



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Whether Land Located in the
Town of Germania, Shawano County, and Owned
by Much Road Monsters III, LLC, and under
Managed Forest Law Order No. 59-386-2004,
Shall Continue as Managed Forest Land.

Case No. DNR-14-039

FINDINGS OF FACT, STIPULATION AND CONCLUSIONS OF LAW AND ORDER

The Department of Natural Resources (DNR or Department), on May 16, 2014, issued "Managed Forest Law –Withdrawal Order # 59 386 2004" (Withdrawal Order) to Much Road Monsters III, LLC (the Petitioner), which ordered that a total of 40 acres owned by the Petitioner described in the above-captioned matter be withdrawn from the Managed Forest Law (MFL) and be assessed as general property as of January 1, 2015.

Subsequent to the original notice, settlement negotiations were entered into between the Department and Attorney Richard Olk on behalf of Much Road Monsters III, LLC (the Parties), and the Parties have reached a stipulated settlement to the above captioned matter.

Now, therefore, THE PARTIES AGREE TO THE FOLLOWING FINDINGS OF FACT, STIPULATION AND SETTLEMENT (Settlement):

FINDINGS OF FACT

1. Tigerton Lumber Company enrolled 722,500 acres of land in the Managed Forest Law (MFL) as Order No. 59 226 2004, effective January 1, 2004 (recorded as Document No. 588606 by the Shawano County Register of Deeds) which included the following lands (MFL Lands).

| Township 26 North, Range 11 East Section 32 NWNE | Parcel Identification No. | Open Acres | Closed Acres | Total Acres |
|---|---------------------------|------------|--------------|-------------|
| | 016-32120-0000 | 40.000 | 0.000 | 40.000 |

2. Tigerton Lumber Company transferred the MFL Lands enrolled in Managed Forest Law Order No. 59 266 2004 to Much Road Monsters III, LLC via a Land Contract recorded on March 14, 2012 as Document No. 679512 by the Shawano County Register of Deeds. A transfer of ownership pursuant to s. 77.88(2)(c), Wis. Stats. was not received by the Department of Natural Resources within 30 days.

3. In March, 2013, DNR Forester Eric Roers visited the MFL Lands and mapped and measured the vegetation to determine if at least 80% of the MFL Lands were producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year based on the requirements of s. 77.82(1)(a)(2), Wis. Stats.
4. Based on the field investigation, Forester Roers determined that only 73% of the MFL Lands are producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year causing the MFL Lands to be ineligible to remain in the MFL program because less than 80% of the MFL Lands are producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year in violation of s. 77.82(1)(a)(2), Wis. Stats.
5. On April 12, 2013, DNR Forester Roers sent a letter to Scott McCormick, owner of Much Road Monsters III, LLC, notifying Mr. McCormick that the MFL Lands would need to be withdrawn from the MFL program because less than 80% of the MFL Lands are producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year in violation of s. 77.82(1)(a)(2), Wis. Stats. In the letter, Forester Roers explained that the low site quality of the MFL Lands would not allow for successful planting of trees in order to bring the parcel back to a state where 80% of the parcel would be producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year.
6. On April 15, 2013, DNR Forester Roers sent a memo to Kristin Lambert, DNR Forest Tax Enforcement and Operations Specialist, requesting withdrawal of the MFL Lands owned by Much Road Monsters III, LLC enrolled in MFL Order No. 59 226 2004 because 73% of the MFL Lands are producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year.
7. In November, 2013, the Department of Natural Resources sent letters to landowners facing withdrawal from the MFL program. The letter notified landowners of the potential for legislative changes in 2014 which could positively impact their withdrawal situation and asked if landowners wanted their withdrawal held for processing until 2014. Scott McCormick, owner of Much Road Monsters III, LLC, requested for the withdrawal to be held until 2014. In 2014 the legislative changes were not passed into law.
8. As a result, on May 16, 2014, the Department issued Withdrawal Order No. 59 386 2004 (Withdrawal Order) to Much Road Monsters III, LLC which ordered that the MFL Lands owned by Much Road Monsters III, LLC be withdrawn from MFL and be assessed as general property as of January 1, 2015 under Wis. Stat. § 77.88 because the MFL Lands owned by Much Road Monsters III, LLC do not meet the MFL eligibility requirements in violation of s. 77.82(1), Wis. Stats because only 73% of the MFL Lands owned by Much Road Monsters III, LLC are producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year.

9. On June 12, 2014, the Department received a contested case hearing appeal from Attorney Richard Olk on behalf of Much Road Monsters III, LLC, requesting a contested case hearing for the Withdrawal Order.
10. On June 30, 2014, the Department granted the request for a contested case hearing solely as to whether or not 80% of the land subject to the Withdrawal Order was capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year. The request was denied for any other issues.
11. The Parties have discussed settlement options to resolve the proposed Withdrawal Order, and, after discussion and in the interest of avoiding litigation and conserving resources, have agreed to the following Stipulation to resolve the above captioned matter, as authorized by Wis. Stat. § 227.44(5).

