessary permits for non-metallic mining operations.

Sand and gravel may, under some circumstances, be leased to private contractors for private use. In these situations, the land must be withdrawn from the County Forest Law until sand/gravel removal and reclamation of the site is completed. Upon completion of reclamation to the satisfaction of the County and the DNR, the lands shall be reapplied for entry under the County Forest Law.

A list of existing non-metallic mine sites (sand and gravel pits), located on the County Forest, can be found in the Appendix.

#### 520.2 EXPLORATION, PROSPECTING, AND MINING

1. The Committee may investigate all mineral exploration, prospecting and mining requests as they are received.
2. The DNR shall be notified of all requests as they become known in accordance with s. 28.11(3)(i) and (j) and with DNR Manual Code 2712.1 or other codes which may be subsequently adopted.
3. The DNR Public Lands Handbook should be referenced for more detailed procedure.

#### 520.3 SANITARY LANDFILLS

The use of County Forest lands for sanitary landfills will not be allowed unless the lands involved are withdrawn from the County Forest Law.

#### 520.4 MILITARY MANEUVERS

Military maneuvers on County Forest lands will be considered under a lease or written land use agreement. Upon receipt of a written request from the military, the Administrator, Committee, other necessary County staff, Military staff, and DNR representatives will discuss the issue at a public Committee meeting.

After the needs and/or objectives have been outlined, the site shall be field inspected by

Department staff, with DNR input and consistency with the County Forest Law sought. Depending on the type of use requested, town officials and local residents may also be advised. Additionally, depending on the overall scope of the project, a public hearing may also be appropriate.

Once all aspects of the request, including concerns, if any, are addressed and agreed to, a legal instrument will be drafted by the Administrator, in consultation with legal counsel, if necessary. The matter will then be brought back to a Committee meeting for final input and approval. The DNR Public Forest Lands Handbook will be used for further direction in this matter.

#### 520.5 PUBLIC UTILITIES.

Easements for public utilities may be considered by the Committee. Underground installations will be encouraged. The following main provisions shall be included in any agreement and/or permit, approved by the Committee, granting permission for construction of any utility transmission line:

1. Utility may be billed for merchantable forest products and the value of existing timber reproduction.
2. Utility may be billed for land removed from production due to right-of-way clearing for losses of future income and multiple use benefits.
3. Land removed for utility operations that is no longer suited “primarily for timber production or, that is no longer suitable for scenic, outdoor recreation, public hunting & fishing, water conservation or multiple use purposes” (s. 28.11(4)(c) Wis. Stats) may need to be withdrawn from county forest law designation.
4. The utility may be required to replace any lands withdrawn from the County Forest, due to said utility, with other lands suitable for county forest entry. Replacement can be in the form of physical property or cash equivalent. In either scenario, a fair market value of lands withdrawn from County Forest Law, as well as those chosen for replacement (or cash equivalent), should be accomplished, to the satisfaction of the Committee. Lands chosen for replacement should be located within the Blocking and should be of equal or



greater value, as determined by the County.

5. Utility companies will be encouraged to use existing corridors and underground lines to minimize disturbance to the County Forest and native plants and animals.
6. Merchantable timber will be removed in a manner approved by the Committee. Timber harvested must be reported to the DNR on form 2460-1.
7. Utility must provide notice of proposed route, including a map of not less than 1 inch /mile scale, 90 days in advance of proposed construction, or as otherwise determined by the County.
8. Special maintenance, controlled access and signage concerns shall be addressed in any proposal.
9. An appropriate annual or one-time fee shall be charged for easements, as determined by the County.

#### 520.6 ACCESS TO PRIVATE LAND

The DNR has determined that granting a private easement across County Forest lands is not consistent with the County Forest Law program. This determination is based on an Attorney General opinion (*OAG-08-10*).

Easements granted to individuals are generally determined to be an exclusive right on a publicly owned asset. Counties are generally restricted from granting easements on County Forest lands unless the easement helps to achieve the purposes of the County Forest Law program.

