

**Division of Forestry Public Comment Cover Sheet****12/8/2021**

Program name: Forest Tax Law

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Document name: Forest Tax Law Handbook HB2450.5 (Standard Tier)

Bureau Director Approval: Jim Warren and Date: 11/29/2021

Summary:

**Appendix 600A of the Forest Tax Law Handbook** details how Forest Tax Law Staff are to use a voluntary compliance agreement (VCA) to document landowner actions to achieve compliance within mutually agreed to deadlines. This new appendix recommends VCA be used in documenting landowner and DNR agreement to implement a series of steps to regain compliance with MFL requirements and conformance with forest certification standards.

*The Forest Tax Law Handbook serves to digest the law relating to the forest tax programs and provide guidance for the administration and implementation of the Tax Law programs. The Handbook embodies statute and rule and provides greater procedural detail to ensure consistency in their application. As such, the chapters provided for your review have been updated to reflect changing regulations and operational efficiencies, as summarized above and detailed on the Stakeholder Input Page.*

<b>Updated Content Title</b>	<b>Content to be Replaced</b>	<b>Summary of Changes</b>
APPENDIX 600: Voluntary Compliance Agreement	This new Handbook appendix rescinds and replaces the Interim Guidance document, Voluntary Compliance Agreement (VCA) for Compliance and Conformance	Editorial changes to the interim guidance document were made for enhanced clarity.

Comments due: 01/19/2022

## Appendix 600 A

## VOLUNTARY COMPLIANCE AGREEMENT (VCA)

**I. PURPOSE and SCOPE**

The VCA is a tool to help landowners complete corrective and mitigation measures successfully and demonstrate satisfactory progress towards compliance to the Department. The VCA accommodates greater detail and more variety of corrective measures than afforded by the management plan amendment process. This guidance provides instructions to Tax Law Staff on how to create, monitor and close out voluntary compliance agreements (VCA) with cooperative landowners, and recommends they be used in documenting landowner and DNR agreement to implement a series of steps to regain compliance with MFL requirements and conformance with forest certification standards, principles and criteria. Staff and partners affected include Tax Law Staff, primarily Tax Law Forestry Specialists, and landowners.

Tax Law Section Staff will use VCA's to secure and document landowner agreements to take steps resulting in restored compliance and conformity. If the TLFS chooses another method to achieve purpose and results of regained landowner compliance and conformance, they should be able to justify their choice.

**II. POLICY**

A VCA is appropriate when there is a documented violation of MFL requirements and/or nonconformity with forest certification standards, there are actions that can be taken to regain compliance and conformance, and landowners are cooperative and indicate they want to regain compliance and conformance. Using a VCA is strongly recommended for documenting multi-step corrections to nonconformance and non-compliance to cement agreement with cooperative landowners. Staff who wish to use other methods to document agreements to implement corrective actions should be able to justify their choice.

The VCA should be used in conjunction with amending the mandatory practices in the plan as appropriate. An active VCA means that further compliance activities or removal from the certified group are put on hold as long as the landowner complies with the VCA. The steps to successful compliance and enforcement are followed simultaneously, meaning that the landowner's failure to adhere to the terms of the VCA results in the Department moving forward with the next step in compliance and conformance, whether that is sending the notice of investigation (NOI), or forwarding the enforcement packet and recommending involuntary withdrawal or recommending removal from the certified group. The result of failure to adhere to the VCA without renegotiation is removal from the certified group, receipt of a NOI with recommended enforcement actions, or both.

**III. DEFINITIONS**

**"Compliance"** means adherence to applicable laws and regulations as supported by evidence.

**"Conformance"** means demonstrable adherence to certification requirements and standards as supported by verification, either through field observation or applicable document review.

