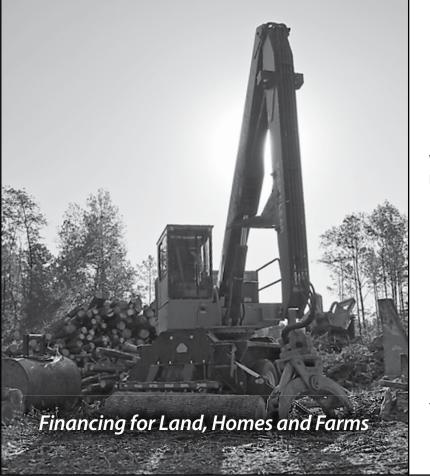
# Virginia Forests

# Legacy & Estate Planning for Virginia Forest Landowners



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# **Virginia Forests**

Winter 2017 Volume LXXII, Number 4

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### VFA Mission:

We promote the stewardship and wise use of the Commonwealth's forest resources for the economic and environmental benefits of all Virginians.

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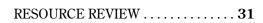


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ON THE COVER: Landowners have a comprehensive resource for education and information to help them plan for the future of their property through the Generation NEXT program from Virginia Cooperative Extension and Virginia Department of Forestry. Generation NEXT logo design by Lesha Berkel.

#### **UPDATE FROM THE EXECUTIVE DIRECTOR**



Paul Howe, VFA Executive Director, recently conducted a prescribed fire on family land in South Carolina.

# Combat Mode

A nother Virginia General Assembly has come and gone. This year, VFA's efforts out of necessity had to focus on fixing items in the proposed state budget, including our work to eliminate a proposed fee on loggers and to reinstate funds cut from the Reforestation of Timberlands Program. We reported on the specifics in our e-news and online Action Alerts that you received during January and February—and it appears we did some good. Since I am penning these comments in late February and can only predict final outcomes at this time, you will be able to check our legislative results using the VFA website (vaforestry.org) and our monthly newsletters emailed to members in the coming months.

The General Assembly is a hectic time, with hundreds of legislators, their assistants, state workers, lobbyists and public visitors scurrying about and doing their work to represent their constituents and interests. The players go into what I half jokingly call "combat mode." It can be both exhilarating and exhausting, intense with tempers strained, and overwhelming, too, if you let it. So it is encouraging for me when VFA leaders and members stay tuned in and supportive regarding the issues our organization is diligently working on for the betterment of



(I. to r.)Virginia House of Delegates Appropriations Committee Chair Chris Jones with VFA Board member William Snyder. One of many VFA visits with legislators during the General Assembly to ward off a logger fee and to gain back funding for the Reforestation of Timberlands Program.



(I. to r.) Senator Ben Chafin, Governor McAuliffe, and Secretary of Agriculture and Forestry Basil Gooden recognizing the vital fire prevention and suppression work of the Department of Forestry, with DOF emergency response equipment on display in front of the General Assembly building.

the forestry community, whether for woodland owners, forest product businesses, loggers, consulting foresters, the Department of Forestry, and many others. It's all about standing together as best we can.

A few snapshots from more pleasant moments at the General Assembly are provided here. I look forward to coming out of "combat mode" and to "at ease" visits with you during the rest of this year!

VFA Members stay up-to-date with association events, get involved in legislative actions from state and federal government, and learn about the issues that impact forest landowners and forest industry at our website. Visit www.vaforestry.org today!



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The Virginia Forestry Association, chartered in 1943, is a non-profit, non-governmental, privately-supported association of forest landowners, wood product industries and businesses, loggers, foresters, forest use groups, and conservation-minded citizens. New board members are elected annually by mail ballot to all VFA members. To ensure a balanced geographical representation, the state is divided into five areas and one "at large" category. Any VFA member may be a candidate for the board.

