

## SCS FOREST MANAGEMENT CERTIFICATION SERVICES

### *Corrective Action Request (CAR) / Observation (Obs) Form*

<b>Certificate Holder</b>	<b>Wisconsin DNR State Forests &amp; Lands (SCS-FM/COC-00070N)</b>
CAR/OBS Reviewed by (SCS representative)	Brendan Grady
Date of Review	7/13/22
Applicable Standard(s)	
<input checked="" type="checkbox"/> Forest Stewardship Standard(s), including version: FSC-US Forest Management Standard v1.0 <input type="checkbox"/> SCS COC indicators for FMEs, V8-0 <input type="checkbox"/> FSC Trademark Standard (FSC-STD-50-001 V2-0) <input type="checkbox"/> FSC standard for group entities in forest management groups (FSC-STD-30-005), V1-1 <input type="checkbox"/> Other(s):	
Audit Year	2021
Audit Type	<input type="checkbox"/> Re/Evaluation
	Surveillance: <input type="checkbox"/> 1 <sup>st</sup> <input type="checkbox"/> 2 <sup>nd</sup> <input type="checkbox"/> 3 <sup>rd</sup> <input type="checkbox"/> 4 <sup>th</sup>
	Other: <input type="checkbox"/> CVA; <input type="checkbox"/> Scope Expansion; <input checked="" type="checkbox"/> Special ( <i>describe</i> ):

<b>Finding Number: 2021.1</b>	
<b>Finding and Deadline</b>	
<input type="checkbox"/> <b>Major CAR:</b> Pre-condition to certification/recertification <input type="checkbox"/> <b>Major CAR:</b> 3 months from Issuance of Final Report <input type="checkbox"/> <b>Minor CAR:</b> 12 months or next regularly scheduled audit, whichever comes first ( <i>surveillance or re-evaluation</i> ) <input type="checkbox"/> <b>Observation</b> – response is optional <input checked="" type="checkbox"/> <b>Other</b> and deadline (specify): Minor CAR, 12 months from finalization of the audit report	
<b>FMU CAR/OBS issued to</b> (when more than one FMU):	
<b>Standard and Indicator</b>	FSC-US Forest Management Standard, Indicator 6.5.b
<input checked="" type="checkbox"/> <b>Non-Conformity Evidence</b> <input type="checkbox"/> <b>Observation Justification and/or Explanation</b>	
<b>Issued 4/22/21, Following Complaint Investigation Report.</b>	
<p>Subsequent to the 2020 field audit, a complaint was submitted to SCS regarding the Hodge Podge 11-19 timber sale, adjacent to Whitney Lake. On the basis of information provided by the complainants as well as interviews with pertinent DNR staff, review of pertinent elements of the Wisconsin Best Management Practices for Water Quality Manual and the Northern Highlands/American Legion Master Plan, it was determined that DNR’s planned (and partially executed) timber harvest plan/sale (“Hodge Podge” 11-19 adjacent to Whitney Lake), is found to be in conflict with FSC-US Forest Management Standard.</p> <p>The planned harvest in tract 11-19 is primarily intended as an “overstory removal” type of commercial harvest that, in large part, is designed to provide sufficient light to the forest floor to foster establishment</p>	

and development of a new cohort of seedlings/saplings, primarily oak. Overstory removal harvest prescriptions are generally more intensive (in terms of volume removed per acre) than single tree selection prescriptions. Likewise, so are the visual impacts.

Another pertinent aspect of the planned harvest is that the intensity of planned removal of harvest trees (and, conversely, the spatial pattern of leave trees) varies across the harvest unit. The basal area retention of retained trees will be as low 35 square feet per acre in some areas and above 60 square feet per acre in other areas of the harvest unit. As well, the widths of riparian management zones (RMZ's) adjacent to or within the harvest boundaries are not universally 100 feet or greater.

Chapter 7 of the Wisconsin BMP Field Manual specifies requirements for establishing RMZ's (riparian management zones) in association with lakes and streams. For lakes and for streams wider than 3 feet, RMZ's are to be at least 100 feet (per each side for streams), starting at the ordinary high-water mark. On page 91 of Chapter 7, tree retention requirements within RMZ's are stipulated: "Harvesting plans should leave at least 60 square feet of basal area per acre in trees 5 inches DBH (diameter at breast height) and larger, *evenly distributed*." (emphasis added).