**IV. PROCEDURES**

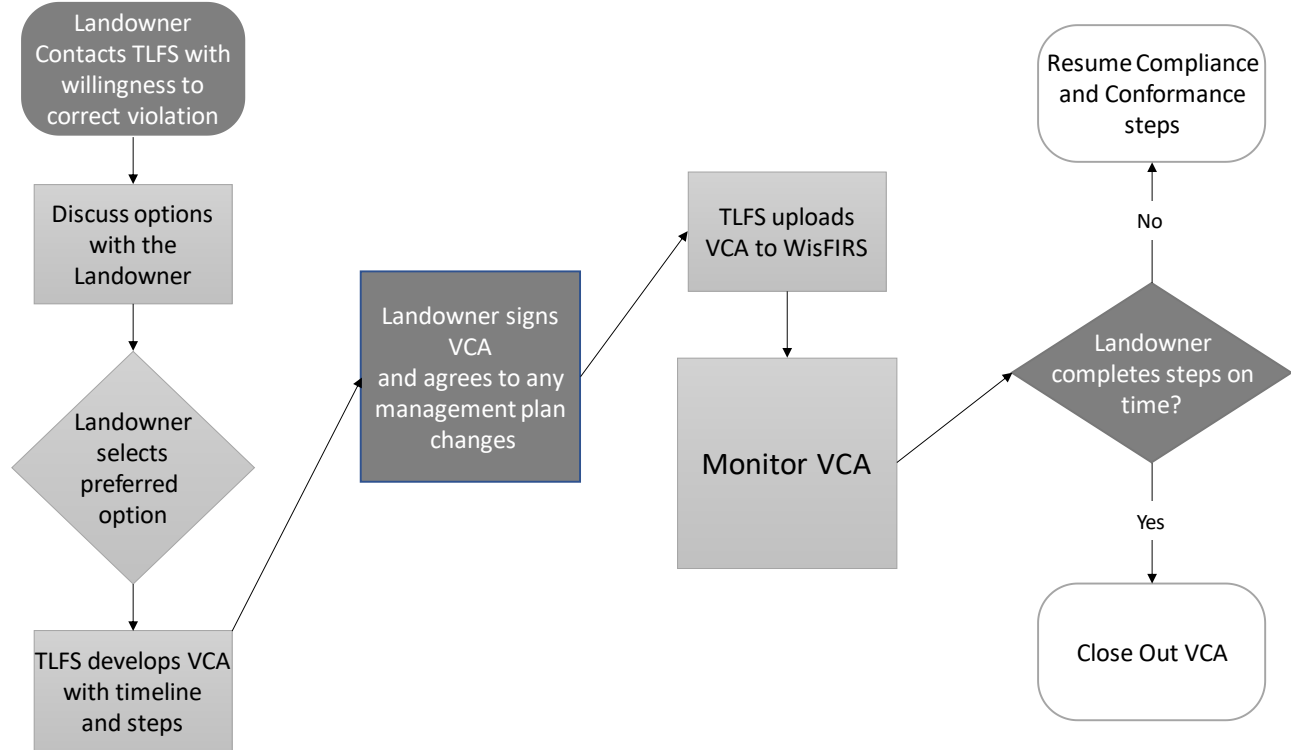
**MFL Violations:** All mandatory practices to address MFL violations must be reflected in an amended management plan. VCAs provide detailed steps on the actions required to complete the practice(s) which are not typically available to a landowner in their management plan. For certification nonconformities, where there is no corresponding MFL violation, the management plan should not be amended, and only membership in the certified group is at stake.

**A. Developing a VCA**

1. Identify and describe the violations as issues of compliance with MFL requirements, forest certification conformance or both.
  - a. Compile field notes, anonymous complaints, audit finding reports, and photos, as applicable.
  - b. Identify whether each violation is a MFL compliance issue, a forest certification nonconformity, or both.
2. Identify options for resolution of each issue
  - a. All reasonable options should be presented to the landowner
  - b. Work with your Team Leader to include additional subject matter experts (e.g., silviculturist, hydrologist, forest health).

