



May 7, 2021

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Natural Resources Division

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Subject: WDNR response to the factual accuracy of the Corrective Action Requests resulting from the recent complaint investigation of the NHAL State Forest timber sale on Whitney lake.

Dear Mr. Grady:

The Department is providing the following comments regarding the recently issued draft CARs, 2021.1, 2021.2 and 2021.3, resulting from the complaint investigation report on the NHAL timber sale on Whitney Lake.

The Department has reviewed CAR 2021.1, 2021.2, and 2021.3, and the underlying investigative report, and finds both to be factually inaccurate and that those factual errors negate the basis for these CARs. In particular, these corrective action requests stem from an error in SCS's interpretation of Wisconsin's BMP for Water Quality Field Manual and the operational application on the Hodge Podge sale on Whitney lake as it relates to the lake Riparian Management Zone (RMZ). Furthermore, the resulting CARs are unsubstantiated and misinterpret the relevant standards and Department guidance as they relate to this harvest.

For these reasons, the Department expects that, once reviewed and corrected, SCS will agree these CARs should be rescinded and the underlying investigation report be repealed.

The Department maintains that the timber sale, as it was initially set-up, met the requirements of the Forestry BMPs for Water Quality Field Manual, the Northern Highland-American Legion State Forest Master Plan, and all other applicable regulations and guidance. Even so, after receiving concerns about the timber sale and meeting with stakeholders at the site, modifications were made to the timber sale in an effort to address the concerns. The information presented below reflects the current conditions of the timber sale as it was when visited by the FSC auditor in September. Some of the information referenced in the CAR and investigative report are conditions that existed prior to the modifications last summer.

CAR 2021.1

This CAR is factually inaccurate as it claims the RMZ is narrowed. The RMZ is not narrowed and the RMZ remains at 100 feet from the lake's Ordinary High Water Mark (OHWM) as recommended in Wisconsin's BMP for Water Quality Field Manual.

The CAR and investigative report incorrectly treat the RMZ and the timber sale boundary "red line" (also referred to as no-cut zone) as the same thing. To be clear, the RMZ and the "red line" are not the same thing. The red line indicates the sale boundary where no harvesting will occur. This no-cut zone is an area within the 100 foot RMZ but is not the entire extent of the RMZ. In this timber sale the red line is approximately 50 feet from the OHWM.

The RMZ remains at the full 100 feet from the OHWM, and within the RMZ, all BMP's for water quality are met, most notably, the 60 square feet of residual basal area, evenly distributed, throughout the entire RMZ. The Department acknowledges the BMP Assessment and Summary produced by the DNR BMP Forester and provided to SCS imprecisely refers to the RMZ and red line as being the same. However, timber sale documents produced by the establishing forester correctly indicate the red line as being the harvest boundary and not indicative of the RMZ.

Once this error is corrected it negates the basis for CAR 2021.1 which inaccurately claims the RMZ was narrowed.

The process to conclude and issue CAR 2021.1 is flawed and inconsistent.

The FSC lead auditor visited the site in September 2020 as part of the annual surveillance audit, knowing full well external stakeholder interests and points of dispute. The FSC auditor did not find or document any concern with the timber sale and specifically no concerns about the protection of water quality. The following is an excerpt from page 20 of the 2020 audit report prepared by SCS – **“Auditor inspection of the area in question and additional consideration of evidence from an independent BMP inspection (BMP Assessment and Summary Report, June 9, 2019 assessment) led to conclusion that the DNR complied with state BMPs guidelines and conformance with the requirements of the FSC standard for BMPs as included in indicators under Criterion 6.4 and indicator 7.1.q.”**

The September 2020 audit occurred after the Department adjusted the originally established sale based on stakeholder feedback. Adjustments included retaining a substantial number of large diameter and long-lived trees.

The complaint investigation, which resulted in CAR 2021.1, did not involve a site visit, nor does it provide reference to, or rely on, any credible evidence showing the Department did not conform to the BMPs. The Department has scientifically credible evidence in the form of detailed field inventory plots and maps, identifying all 100 foot lake RMZ's are complied with on the Hodge Podge sale without question. Moreover, the complaint investigation incorrectly assumed the RMZ was narrowed without a second site visit. Furthermore, there is no evidence or finding to counter the Department's findings that all lake BMPs were met, most notably, the 100 foot lake RMZ is in effect and the 60 square foot residual basal area, evenly distributed, is met. The sale conforms with the RMZ requirements, which is a conclusion verified and confirmed by the Department as well as the FSC lead auditor in September 2020.

Although not germane to this particular sale because the RMZ was not narrowed, but nevertheless critical to correct, is the applicable standard for modifying an RMZ. When considering a narrowing of the RMZ, the BMP Manual states in numerous places that the BMPs may be modified so long as water quality is protected. The guidelines were designed to allow for flexibility in application based on site conditions and, as it relates to this finding, the BMP manual on Page 86 states - **“Using best professional judgment, the width of the RMZ and associated BMPs may be modified to ensure water protection or if water quality will not be impacted.”** SCS has attempted to read in a new, higher standard for modifying an RMZ that defies the overwhelming evidence to the contrary. The concise, plain language above provides the applicable standard for modifying an RMZ. To avoid future misapplication of the BMPs, the Department asks that SCS limit its interpretation of the BMPs to what is written in the document.