On page 87, variations from the 100' per side RMZ width requirement are addressed:

RMZ widths greater than 100' per side "may be needed on sites that exhibit one or more (emphasis added) of the following site conditions:

- steep slopes
- long, continuous slopes
- highly erodible soils
- no ground cover or duff layer
- intensive soil disturbance near the RMZ
- Unique or sensitive waters"

RMZ widths less than 100' per side "may be suitable on sites that exhibit the following site conditions:

- flat terrain
- short slopes
- stable or undisturbed soil
- dense groundcover vegetation
- soils with high filtration rates"

Of significant note, the trigger for increasing the widths of RMZs is "one or more" of the stipulated conditions. In contrast, "one or more" does not apply to narrowing RMZs below 100' per side. That is, text on page 87 rather clearly establishes that all 5 stipulated site conditions must be present to warrant narrower RMZs.

In the absence of an argument and supporting evidence that all 5 triggers for narrower RMZ's are met, the RMZs established for the Whitney Lake harvest unit are not in compliance with the Wisconsin Best Management Practices Manual. That is:

- the RMZ's as laid out are not uniformly greater than 100' per side
- The residual trees (to be reserved from harvest) are not evenly distributed, and comprising at least 60 square feet basal area per acre.

Given that forest operations must meet or exceed BMPs, the current harvest layout constitutes a non-conformity with pertinent elements of the FSC US Forest Management Standard.

#### **Amended 6/22/21, Following Special Audit**

Fundamental to the discrepancy is a misunderstanding between the DNR and stakeholders as to how the RMZ buffer is designated in the field. The BMPs recommend a minimum 100 ft RMZ from the ordinary high water mark (OHWM) for RMZs adjacent to lakes and certain other water bodies. (see page 91 of the BMP manual). The BMP manual also presents field conditions and a multiple factor list for when a wider RMZ is needed or a narrower RMZ is suitable. However, there is an additional buffer within the RMZ which is an equipment exclusion zone (EEZ), which is only required to be a minimum of 15 ft from the OHWM. From 15-50 ft, wheeled or tracked equipment is only allowed on frozen or dry ground.

At the Hodge Podge sale and other sales, a spot painted red line has been marked out running parallel to the shoreline. In the initial complaint submission, the complainants allege that the cutline at the Hodge Podge sale averages 50-60 ft, while the residual basal area would be less than 60 sq ft in many places in the RMZ, and 32 sq ft on average behind the no cut zone. The red line appears to be the RMZ line, and as it is clearly less than 100 ft in many places, it would be subject to the BMP's test on whether conditions are suitable for a narrower BMP. Indeed, after initial concerns were raised by stakeholders, the DNR's BMP forester reviewed the sale in June 2020, and analyzed the redline as the entire RMZ. The BMP forester concluded that it met the test to be narrowed, while the SCS complaint investigation report disagreed with this assessment, as described above.

However, in response to the complaint investigation report, it was clarified by the DNR that the redline is only the equipment exclusion zone, and that the RMZ should be measured 100 ft from the OHW, including areas falling outside the EEZ and available for harvest. This has the practical effect of creating an "inner buffer" composed of the EEZ, and an "outer buffer" composed of the remainder of the 100 ft. It is acknowledged that the terms inner and outer buffer are not found in the BMP manual and this concept is not used by DNR, SCS is using it only to illustrate the sites visited on this audit. The 100 ft RMZ itself is not marked out on the ground, but trees retained within the entire 100 ft still contribute to the basal area retention requirement. Using a 100 ft RMZ, a DNR Forest Ecologist/Silviculturist conducted an inventory of the area in May 2021 using 21 random plots and determined that the average basal area to be retained after harvest was 94 sq ft. basal area, with a range of 50-200 sq ft. The SCS auditor also took sample plots of the area and found a lowest basal area plot of 80 sq ft.

The difference between the inventory data submitted by stakeholders and the inventory plots is possibly explained by the fact that DNR marked additional trees for retention in response to stakeholder concerns after the stakeholder survey was conducted. Also, there is a difference in interpretation on how to measure the basal area of plots that fall partially within the RMZ. Regardless, based on the inventory data taken directly by the SCS auditor and the DNR data confirmed by SCS, we conclude that the average basal area of the RMZ exceeds the 60 sq ft. minimum.