#### **PRESIDENT'S COLUMN**

# New Advisory Council to Help Improve Efficiency and **Response to Forestry Issues**

ometimes when you think things are humming along smoothly, you suddenly hit a pothole and find yourself scrambling to stay on course. That's sure been the case for forestry this year with regards to the state budget. There had been past cut-backs and still more to come, but we hoped the worst was behind us. We've had to work hard alongside our partner associations to hang onto recent gains in the Reforestation of Timberlands Fund and develop strategies to ward off fees affecting woodsrelated operations. All of this while we championed the dedicated work of the Department of Forestry and lobbied for the financial resources they need to sustain their mission. No rest for the weary!



**Carolyn Moon** 

The General Assembly has concluded another session where our legislators submitted, reviewed, argued over, amended and voted on a vast number of bills. Our Executive Director Paul Howe keeps a close eye on the proceedings and is quick to rally the forces when something comes along that can impact our forest resource. Advocacy for our members is the top priority for VFA. Sometimes the stance we need to take is quite clear—the association as a whole is definitely for or against the bill being brought forward. But sometimes things are not so clear: We hear from members on both sides of the fence on some issues, and VFA must take a neutral stance. Receiving input from members is the sign of a healthy organization, and it helps Paul and the VFA Executive Committee better understand and address what is important to our constituency.

Back on the home front, VFA continues to forge ahead with restructuring plans. In December the Board of Directors unanimously agreed to change the configuration of the association to be comprised of a 15-member board (instead of the present 36 members) supported by a 15-20 member advisory council. During the course of considering this change, some members posed some very good questions, a few of which I thought I would share so you can better understand how your association works and why we want to make some changes.

#### How will restructuring the association help to strengthen it?

We are looking to restructure our association in order to facilitate a more streamlined working environment and enable us to anticipate and respond to issues confronting Virginia forestry more efficiently. We also recognize how valuable everyone's time is, and we would like people to serve where they can offer the most benefit to the association. We also want to encourage members to serve where they may gain the most satisfaction for their efforts. Restructuring will ultimately offer more avenues for involvement.

-continued on page 36.

# **Legacy & Estate Planning for Virginia Forest Landowners**



# What's **NEXT**... for Your Land?

by Mike Santucci, VDOF and Adam Downing, VCE



orest landowners are practiced in thinking long-range for timber management and harvesting. Nurturing a timber crop and a healthy forest is, by nature, a long-term commitment. Even so, there is a longer term aspect to owning woodland that is arguably more important. It's the question only you, a woodland owner, can answer: *What's next for your land*?

Consider this: thousands, if not millions of acres of family-owned forest land in Virginia will change hands in the next two to three decades, and many of these transfers will happen with no, or very little planning.

Do you know what is going to happen to your forest land after your tenure? Is it going to stay intact? Is it going to stay in forest? Will it remain in your family's ownership?

Nobody likes to think about dying, let alone talk about it. But the truth of the matter is that your land will outlive you. All landowners know this, but few take it to heart and prepare accordingly. Deciding what will happen to your family's land, legacy, and memories after you are gone is the next stage of being a good steward.

If you intend to keep your family woodland intact, in forest, and in the family, it is time to start planning. With fairly simple steps, the odds of making sure this happens increase dramatically.

(I. to r.), Adam Downing with Jim Ballard on Jim's property.

## A TALE OF TWO FAMILIES

To illustrate, let's consider two scenarios, the "Woods" family and the "Legacy" family. Like most of you, both owners have a connection with the land, and devote time and resources to managing the forest. A history of stewardship has been established, as well as innumerable family memories, both of which are inseparable from the land.

The Woods family intends to pass their land on to their children. But mom and dad have not thought much about it and the extent of their planning is contained and documented in a will. Their thought is to let the kids sort things out after their passing; they trust their children to do the "right" thing. They assume that all of the children have an interest in the land and desire to keep it.

However, over the years, the children have not been involved in the management and decisionmaking on the property. Things that happened were left up to the parents, and it seemed like they were always working on the property rather than enjoying it. The children do not understand what it took to obtain and keep the land and steward the forest resources, and as they have grown older, any ties to the property have diminished.