STIPULATION

1. Much Road Monsters III, LLC agrees to withdraw its appeal of MFL Withdrawal Order No. 59-386-2004 and be subject to the full tax liability for withdrawal under Wis. Stat. s. 77.88(5) and (5m).
2. The Department will not seek to collect, and agrees that Much Road Monsters III, LLC does not have to pay the 25% yield tax on the volume of merchantable timber harvested on lands subject to MFL Order No. 59-386-2004 consisting of approximately 5 acres of cleared land.
3. The Department agrees that it will not issue a citation under Wis. Stat. s. 77.86(5)(b) for the timber harvested referenced in paragraph 2 above.
4. That Much Road Monsters III, LLC agrees to waive any appeal or review rights in equity or in law, and agrees not to challenge in any manner, in any future proceeding in equity or in law, the Settlement.
5. This Settlement applies to the Parties and all heirs, assigns, and successors, and shall run with the MFL order until the terms of the Settlement are fulfilled.
6. The Parties shall not seek to modify this Settlement or any tax assessment issued pursuant to this Settlement in any appeals under Wis. Stat. § 227.52 or in any other proceedings in equity or in law.
7. This Settlement is intended to be and shall be construed as a compromise for valuable consideration of the disputed claims of the Parties.

8. This Settlement is global in nature and, in conjunction with all of the documents and filings referred to and incorporated by reference into the Settlement, resolves all claims as between the Parties up to the date of the execution of the Settlement.
9. That if any provision of the Settlement is held to be void, invalid, or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Settlement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
10. That the Department's failure to enforce any provision of the Settlement shall not be construed as a waiver or limitation of the Department's right to subsequently enforce and compel strict compliance with every provision of the Settlement.
11. This Settlement shall be effective and binding upon the Parties upon signing by the undersigned, who hereby represent they have full authority to sign on behalf of the stated Parties.
12. The Parties may execute this Stipulation in two or more counterparts, which shall, in the aggregate, be signed by all Parties. Each counterpart shall be deemed an original instrument as against any Party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

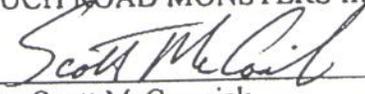
Dated: 1/13/15

DEPARTMENT OF NATURAL RESOURCES


By: Quinn Williams
Forestry Attorney
Bureau of Legal Services

Dated: 1/19/15

MUCH ROAD MONSTERS III, LLC.


By: Scott McCormick

CONCLUSIONS OF LAW AND ORDER

1. The Division of Hearings and Appeals has authority to hear contested cases and issue necessary Orders relating to withdrawal of Managed Forest Land designation pursuant to Wis. Stat. §§ 227.43 and 77.88(1).
2. Sec. 77.88(1)(b), Wis. Stats., authorizes the Department at its own discretion to investigate to determine whether the designation of land as managed forest land should be withdrawn. Department Forester Eric Roers initiated an investigation and determined that 80% of the following lands owned by Much Road Monsters III, LLC (MFL Lands) are not producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year in violation of s. 77.82(1)(a)(2), Wis. Stats., Wis. Stats.

| Township 26 North, Range 11 East | Parcel Identification No. | Open Acres | Closed Acres | Total Acres |
|----------------------------------|---------------------------|------------|--------------|-------------|
| Section 32 NWNE | 016-32120-0000 | 40.000 | 0.000 | 40.000 |

4. Much Road Monsters III, LLC owns the following land which does not meet the MFL eligibility requirements in violation of s. 77.82(1)(a)(2), Wis. Stats because 73% of the parcel is producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year. Lands within the following legal descriptions owned by Much Road Monsters III, LLC are required to be withdrawn from the Managed Forest Law program:

| Township 26 North, Range 11 East | Parcel Identification No. | Open Acres | Closed Acres | Total Acres |
|----------------------------------|---------------------------|------------|--------------|-------------|
| Section 32 NWNE | 016-32120-0000 | 40.000 | 0.000 | 40.000 |

5. Sec. 77.88(2)(am), Wis. Stats. requires the DNR to issue an order withdrawing land from managed forest land designation and assess against the owner a withdrawal tax under sub. (5) and the withdrawal fee under sub. (5m) if the land transferred does not meet the eligibility requirements under s. 77.82(1), Wis. Stats.
6. The Department of Natural Resources and Much Road Monsters III, LLC, in the interest of avoiding litigation and conserving resources, pursuant to Wis. Stat. § 227.44(5), have agreed to the attached Findings of Fact, Stipulation and Conclusions of Law and Order (the Settlement).

WHEREFORE IT IS HEREBY ORDERED, that the attached Findings of Fact, Stipulation, and Conclusions of Law and Order shall be adopted in their entirety.

IT IS FURTHER ORDERED that, pursuant to the adopted Findings of Fact, Stipulation, and Conclusions of Law and Order, the Department of Natural Resources' decision to issue Withdrawal Order No. 59 386 2004 be upheld, and that the following lands owned by Much Road Monsters III, LLC remain withdrawn from designation under the Managed Forest Law and be assessed as general property as of January 1, 2015:

| Township 26 North, Range 11 East | Parcel Identification No. | Open Acres | Closed Acres | Total Acres |
|----------------------------------|---------------------------|------------|--------------|-------------|
| Section 32 NWNE | 016-32120-0000 | 40.000 | 0.000 | 40.000 |

IT IS FURTHER ORDERED that, pursuant to the adopted Findings of Fact, Stipulation, and Conclusions of Law and Order, Much Road Monsters III, LLC be subject to a withdrawal tax under § 77.88(5) and a withdrawal fee under § 77.88(5m) which is due and payable to the Department of Natural Resources by the last day of February, 2015. If unpaid, the taxation district clerk shall enter the delinquent amount on the property tax roll as a special charge.

Dated at Madison, Wisconsin on January 22, 2015.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____

Jeffrey D. Boldt
Jeffrey D. Boldt

Administrative Law Judge