However, the BMPs also state that the basal area should be retained in trees that are "evenly distributed," and a simple average of basal area in an RMZ would not capture potential variability. An RMZ in which the retained basal area was all clumped in the EEZ with little to none in the RMZ beyond the EEZ would not meet this requirement, even if the average basal area of the 100 ft was above 60 sq ft.

At the Hodge Podge sale, this does not appear to be the case, because plots taken in the outer buffer in exceeded 60 sq ft.

Other completed sites visited during the audit did identify a larger discrepancy between the basal area within the EEZ and basal area in the remainder of the RMZ. For example, a completed sale at Upper Gresham Lake had plots taken by the auditor showing 20, 30, and 40 basal area in the outer zone. However, in this case the EEZ had been extended to 75 feet, beyond the minimum of 15 ft. The Jute Lake sale also included plots as low as 10 sq ft basal area, although it is acknowledged that this sale occurred more than 5 years ago, and DNR identified it as operator error. In cases such as this, the basal area is clearly not evenly distributed and in excess of 60 sq ft. Stakeholders also identified other sites around the NHAL that exhibited a similar pattern of decreased basal area outside the EEZ, although these sites were not all sampled during the audit.

By its own terms, the BMP manual does allow for modification of BMPs if water quality is not impacted, and the sites visited during the special audit did not have visible evidence of water quality impacts. So, these modifications do not indicate automatic violations of the BMPs. However, the DNR’s system for review of BMP modifications needs to be strengthened.

Because DNR clarified that the RMZ was not narrowed, an analysis of the five conditions allowing an RMZ to be narrowed is not directly pertinent here. However, the state-wide BMP forester who originally reviewed the Hodge Podge sale for BMP compliance in June 2020 explicitly analyzed the sale as if the RMZ had in fact been narrowed. This indicates that the DNR’s internal system for evaluating BMP field review needs improvement in order to ensure that it is operating effectively.

Based on this, CAR 2021.1 is being maintained, but rewritten to more accurately reflect evidence from the special audit.

**Non-Conformity Corrective Action Request**     **Observation; no Corrective Action is required**

DNR must review its forest operations to ensure that harvest plans consistently meet or exceed Best Management Practices. DNR must also review its internal systems for BMP compliance field review in order to ensure that being BMPs are consistently being met.

**FME response**  
*(including any evidence submitted)*

7/13/22 Response

DNR RESPONSE

- A. DNR conducted a review of existing forest operations, timber sales, to ensure established, sold, and active sales are compliant with BMPs for water quality.
- B. DNR conducted a review of internal systems for field compliance of BMPs.

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Actions for A.

DNR Division of Forestry reviewed internal forest operation harvest plans, specifically BMPs for water quality, on all active and planned timber sales on the NHAL State Forest and all sales established on DNR lands in 2021.

- Following the issuance of CAR 2021.1, NHAL Forestry Team Leader reviewed 18 timber sales prior to the fall 2021 bid opening and 11 timber sales prior to the spring 2022 bid opening. Section C of form 2460-001A was reviewed to ensure forestry BMPs for water quality were consistently