##### 520.6.1 Temporary Access

Requests for temporary access across County Forest lands will be accepted and reviewed by the Administrator. Each request will be reviewed for any potential conflicts with management activities, public access or other previously approved activities, including recreation. If impacts are minimal, as determined by the Administrator, access for short term needs may be authorized through the use of permits, agreements, letters of authorization or similar written forms, as determined by the Administrator. The County

does not have an obligation to allow temporary access across County Forest land, if such access conflicts with the goals and objectives of this Plan, as determined by the Administrator.

Temporary access is generally considered for activities such as utility maintenance (rail, powerline, etc.) or forest management on private lands (i.e. logging).

The recipient of temporary access will be responsible for their use of the County Forest, including damage that they may cause to existing infrastructure (i.e. roads and/or trails), as determined by the Administrator and all clean-up, if necessary. New road construction may also be considered by the County, on a case by case basis. Terms of construction, including fees for the value of merchantable timber removed during construction, will also be addressed on a case by case basis, as determined by the Administrator.

The recipient of temporary access may also be required to provide a performance deposit (or bond) and/or liability insurance to cover their use of County Forest land.

#### 520.6.2 Access Permits or Agreements

Requests for access to privately owned lands may also be made by private parties. A request may be made to utilize an existing road(s) or to build new road, through County Forest land, to gain access to privately owned parcels.

All access permit requests will be submitted to the Administrator, either in writing, or by filling out a Department produced access permit request form, if available. All requests for access to privately owned lands will be presented by the Administrator to the Committee for review and action. Access permits or agreements will be considered on a case-by-case basis, with an understanding that the County is not legally obligated to provide access to private lands.

All access permit renewal requests, that were previously approved by the Committee, and that have no or insignificant changes from the previous permit, as determined by the

Administrator, can be addressed directly by the Administrator. The Administrator has the authority to approve these renewal requests, subject to the same terms and conditions as outlined below.

A permit or similar written agreement will be the primary means of addressing requests to access private land. General terms or conditions of an access permit or agreement will be as follows (though the Committee can modify terms and conditions in a manner deemed most advantageous to the County):

1. A set fee per quarter mile of County owned land crossed will be assessed by the Committee for access permits or agreements. In cases of new road construction, the cost of all cut merchantable timber will also be added to the fee. In addition, all administrative costs associated with the development of the permit or agreement, including mileage, will be added to the total fee. Other incidental costs, incurred as a result of the access permit or agreement, including the value of lost future timber revenue, may also be added to the total fee, as determined by the Administrator and/or Committee. The Committee may elect to waive or modify these fees in cases of reciprocity or if otherwise deemed advantageous to the County.
2. Access across County Forest lands must be demonstrated, by the applicant, and to the satisfaction of the Committee, as the route of last resort, including evidence of attempts to secure access through other lands.
3. Access permits or agreements are made by and between the County and the property owner. As such, they are not transferrable and subsequent property owners must secure their own new permit or agreement.
4. Access permits or agreements will generally be for a period of 10 years. Exceptions will be considered by the Committee and addressed on a case by case basis.
5. Gates, signs, or other articles of the permittee are not allowed on County lands, unless otherwise addressed as part of the permit or agreement.
6. Blacktop, concrete or other similar surface material is not allowed on the approved access road.

A standard access permit and/or agreement is located in the Appendix. This document will serve as the official permit for access across the County Forest to private lands. It should be noted that each access permit is fairly unique and, as such, may contain different terms and conditions.

The standard permit or agreement will be reviewed periodically by the Administrator. Recommendations for modification will be presented, by the Administrator, to the Committee and addressed accordingly. If changes are approved by the Committee, the permit form or agreement will be updated.

#### 520.6.3 Prescriptive Easements

Historical access points and driveways may meet the legal requirements of prescriptive use. A prescriptive use easement does not generally trigger a need to withdraw lands from the County Forest program unless the public is excluded from motorized travel on the subject road. Any potential claims of prescriptive easement across County Forest lands must be reviewed by legal counsel in order to determine legal validity and possible legal defense or standing.

