

# WEST VIRGINIA DIVISION OF FORESTRY

## Cooperative Forest Legacy Program

### Information Brief

#### General Information:

Every landowner has a great responsibility to the land and to future generations. This includes using the very best forest management practices and doing what can be done to leave the land for others to enjoy as he has. One way of protecting the land, including its wildlife, open space, aesthetics, biodiversity, etc., is to prepare a conservation easement that keeps the land as a working forest while protecting it against development into housing subdivisions, second homes and industrial sites.

A working forest conservation easement allows the owner to practice professional forestry, including continuing to live on the property if his home is there, even cut off lots for the children, but it also protects permanently against development which preserves the natural amenities. It is, however, important to recognize that each easement has restrictions and that each easement is different. There is no “one size that fits all.”

The assistance to forestland owners is rather recent. The U. S. Forest Service (USFS), under indefinite authority provided the U. S. Secretary of Agriculture by the Cooperative Forestry Assistance Act of 1978, as amended via language in the 1990 Farm Bill established a Forest Legacy Program (FLP) to protect environmentally important forest areas. It does this by purchasing the land in fee or by purchasing a conservation easement that buys only certain landowner rights. The 1996 Farm Bill provided the U. S. Forest Service with authority and funds to make grants to participating States for the irrevocable purchase of lands or conservation easements on lands in areas *where there is pressure to convert environmentally important forest areas (EIFA) to other uses.*

In April, 2001, West Virginia’s Governor selected the West Virginia Division of Forestry (DOF) as lead agency for the FLP. The USFS, through the Division’s auspices, then contracted with the consulting wing of a conservation non-profit organization for a statewide Assessment of Need (AON) for the program. The AON evaluated private forest land in the state on the basis of productivity, health, development pressures, level of professional forest management and citizen values as a basis for program initiation. The contractor also designated the boundaries of four legacy areas, the priority ranking of which was developed by the Division’s State Forest Stewardship Coordinating Committee (SFSCC) as it identified eligibility criteria and priorities to be considered when selecting lands and interests in lands for purchase under the program. Data from the studies, including the final report(s) is on file at the DOF headquarters in Charleston. The State Forester has accepted that the AON justifies a need for the program, has accepted the Forest Legacy Areas (FLA) identified by the contractor, and has caused a procedural rule to be filed for implementation of the program.

Landowner participation in the FLP is entirely voluntary. However, the transfer of title to the land or to a portion of the rights usually associated with the land in the form of a conservation easement to a governmental entity (DOF) is *perpetually irrevocable* under the Congressional mandate that established the program. It is intended that the program be reviewed in five (5) years, but program changes will not be binding on lands already placed under the program unless a mutually agreed upon modification of the original deed agreement has been negotiated with the current landowner.

All conservation easements and land acquisitions are purchased at no more than fair market value *as determined by standardized federal appraisal methods*.

The government agencies involved in the FLP understand that one of their foremost obligations is to protect the rights of citizens and since a conservation easement is considered a restrictive covenant, it is vital that every word be thoroughly scrutinized and understood. It's important to know that the State Legislature in 1995 adopted the Uniform Code of Conservation Easements (Chapter 20, Article 12 of the West Virginia State Code) which legally provides that a third party, *non-profit organization* can, under several unspecified conditions, monitor and enforce a conservation easement if the third parties name has been listed in the document. For example, if the two parties signing the easement as grantor and grantee are in agreement that the contract is working as initially intended, but the third party whose name is listed believes otherwise, then the third party can legally sue to impose its idea of enforcement. The easement can, however, contain language that forces the third party to pay all legal costs if its lawsuit is unsuccessful.

The landowner should also know that any language in the easement stating that another use can supercede production could be used at some later date to stop resource-based production on a working forest. Consequently, to totally assure that forestland under the easement is to remain a working forest, it is necessary to state that timber management and harvest is paramount to other natural resource values as long as the production activity is being conducted satisfactorily under Best Management Practices (BMP's) or other pertinent laws or regulations.

Also, it should be stated in the document that if in the future there is dispute as to the interpretation of word meanings the resolution shall be legally construed to be in favor of the grantors premise.

Under the FLP, all conservation easements and land acquisitions are purchased at no more than fair market value *as determined by standardized federal appraisal methods* and subsequent negotiation.

### **Questions to Consider before making application to the Forest Legacy Program**

- 1. Does the property possess forestry and at least two other natural values such as special scenic, biological, ecological, outdoor recreation, quality water, or historical-cultural values?***
- 2. Is the landowner committed to preserving the conservation values of the property?***
- 3. Has the landowner considered combining their project with other potential Forest Legacy Projects within close proximity to increase their chances for a higher national ranking?***
- 4. Is the landowner aware that they must make a 25% match to the governments 75% match of the cost of the fair market value of the property?***

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.