	<p>addressed, documented, and compliant with Wisconsin’s Forestry BMPs for water quality. Field checks were implemented on sales to ensure compliance. The review further evaluated if and when BMPs were modified. NHAL Forestry Team Leader clarified some elements in three timber sale 2460 forms and consulted with forestry team members during the review. All sales that appeared in the 11/3/2021 bid opening were reviewed in September and October of 2021 and all sales that appeared in the 5/4/2022 bid opening were reviewed in March and April of 2022.</p> <ul style="list-style-type: none"> <li>• All timber sales completed on DNR lands in 2021 were reviewed by the Forest Hydrologist for BMP compliance. A report was produced on the review purpose, methods, and findings. <a href="https://dnr.wisconsin.gov/topic/timbersales/dnrlands">https://dnr.wisconsin.gov/topic/timbersales/dnrlands</a></li> <li>• A special assessment of the RMZ on the NHAL State Forest Whitney Lake, Hodgepodge timber sale occurred pre harvest and post harvest with both reports on the DNRs web page. <a href="https://dnr.wisconsin.gov/topic/timbersales/dnrlands">https://dnr.wisconsin.gov/topic/timbersales/dnrlands</a></li> </ul> <p>Both assessments of the RMZ found compliance with the BMPs.</p> <p><b>Actions for B.</b> DNR staff conducted a review of the internal systems, with attention focused on the timber sale process, as relates to establishment and implementation of BMPs for water quality. The review included systems for planning, implementation, and monitoring BMPs. Procedural reviews occurred over multiple meetings on April 12, April 25, and May 16, 2022. The review considered existing processes and methods, and for some elements, identified future actions to provide clarity and improved consistency. Addendum 1</p> <p>A joint NHAL and Rhinelander Forestry Team meeting was held on 1/12/2022 and included a presentation and review of forestry BMPs for water quality and their application on state lands timber sales. NHAL Forestry Team Leader and other internal staff continue to evaluate current BMP application for all established and planned timber sales. Addendum 2</p> <p>The Division’s internal Public Lands Team reviewed the internal procedures for addressing BMPs in timber sale establishment and administration. Addendum 3</p> <p>The DNR Forest Hydrologist conducted a review of internal systems for field compliance of BMPs. A report was produced on the review purpose, systems, methods, and findings. <a href="https://dnr.wisconsin.gov/topic/timbersales/dnrlands">https://dnr.wisconsin.gov/topic/timbersales/dnrlands</a> (same link referenced in part a)</p>
<b>SCS review</b>	As detailed in the supporting documentation, the DNR’s pre-harvest inventory at

	<p>Whitney Lake reported that basal area to be retained was above the minimum amount required by the BMPs. The post-harvest inventory confirmed that basal area retained after the harvest was also in compliance with the BMPs.</p> <p>DNR’s internal assessment of BMP compliance at other sites in the NHAL reported that overall BMP compliance was high. Although these sites have not all been verified directly by SCS, the sample conducted during the special audit in the NHAL showed that the DNR’s measurements were consistent with those done by the audit team.</p> <p>DNR’s internal review of BMP procedures included a training to emphasize the need for documenting within the 2460 timber sale narratives when BMPs are utilized and justification if there are any cases where modifications to BMPs have been proposed. This is possible in the current form, but revised form language has been created to facilitate BMP review as well.</p> <p>The internal reviews conducted by DNR are directly responsive to the corrective action request. On that basis, this CAR is closed. The effects of the internal review and any associated process changes will be followed up at the next surveillance audit, scheduled for September 2022.</p>
<b>Status of CAR:</b>	<input checked="" type="checkbox"/> Closed <input type="checkbox"/> Upgraded to Major <input type="checkbox"/> <i>Other decision (refer to description above)</i>

<b>Finding Number: 2021.4</b>	
<b>Finding and Deadline</b>	
<input type="checkbox"/> <b>Major CAR:</b> Pre-condition to certification/recertification <input type="checkbox"/> <b>Major CAR:</b> 3 months from Issuance of Final Report <input type="checkbox"/> <b>Minor CAR:</b> 12 months or next regularly scheduled audit, whichever comes first ( <i>surveillance or re-evaluation</i> ) <input type="checkbox"/> <b>Observation</b> – response is optional <input checked="" type="checkbox"/> <b>Other</b> and deadline (specify): Minor, 12 months from date of finalization of report	
<b>FMU CAR/OBS issued to</b> (when more than one FMU):	
<b>Standard and Indicator</b>	FSC-US indicator 4.4.d
<input checked="" type="checkbox"/> <b>Non-Conformity Evidence</b> <input type="checkbox"/> <b>Observation Justification and/or Explanation</b> The FME’s consultation process does not clearly make available an accessible and affordable appeals process to planning decisions (item 3 of 4.4.d). Specifically, the appeals process is not fully defined and documented. For annual property implementing plans, staff may follow various methods and chains of command to address stakeholder concerns or disputes. Per interviews with FME staff, litigation is currently considered the primary option of the appeals process, without a defined non-litigation appeal option.	

The FME made efforts to engage stakeholder groups, as confirmed via review of email records and interviews with stakeholders. While some concessions were made, such as creating a buffer around a newly established raptor nest on Upper Gresham Lake and marking some additional leave-trees in an uncut timber sale on Whitney Lake, it was unable to determine the main points of disagreement and/or agreement between itself and stakeholders using its informal process.

