Forest Conservation, Conservation Easements, and the DOF Easement Program

5th Annual Forest Landowners’ Retreat
Holiday Lake 4-H Educational Center
April 27, 2013
Virginia’s Forests

What image comes to mind when you think of Virginia’s woodlands?
Current Forest Cover

- 15.7 million acres
- 62% forested
Who owns a majority of Virginia’s woodlands?

- Government?
- Private Industry?
- Private families?
Family Forest Landowners Hold the Key

- 373,600 family forest landowners
  - Control 10.1 million acres of VA’s forestland (64%)
  - Control 75% of Virginia’s timber supply

- Family forest landowners
  - 2/3 aged 55 years and older
  - 70% of woodland in private ownership

- Unprecedented future intergenerational transfer
  - Easements are an option
VA Family Forest Landowners

“Strong Feelings”

• Care about their woods
• Desire to do the ‘right thing’
• Want to leave a woodland legacy

**YOU** are most important part of conserving Virginia’s forest resources.
Challenges of Family Forest Ownership

- Intergenerational “disconnect”
- Diminished profitability
- Burdensome tax structures
- Changing societal values
Forestland Base is Decreasing

- ± 16,000 acres annually
  - ± 600,000 acres since 1977
- 75% due to development
  - Most from family-owned forestlands
Family Forests Becoming More Fragmented

- LESS THAN 100 ACRES
  - 95% of ownerships
  - 47% of forest acreage

- Average size = 27 acres
The Conversion Progression

- Parcelization
- Fragmentation
- Conversion
Forest Parcelization

- Division of large, contiguous forest tracts into smaller properties
- Generally tied to ownership
- Promotes
  - Fragmentation
  - Conversion
Forest Fragmentation

- Can be a reflection of:
  - Ownership
  - Land cover
  - Land use

- Often leads to conversion

- Tends to isolate and separate forested tracts from each other
  - Active forest management less likely
  - Forest no longer looked at as a ‘whole’
7,500 Acres
Continuous Forest Cover

Derived from
Year 2000
Landsat Satellite Image Analysis
FOREST PARCELIZATION

Ownership Patterns affect Forest Fragmentation

7,500 Acre Forest Patch

328 Ownership Parcels
22 Acre Average

Range:
0.07 Acre to 518 Acres
Conversion
Change from forest use to non-forest use
Conservation Tools

What is Your Objective?
- Minimize tax liabilities?
- Maintain family ownership?
- Revenue stream?
- Environmental ethic?
- Legacy?
Comparative Threat to Conversion

No Protection
FSMP

Land Use Taxation

Conservation Easement
PDR
Donated Land

Ag & Forestal District

Daily
1 Year

4 – 10 Years

Perpetual

HIGH
Low

Relative Susceptibility to Conversion
Conservation Easements
What is a Conservation Easement?

• A *voluntary* land preservation agreement between a landowner and an easement holder.

• An easement *in gross*, meaning that it does not benefit a specifically identified property owned by the easement holder like a Right of Way.

• Landowner gives up “sticks” from their fee simple bundle of sticks.

• In order to “qualify” for tax benefits the easement MUST last in *perpetuity*.
WHY WOULD A FOREST LANDOWNER DONATE AN EASEMENT?

The first and great reason(s):
Landowner loves his or her land and wants it to stay rural.
Forest landowner wants his or her forest to remain a forest
Landowner wants to keep a place for wildlife
Parents want a family place to be able to stay in the family

The other reason: Significant tax benefits
Preserving Open-space: protecting the forest and farm land base from suburban sprawl and urbanization.
Easement Characteristics

• Voluntary
• Flexible to protect unique land features and allow for individual situations
• Perpetual (required for tax benefits)
• Cost effective: keeps land on tax rolls
• Significant tax benefits
• Community benefits: easements protect air quality, soil, water quality, rural character
Conservation Easement Requirements

For a charitable gift to be tax deductible, normally you must contribute your entire interest in the gifted property. A Conservation Easement is one of a few exceptions to this rule. According to section 170(h) of the IRC to qualify the donation must be:

1. A “qualified” real property interest given to,
2. A “qualified” organization, and
3. Exclusively for “conservation purpose”
What is a “Conservation Purpose”? 