3. Inform the landowner of the violations, non-conformities and options for resolution in the “1st Stepped Enforcement Letter” to the landowner.
  4. If the landowner is responsive, and a VCA is deemed appropriate, schedule a meeting with the landowner(s) to discuss options.
    - a. Discuss violations of MFL requirements and nonconformities with forest certification
      - i. Provide documentation, conduct site visit, or both, as appropriate, with landowner
    - b. Present options for resolution
      - i. Landowners may also bring forth options for resolution. Work with your Team Leader to include subject matter experts, as needed, to review such options and determine its acceptability.
    - c. Landowner selects preferred option for resolution
  5. Using the VCA template, to document your discussion with landowner and formalize landowner’s acceptance of the selected option for resolution.
    - a. For MFL Violations involving Mandatory Practices: Amend the management plan to include the appropriate mandatory practice(s). You may need to use the “Other” category (e.g., for soil conservation practices).
  6. Complete the VCA-Cover Letter template to inform landowners that they need to sign both copies of the Department-signed agreement and return one to the Department. The VCA is considered active upon receipt of the dual signed VCA by the Department. Landowners are expected to complete the stipulated actions by the indicated dates.
    - a. For MFL Violations involving mandatory practices: Landowners must also mutually agree to their amended management plan
  7. Upload the dual signed VCA to WisFIRS under “correspondence”
- B. Monitoring a VCA: Check-ins and evidence of completion should be documented for each step detailed in the VCA; depending on the scope of the project, you may choose to conduct site visits to observe and evaluate progress. You may choose to add a reminder to your Outlook calendar to check-in around the expected completion date of each step.
- C. Amending a VCA: VCA’s may be amended by mutual agreement of both parties, if amendments continue to reflect a landowner’s active cooperation in regaining compliance and conformance. Use discretion in documenting mutual agreement to amend a VCA.
- D. Close-Out of a VCA:
1. Field verification
    - a. In most cases, a site visit will be needed to verify resolution of the violation/nonconformance. In some situations, landowners can provide photos or other documentation to document resolution.
  2. Complete VCA-Completion Letter template to inform the landowner that they have regained compliance/conformance and the VCA is now considered complete.
    - a. For MFL Violations: Mark the mandatory practice as ‘complete’ in WisFIRS

E. VCA Process diagram (Figure)



V. **BACKGROUND**

Forest Certification audit results revealed an opportunity to improve our methods of documenting and closing out corrective actions. The VCA was developed with corrections of BMPs for water quality and other management plan violations and non-conformities in mind, but its utility across violation types quickly became apparent. Its use was piloted in responding to the 2019 Forest Certification External Audit findings, and further formalized as interim guidance in Fall of 2020. The VCA is designed to be used at any point in the compliance and conformance process when there is a violation or nonconformity and the landowner is willing to commit to correcting the violation or non-conformity.

A. Examples of when a VCA can be used (Table)

Violation	Sample VCA steps	WisFIRS “Other” Mandatory Practice Sample Language
Active, ongoing erosion on forest roads	Install diversionary structures, protect/armor road, stabilize and revegetate	Control active and prevent future soil erosion according to specific management recommendations prescribed or approved by a forest hydrologist, forester, or other resource professional.
Landowner has a stand with a failed plantation. The stand is capable of being productive but must be replanted to meet the 80% productivity requirement	Establish a realistic timeline for the site to be replanted.	
Multiple transfers needed to match up WisFIRS ownership records	File all transfer forms within agreed timeframes	

B. Timeline – ID of violation to enforcement action (Table)

<b>Recommended Timeframes</b>	<b>Step</b>
N/A	ID or notification* of potential violation.  *inform TLFS within one week of potential violation (DNR staff)
Within 15 working days	TLFS determine if sufficient evidence to proceed.  Send initial stepped enforcement letter .
Within 10 working days	LO Response required.  Send second stepped enforcement letter.
Within 10 working days	LO Response required.  Send NOI.  Request decertification (certified group nonconformance only).
Within 10 working days	Request enforcement action.  Request decertification.
Within 10 working days	TLCS review and respond to request.

**VI. REFERENCES and RELATED DOCUMENTS**

Reference used in Background: “Process steps for identifying, documenting, correcting and closing out noncompliance and nonconformance issues” (from draft Chapter 221 of Tax Law Handbook).

**VII. DOCUMENT HISTORY**

This version Rescinds and Replaces	-Voluntary Compliance Agreement (VCA) for Compliance and Conformance Interim Guidance
Summary of Changes from previous version	-Editorial changes for enhanced clarity