**Non-Conformity Corrective Action Request**     **Observation; no Corrective Action is required**

For public forests, consultation shall include an accessible and affordable appeals process to planning decisions.

**FME response**  
*(including any evidence submitted)*

7/13/22 Response

The Department has consultation processes at several planning decision points, including the master planning process, annual property implementation plans, and timber sale operational plans. Consultation is defined as sharing information with the public, seeking public questions and comments, and addressing public concerns.

*WDNR currently has a well-defined, accessible and affordable appeals process to Department decisions known as the contested case hearing process. The process can be used to challenge actions or inactions by any state agency and is detailed in state statute and administrative code.*

*DNR staff were not fully aware of the existing contested case hearing process during the July 2022 special audit and failed to share the process and details at the time with the auditor. After review of the CAR, additional DNR staff identified, and legal counsel confirmed, the contested case hearing process as an existing appeal process that is affordable and accessible and applicable to the CAR.*

*The Department is submitting evidence that the contested case hearing process meets the intent for an accessible and affordable appeals process for planning decisions.*

*A. Contested Case Hearing overview and references The primary method used by citizens wishing to challenge a DNR action (or inaction) is a contested case hearing under Wis. Stats. s. 227.42. This process is not unique to DNR but rather is the same process available to challenge actions or inactions of other Wisconsin agencies as well. In the case of DNR, this administrative process is initiated when a written request for hearing is sent to the DNR Secretary. Wis. Adm. Code s. NR 2.05 provides templates to be used when requesting a contested case hearing. Unlike when filing an action in Wisconsin circuit court, there is no direct cost to the petitioner for a contested case hearing. Petitioners may wish to hire legal counsel but legal counsel is not required.*

*Upon receipt of a request for a contested case hearing, DNR has 20 days to review the request and consider whether the basic jurisdictional requirements of Wis. Stats. s. 227.42 and the statutes and rules under which the petition is filed have been met. If DNR denies the request, the petitioner may appeal the decision in Wisconsin circuit court. If DNR grants the request, DNR will send a request for hearing to the Department of Administration's Division of Hearings and Appeals, for assignment to an Administrative Law Judge (ALJ). ALJ's are impartial independent hearing examiners who will operate the hearing process.*

	<p>The procedures related to the hearing are like that of a circuit court proceeding, with relaxed rules of evidence and less formality. The procedures are detailed in Wis. Stats. ch. 227 and Wis. Adm. Code ch. NR 2. Petitioners have an opportunity to conduct discovery, file motions, call witnesses, present exhibits, question DNR staff, etc. If the case proceeds to hearing, the ALJ will preside over the hearing and issue a decision following the hearing. That decision can be appealed in circuit court.</p> <p>In addition, the Annual Property Implementation Plan and timber sale web pages have been expanded to provide more clarity on the stakeholder involvement process for DNR’s land management decisions.</p>
<b>SCS review</b>	The existing contested case hearing process is directly responsive to the requirements in the standard for an accessible and affordable appeals process. Based on this, the CAR is closed.
<b>Status of CAR:</b>	<input checked="" type="checkbox"/> Closed <input type="checkbox"/> Upgraded to Major <input type="checkbox"/> Other decision (refer to description above)

