

WEST VIRGINIA DIVISION OF FORESTRY

Forest Legacy Program

Frequently Asked Questions

The following questions are those that have been most asked as the program has been under development. Also see the provided Fact Sheet and Brochure.

How is the program being financed?

The program is a 75:25 percent matching program. The 75% is from the U. S. Congress via the U. S. Department of Agriculture's Forest Service. The 25% comes from the individual(s) that own the land being offered to the program or from other private sources.

Is there any assurance that the program will continue? What if I make my timberland available and the program is terminated? Will my land still be protected?

No one can assure that the program will continue to be financed as it depends entirely on annual Congressional appropriations. However, lands placed under the program are guaranteed to be protected in perpetuity.

Briefly, what is an easement?

A landowner has many "rights" to his property – mineral rights, oil and gas rights, coal rights, water rights, development rights, timber rights, access rights, etc. The legal document used to give or otherwise transfer total or partial control of one or more of these "rights" to someone else is called an easement.

What is a conservation easement?

A special form of easement in which a forestland owner donates or sells certain surface rights on his property to a government agency or in special cases to a conservation organization qualified under IRS law to hold the legal title and enforcement rights.

What qualifies a conservation organization?

It must be a public charity as described under IRS Code Section 501 (c) (3) with proven time and financial commitment to protect the property.

If I give a conservation easement on my timberland to the WV Division of Forestry, can it be transferred to a conservation organization?

Not unless the Division of Forestry ceases to exist and you can provide in the easement that it will go to the successor agency.

Does the forestland owner retain the right to use the property if he provides a conservation easement?

The property owner retains the ownership of any “rights” not sold or given away in the easement. He can use the retained rights in any fashion he desires, including selling them.

What if the mineral rights have been sold and the forestland owner only owns the surface?

The property would not be eligible for enrollment in this program if known coal or other mineral deposits, i.e., limestone, that might be surface mined underlie the property. However, underground mine shafts would be allowed. Oil and gas development, which is possible throughout all of West Virginia, and which only utilizes the space for a road to the well site and an acre or so for the well site might be allowed, but the property owner should see that the matter is specifically mentioned in the easement.

How does a landowner know that coal or other mineral deposits exist on his or her property?

The landowner must procure a geologic report on the property.

What qualifies a property for a forest legacy conservation easement?

It must be environmentally important forestland located in a Forest Legacy Area proven to be in danger of development (non-traditional forestland uses) as defined in the documentation establishing the forest legacy program and it must qualify under Section 170(h) (4) (A) of the IRS Code. In general, the code allows preservation for outdoor recreation, scenic enjoyment and education of the general public, the protection of natural habitat, and the preservation of area or structures classified as “historic.”

How long does a forest legacy conservation easement last?

Forever, unless changes or termination are ordered by a Court of competent jurisdiction. As a general rule, changes seldom occur.

If I later sell, will, give or transfer my property to someone else, how will this conservation easement affect them?

Anyone who purchases or otherwise receives an interest in the property must comply with the terms of the easement the same as the previous owner.

What if no one knows about the easement?

The easement is recorded in the County Court House in the County Clerk’s office and thereafter is part of the record.

Are there tax breaks to be realized from giving or selling an easement?

It's necessary to ask your tax advisor. However, the decrease in value of your land before and after the easement could decrease your local and county taxes and could also help with estate taxes. You must be able to deduct the value of such a donation from your federal income tax if you donate all or part of the property. However, the maximum charitable donations are set by law and it does change.

Can I sell or give a conservation easement if I have a mortgage on the property?

Each case has to be answered separately. A landowner might sell the easement in order to get money to pay part or the entire encumbrance.

How much money will I receive for a conservation easement?

Again, each case is decided differently. The transaction must be for the value that a willing seller, who doesn't have to sell, will get from a willing buyer, that doesn't have to buy. The landowner must be amiably satisfied. This price is decided by a land appraiser qualified to work under the Uniform Appraisal Standards for Federal Land Acquisitions. The landowner does not have to sell nor is the WVDOF obligated to purchase.

Who is responsible for property line location and survey map acceptable for recording in the respective county courthouse?

The landowner is responsible.

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.