

WEST VIRGINIA DIVISION OF FORESTRY

Cooperative Forest Legacy Program

Conservation Easement Fact Sheet

This information is for guidance and general planning purposes. Only you and your lawyer should make the decisions on specific matters. An easement must be carefully drafted to ensure that the terms allow forestland owners to expand, contract or otherwise alter their forestry practices in order to adapt to changing silvicultural needs and economic conditions. Donating or selling an easement may not always be a financially viable option for certain landowners. *Consider it carefully.* Conservation easements can be wonderful, but they are forever and they are legally binding on all future owners of the land.

What Is A Conservation Easement: In this program, a conservation easement (CE) is a deed restriction landowners voluntarily place on their forestland to assure that the property will be perpetually preserved in its forested condition. It authorizes a government agency, the West Virginia Division of Forestry (DOF), to monitor and enforce the restrictions set forth in legal terms in the easement document. CE's may be donated or sold. They are tailored to each property and each landowner's desires. The entire property or just a portion of it may be included. The final document must be amiably agreed to by each party. In general, forestland easements are designed to keep land available for forest product production forever.

Are There Restrictions? In general, forestland easements prevent subdividing or fragmenting the property. They also prevent any use inconsistent with traditional forestry practices. Easements can allow the cutting off of lots for family members, but these are small, one to two acres, and located in the least intrusive areas. Landowners must implement forest stewardship plans developed by a registered professional forester according to the landowner's goals. In general, timbering is required to keep the forest land viable and contributing to the fringe benefits, such as wildlife, that are a valuable part of forestlands. Conservation easements can be modified or terminated by a court of law by the exercise of eminent domain.

Retention of Rights: Landowners granting or selling conservation easements retain title to their property and can continue to practice forestry in all aspects mentioned in the forest stewardship management plan.

Easement Value: The value is generally the fair market value of the property minus its restricted value as determined, in this program, by an appraiser qualified under the Uniform Appraisal Standards for Federal Land Acquisitions.

Are There Tax Benefits: Be certain to consult your tax adviser, but you may qualify for certain tax deductions. Donated easements that meet IRS Code 170 (h) criteria are treated as charitable gifts and the donor can deduct up to 30 percent of their adjusted gross income in the year the gift was made. Donations in excess of the 30 percent can be saved and applied to federal income tax liability for the next five years. The state income tax provides similar benefits. Corporations are limited to a 10 percent donation. The donation or sale of an easement also reduces the value of the land for estate

tax purposes, since the restricted value is lower than the fair market value. The law changes constantly. It is necessary to seek professional help before making final decisions.

Are Easements Regulated by State Law? The State Legislature adopted the Uniform Conservation Easement Act several years ago. This Act is advertised as model legislation that allows qualified agencies and organizations to accept, acquire and hold less-than-fee simple land. The important third party authority of this law is discussed elsewhere in this kit. *Please read it carefully.*

Who Prepares The Conservation Easement? Preparation of the easement is the responsibility of the landowner and the landowner's attorney in conjunction with the State Forester and the DOF legal counsel. The final document must be amiably agreed to, and the landowner must be satisfied before any easement is finalized.

Items to Be Included in a Conservation Easement:

- a. Title mentioning "Conservation Easement."
- b. Grantor's full name, marital status and address.
- c. Grantee's full name and address.
- d. Complete legal description of the property and complete legal description of the part affected by the easement if such is different.
- e. One or two sentence conveyance language.
- f. Owner's purposes and commitments in making the easement.
- g. Conservation values to be protected.
- h. Prohibited activities.
- i. Permitted uses retained by the owner.
- j. Owner's conference of right of entry and right to preserve on DOF.
- k. Enforcement.
- l. Acts beyond owner's control.
- m. Notices.
- n. Remedies.
- o. Ownership costs and liabilities.
- p. Cessation of existence.
- q. Termination.
- r. Miscellaneous.
- s. Entire agreement statement.
- t. Signature block.
- u. Notary acknowledgment.
- v. Exhibits or attachments.

An easement example is included elsewhere in this kit, but it is strictly for format reference. *Your easement should be tailored to your property and desires.*

Participation in Division of Forestry Programs is open to all eligible applicants without regard to race, color, religion, national origin, age, sex, marital status, or disability. To file a complaint of discrimination write: WV Division of Forestry, 1900 Kanawha Blvd., East, Charleston, WV 25305. The WV Division of Forestry is an equal opportunity employer.