#### 520.6.4 Other Types of Access

Complex issues of private access needs may arise in the future. Any proposals to grant an easement across County Forest must help achieve the purposes of the County Forest Law and meet a standard of better and higher public use. Easements to private parties will generally require withdrawal from County Forest Law and are to be discussed with the DNR prior to initiating any proposals.

### 520.7 PRIVATE UTILITY SERVICE LINES

If a landowner cannot gain utility access across other lands, the Committee may consider a permit or land use agreement for access across the County Forest. Requests will be considered on a case by case basis, in a manner similar to access permits (as described in Section 520.6.2). These permits or agreements should consider the inclusions mentioned below:

1. The permit is non-transferrable.
2. The County retains full ownership of the utility corridor, however it shall not be liable for maintenance, upkeep, or other damages associated with the utility service.
3. The permittee waives all rights to any declaration of ownership or interest in the utility corridor on County land, including administrative costs, as a result of the agreement or permit. The agreement is granted upon the signature and any fees being received by the Department.
4. The fee for such a land use agreement or permit will be the same as those assessed for an access permit. See Section 520.6.2 for more details.
5. The Committee can modify the terms and conditions of the private utility agreement or permit, including the fee schedule, in a manner deemed most advantageous to the County.

#### 520.8 COMMUNICATION TOWERS

The siting of communication towers on the County Forest will be considered by the Committee on a limited basis. Requests will be considered on a case by case basis subject to the following conditions:

1. It must be demonstrated that the site is the most practical location for such a tower.
2. Land selected for such a tower is no longer suitable for continued entry in the County Forest program. According to section 28.11(4), Wis. Stats, any accompanying lands needed for tower support wires that inhibit the practice of forestry and are no longer suitable for scenic, outdoor recreation, public hunting & fishing, water conservation or multiple use purposes may also need to be withdrawn from County Forest Law. Withdrawal is subject to approval by both the Board and DNR.
3. A request to withdraw lands from County Forest Law shall follow withdrawal protocol. See Chapter 400 for more information on withdrawal from County Forest Law.
4. The County shall be compensated for the use of County owned land for the

construction of said communications tower, in an amount deemed appropriate by the County. Each instance will be treated on a case by case basis, as determined by the County.

5. Any agreement should also consider the inclusions listed under 520.5 (Items 1-8).

#### 520.9 OTHER

Other types of special uses of the County Forest may be considered by the Committee. Regulations governing these uses will be developed on an individual basis. These may include, but are not limited to: research, independent study and scientific areas.

#### 525 TREATY RIGHTS: GATHERING MISCELLANEOUS FOREST PRODUCTS

Ordinance No. 6, adopted by the Bayfield County Board of Supervisors on May 16, 1995, authorizes Bayfield County to require permits for gathering miscellaneous forest products on County land by Native American treaty rights participants. The Ordinance, adopts language of, and complies with, the Federal District Court decision and states as follows (a copy of the Ordinance can be found in the Appendix):

1. Any treaty rights participant interested in gathering firewood, tree bark, maple sap, lodge poles, boughs, marsh hay or other miscellaneous forest products (except fruits, seeds, or berries not enumerated in County ordinances) from County land shall obtain a County gathering permit from the County forestry office. The County shall respond to the gathering permit request no later than 14 days after receipt of the request. The gathering permit shall indicate the location of the material to be gathered, the volume of material to be gathered, and conditions of the gathering of the material necessary for conservation of the timber and miscellaneous forest products on the County land, or for public health or safety.
2. The County may not deny a request to gather miscellaneous forest products on county property under this section unless: (a) the gathering is inconsistent with the management plan for the property, (b) the gathering will conflict with the pre-existing rights of a permittee or other person possessing an

approval to conduct an activity on the property, including a contractor of the county or, (c) is otherwise inconsistent with conservation or public health or safety. See subchapter IV, Ch.NR13, Wis. Adm. Code.