- Protection of land for public outdoor recreation or education;
- Protection of natural habitat for fish, wildlife, or plants;
- Protection of historic structures or land; and
- Protection of ‘open space’ with significant public benefit for either scenic enjoyment or pursuant to government policy (which includes farm and forest protection).
Easement Structure

Recitals – reasons for protecting property
Restrictions – terms to protect conservation values
Responsibilities – of parties to uphold terms
Conservation Easement Terms

Terms vary depending on:

- Property’s size
- Physical characteristics
- Conservation values
Divisions
Development
Dwellings
Outbuildings
Farm buildings
Miscellaneous structures
Forest or farm management plan
Stream buffers
Conservation Easement Myths

- You have to grant the public access to your land.
- You can’t sell your land.
- You can’t continue to farm, hunt, fish or harvest timber on your land.
- You can’t pass your land on to your kids.
- One size fits all.
CONSERVATION EASEMENT

INCENTIVES
<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before Easement Value:</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>After Donation Value:</td>
<td>700,000</td>
</tr>
<tr>
<td>Easement Value:</td>
<td>$300,000</td>
</tr>
</tbody>
</table>
Easement Tax Benefits

**Federal**
- Income Tax Deduction
- Estate Tax Relief

**State**
- Income Tax Deduction
- Land Preservation Tax Credit

**Local**
- Automatic Land Use Enrollment
- Reduced Property Tax
Estimated Income Tax Benefits
(Hypothetical Example)

**Federal Deduction**
- $300,000
- Use rate: 50% of AGI
- Carry forward: 15 + 1 years

**Virginia Deduction**
- $300,000
- Use rate: 50% of AGI
- Carry forward: 15 + 1 years

**Virginia LPTC**
- $120,000
- 40% of easement value
- Transferrable or saleable
- Carry forward: 10 +1 years
Land subject to a conservation easement may qualify for two estate tax benefits:

1. The easement will reduce the value of the land in the taxable estate.

2. In addition, as much as 40% of the value of the land (up to a $500,000 cap) may be excluded from the estate. This is a recurring benefit.
Estimated Estate Tax Benefits
(Hypothetical Example)

Taxable Estate was $1,000,000

With easement is $700,000

Possible Exclusion $280,000
(Up to 40% of protected land’s value, recurring)

Now Estate is taxed at $420,000
Land subject to an easement in a locality that has adopted the “Land Use” valuation system shall be assessed as “Open Space” and will be taxed at “Use Value”.
DOF Conservation Easement Program
Focus on Working Forests

To provide:
  Additional forest conservation option to family forest landowners

To protect in perpetuity:
  Interest & potential to manage woodlands
  Sustained flow of natural goods and benefits
"And this here is a tree. They say that it will grow even larger with proper nourishment..."
Forest Conservation Value Map
DOF Easement Criteria

- 50 contiguous acres
- 75% forested
  - 100 acres on larger properties
- High ‘Forest Conservation Value’
DOF Easement Guidelines - Divisions

- Best to remain intact
- <125 acres
  - No divisions
- >125 acres:
  - 1 per 125 acres
  - Maximum of seven divisions (eight parcels)
DOF Easement Guidelines - Structures

Dwellings
- Up to 2 per permitted parcel
  - Individual: 4000 sq. ft.
  - Collectively: 6000 sq. ft.

Outbuildings
- 2000 sq. ft.

Farm buildings
- 4500 sq. ft.

Misc. Structures
- 150 sq. ft.

Footprint
- Ground area

Location
- Building envelope
- “No build” areas
- Prior approval
DOF Easement Guidelines - Forest Management

Forest Stewardship Management Plan

Harvesting Activities
- Notifications
  - Preharvest plan
- BMPs mandatory

Forest Preservation
- 75% of existing forest
DOF Easement - The Process

Step 1: Referral & initial property visit
Step 1A: Obtain preliminary appraisal
Step 2: Confer with mortgage holder (if applicable)

Decide to proceed with easement
Step 3: Retain attorney
Draft easement
Title insurance commitment & binder

May be Steps 3A, 3B, 3C……

Step 4: DOF performs Baseline Documentation Report (BDR)
Step 5: DOF Review & Approval

Team
▼
ADFC
▼
Division Director
▼
OAG

Step 6: Signatures

Step 7: Record easement

• Allow up to 6 months to complete
• Annual monitoring
Deciding to Convey an Easement: “Heirloom Scale”

1 = My woodland is one of the financial assets in my portfolio and nothing more.

10 = My woodland is priceless family heirloom to be protected at all costs.

100% Financial  Continuum of Desire to Convey an Easement  100% Philanthropic
SAVE THE DATES!!

- 5th Annual
- August 13th & 20th, 2013
- Fredericksburg
- More details soon!
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THANK YOU!!