SCS's focus on a non-exhaustive list of factors to consider when narrowing an RMZ was an incorrect interpretation, overlooking a clear standard, and defying the intent and long-standing application of the Wisconsin's BMP for Water Quality Field Manual.

The certificate holder and numerous stakeholders developed the guidelines to provide significant flexibility in their application, while ensuring that water quality protection outcomes are met. The certificate holder, numerous partner agencies, the forest industry and the public have long been trained on, have implemented, and have

evaluated the success of the BMP guidelines for several decades. During this time, the proper focus has always been on water quality and professional judgment; not an inference that a rigid list of five factors controls the decision. Such an interpretation is contrary to reason and historical practice in applying these BMPs.

CAR 2021.2

CAR 2021.2 reaches no conclusion and does not provide the Department with an actionable decision. Strikingly absent from the CAR, and underlying investigative report, are any findings or conclusions that the Department is not meeting the aesthetic management objectives. Instead, only the following sweeping assertions are made:

- **“While the complaint review did not include a site inspection, it is likely that an overstory removal type of harvest. . . will generate adverse aesthetic impacts.”**
- **“... the harvest plan for tract 11-19, adjacent to Whitney Lake, is likely in conflict with the above excerpts from the NHAL Master Plan.”**
- **“The evidence suggests that the harvest prescription does not adequately incorporate ‘aesthetic management techniques’ nor adequately balances aesthetic objectives against silvicultural and production objectives.”**

The CAR lists a few select excerpts from the NHAL Master Plan but makes no connection between these sections and the elements/criteria/indicators that were not met at the harvest site. Notably, it also ignores the on-the-ground information available to SCS and the balancing of aesthetic objectives with silvicultural and production objectives. As such, this CAR is essentially conjecture based on potential unknown problems.

There is substantial evidence undermining SCS’s suspicion over potential aesthetic impacts. The lead FSC auditor on site in September 2020 identified no concerns regarding aesthetics or nonconformities with standards and noted: **“It is important to note that this was not a “clearcut” and the outcome would be a park-like appearance of scattered young and large trees retained on the site.”** A 100 foot RMZ, with 60 plus residual basal area, even distributed with large diameter, long-lived trees meets and exceeds aesthetics considerations for plan objectives.

Simply put, there is no basis for this CAR and it should be rescinded. The Whitney lake sale follows all Department processes and guidelines for implementing aesthetics. Nevertheless, if SCS wishes to maintain its position related to the aesthetic management techniques, this CAR must be amended to reach an actual conclusion and not rely vaguely on the aesthetic management techniques being potentially problematic. Additionally, the CAR should include an application of the relevant standards to the practices at hand, identifying the specific elements/criteria/indicators that are not met, such that the Department is given notice of how and why SCS reached this conclusion.

CAR 2021.3

The Department strongly states the management plan and operations of the Hodge Podge timber sale complies with all applicable federal, state, county, municipal, and tribal laws, and administrative requirements. Further, the Department rejects any assertion by SCS to the contrary, because CAR 2021.3 is dependent on the same evidence and factual inaccuracies as CAR 2021.1. These errors are discussed in the Department’s comments related to CAR 2021.1 above. Once the evidence and factual inaccuracies are resolved, there is no basis remaining for CAR 2021.3 and it should be rescinded.

Response to May 6, 2021 email from Grady referencing additional stakeholder comments

The additional stakeholder comments on other NHAL timber sales are not germane to the original complaint, investigation report, or 2021 CARs and should be handled separate from the Whitney Lake sale CARs. Furthermore, basing a CAR on an unconfirmed citizen comment alone, without allowing the Department adequate

time to respond and provide evidence is an unrealistic, flawed process. These specific comments have not been shared with the Department in any form, either by the stakeholders themselves or SCS. Additionally, SCS has not considered any evidence from the Department in response to these comments. Therefore, it is premature for SCS to issue any CAR at this point.

Conclusion

Time is of the essence as this timber sale is under contract and portions of the sale, not near the lake, were already harvested last year. There are serious consequences of issuing inaccurate and unfounded CARs as it relates to the Whitney Lake timber sale. Based on the information provided herein, the Department requests:

- 1.) CAR 2021.1 and 2021.2 and 2021.3 should be rescinded as the information used was factually inaccurate and misapplied. The Department has provided, and can provide additional evidence, that the 100 foot RMZ is intact and all requirements are met. The Department has provided detailed observations of the site which undermines SCS's unsubstantiated suspicion of potential aesthetic impacts and concludes aesthetics objectives are met or exceeded. Finally, all applicable federal, state, county, municipal, and tribal laws, and administrative requirements are being met.
- 2.) The Investigation report prompting the CARs should be amended immediately to correct the factually inaccurate and unfounded findings.
- 3.) That any new CAR's based on additional stakeholder comments only be issued after an objective review of the comments and relevant evidence, including an opportunity for the Department to respond. These comments have not been shared with the Department in full and therefore the Department cannot address the content and provide an assessment on their merit. Further, the comments are unrelated to the resolving of the specific Whitney Lake sale and investigation report.

Respectfully

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