<b>Finding Number: 2021.5</b>	
<b>Finding and Deadline</b>	
<input type="checkbox"/> <b>Major CAR:</b> Pre-condition to certification/recertification <input type="checkbox"/> <b>Major CAR:</b> 3 months from Issuance of Final Report <input type="checkbox"/> <b>Minor CAR:</b> 12 months or next regularly scheduled audit, whichever comes first ( <i>surveillance or re-evaluation</i> ) <input type="checkbox"/> <b>Observation</b> – response is optional <input checked="" type="checkbox"/> <b>Other</b> and deadline (specify): Minor, 12 months from date of finalization of report	
<b>FMU CAR/OBS issued to</b> (when more than one FMU):	
<b>Standard and Indicator</b>	FSC-US indicator 7.1.r
<input checked="" type="checkbox"/> <b>Non-Conformity Evidence</b> <input type="checkbox"/> <b>Observation Justification and/or Explanation</b> The management plan describes the current stakeholder consultation process. However, a change in the process is expected based on the outcome of CAR 2021.4.	
<input checked="" type="checkbox"/> <b>Non-Conformity Corrective Action Request</b> <input type="checkbox"/> <b>Observation; no Corrective Action is required</b> Once the process described in 2021.4 is concluded, the relevant section of the management plan must be updated.	
<b>FME response</b> (including any evidence submitted)	7/13/22 Response  The Department has consultation processes for different planning decisions, including the master planning process, annual property implementation plans, and operational timber sale plans. There is stakeholder consultation and opportunities for stakeholder involvement in each of these planning processes. In addition, though not a “consultation” process, stakeholders can challenge administrative agency decisions through the contested case hearing process, which is thoroughly detailed in <a href="https://docs.legis.wisconsin.gov/statutes/statutes/227">Wis. Stats. ch. 227</a> ( <a href="https://docs.legis.wisconsin.gov/statutes/statutes/227">https://docs.legis.wisconsin.gov/statutes/statutes/227</a> ) and <a href="https://docs.legis.wisconsin.gov/code/admin_code/nr/001/2.pdf">Wis. Adm. Code ch. NR 2</a> ( <a href="https://docs.legis.wisconsin.gov/code/admin_code/nr/001/2.pdf">https://docs.legis.wisconsin.gov/code/admin_code/nr/001/2.pdf</a> ).



	<p>The Department has added additional information about stakeholder involvement opportunities on the following websites:</p> <ul style="list-style-type: none"> <li>- State forest timber sales (<a href="https://dnr.wisconsin.gov/topic/timbersales/stateforests">https://dnr.wisconsin.gov/topic/timbersales/stateforests</a>)</li> <li>- Other state lands timber sales (<a href="https://dnr.wisconsin.gov/topic/timbersales/statewide">https://dnr.wisconsin.gov/topic/timbersales/statewide</a>)</li> <li>- Annual Property Implementations Plans (APIPs) (<a href="https://dnr.wi.gov/topic/lands/apip/index.aspx">https://dnr.wi.gov/topic/lands/apip/index.aspx</a>)</li> </ul> <p>The language below is the information that was added to these websites.</p> <p><b>Stakeholder involvement for land management actions</b></p> <p>If a stakeholder would like to question or comment on a proposed management action on a property, the stakeholder should initiate contact with the property manager. The stakeholder should include the following information when contacting the property manager:</p> <ul style="list-style-type: none"> <li>• Contact information (name, phone number, email)</li> <li>• A description of the proposed action being questioned or commented on.</li> </ul> <p>The property manager will engage appropriate Department program staff and respond within a reasonable time frame, and in an appropriate format, including a summary of the options considered and the property manager’s recommended action.</p> <p>There are a variety of actions and processes that are defined in law and that are, or may be, used in the process of planning and implementing DNR land management activities, including providing opportunities for stakeholder involvement, consultation, and disputes. Which processes are used will depend on the nature of the land management activity. Some of the major ones are:</p> <ul style="list-style-type: none"> <li>- Wis. Stats. ch. 23 – Conservation</li> <li>- Wis. Stats. ch. 26 – Protection of forest lands and forest productivity</li> <li>- Wis. Stats. ch. 27 – Public parks and places of recreation</li> <li>- Wis. Stats. ch. 28 – Public forests</li> <li>- Wis. Stats. ch. 29 – Wild animals and plants</li> <li>- Wis. Stats. ch. 227 – Administrative procedure and review</li> <li>- Wis. Adm. Code ch. NR 1 – Natural Resources Board policies</li> <li>- Wis. Adm. Code ch. NR 2 – Procedure and practice</li> <li>- Wis. Adm. Code ch. NR 11 – Wildlife refuges and closed areas</li> <li>- Wis. Adm. Code ch. NR 44 – Master planning for department properties</li> <li>- Wis. Adm. Code ch. NR 45 – Use of department properties</li> </ul>
<b>SCS review</b>	The revised DNR websites includes a clearer description of how stakeholders may provide comments on management planning. Based on this, the CAR is closed.
<b>Status of CAR:</b>	<input checked="" type="checkbox"/> Closed <input type="checkbox"/> Upgraded to Major <input type="checkbox"/> <i>Other decision (refer to description above)</i>