As the children grew up and moved away, the family land became where they are *from* rather than their home. While the children understand the land and forest resources have monetary worth, the emotional attachment has eroded.

If this will is written like most, mom and dad have left everything equitably to the children. The land will most likely be passed forward as a whole in equal parts.

The result? What was once a large family forest now becomes a series of forest patches or woodlots under

### A WORD TO FORESTERS, LOGGERS AND OTHERS WHO WORK WITH LANDOWNERS

Keeping forest lands intact, in forest, and in family ownership is one of the most pressing issues facing the forestry community. In the past four decades, approximately a half-million acres of forest land has been converted to non-forest uses. Two-thirds of it is due to residential and commercial development. A majority has come from family forest lands. All indications are that future forest land loss will continue to be concentrated on family-owned woodlands.

The remaining family forest lands are highly parcelized and fragmented, and getting more so with each generation. Ninety-five percent of ownerships, which account for nearly half the family forest land base, are in holdings less than 100 acres. The average family parcel size is 27 acres and the average ownership is 75 acres; numbers on the edge of economic and ecological functionality.

You know all too well the challenges presented to practicing forestry and operating on small acreages. What you may not realize is that you are part of the answer. You already have a working relationship that puts you in a trusted position to offer options without having to be a legal expert. It can be as simple as asking a question about the long-term future of the land and, from there, to possibly recommending some written material like a copy of this magazine or a number of resources listed in this issue.

With seven out of every 10 acres of family forest land controlled by someone aged 55 years or older, Virginia's family forest lands are at a crossroads. The largest transfer of forest land in the state's history is underway and will continue for the next 20 to 30 years. The shape this transfer takes will determine the sustainability and viability of Virginia's forests for years to come. While the future of Virginia's forests are in the hands of families many of them will *look to you* as a trusted advisor.

Pictured at top, Jack Kauffman, Virginia Department of Forestry, (center) works with the Dollarhide family on a legacy plan for their property.



Landowner Philip Johnson Jr. works on legacy planning with VDOF Forester Heather Dowling.



Eighty percent of family forest landowners want their land to stay intact, in forest, and in family ownership. They have no intention or desire to sell their property.

Only 18 percent have a written forest management plan and only 13 percent have ever used professional forest management or timber harvest assistance.

Forest landowners who do not plan their forestry activities are much less likely to plan for the preservation of their forested estate, a conclusion supported by the fact that only three percent of family forest owners have a written succession plan.

# What does this mean?

There is a well-documented correlation between intergenerational transfer and the parcelization and fragmentation of family woodlands. In other words, family forest land is most at risk of being broken up, passing out of family hands and forest use when it passes from one generation to the next. The numbers indicate that a large proportion of the looming future transfers will happen without any estate or succession planning in place, potentially putting families in the position of making difficult decisions and placing millions of acres of Virginia's valuable forest lands at risk to further parcelization and conversion to another land use. different ownerships which may or may not be the children. It is no longer intact, may or may not be in forest, and may or may not be in the family. This scenario presents many unanswered questions and much uncertainty.

Now consider the Legacy family. Mom and dad have a clear goal of keeping their woodlands intact, in forest and in family ownership while being equitable to the kids. They have kept a forest stewardship management plan current over the years, and as the children have gotten older, they have been involved in implementing the plan, goal-setting, and developing a vision for the property. This has internalized a land ethic through informed and intentional management, and revealed which of the children may be better suited to carry this management forward.

Additionally, mom and dad made sure that recreational opportunities were available, hosted sleepovers with the kids' friends, held regular family gatherings and took holiday card pictures that all helped to create memories and events tied to the land. Over time, they've had conversations with their children about shared family goals for the land into the future, beyond their lives.

The Legacy parents have begun working with professional advisors to explore tools to facilitate keeping the land intact. They've also looked into ways to create a shared management of the property; all while ensuring their children are treated equitably.

The result? The Legacy property is likely to remain intact, in forest, and in the family. This trajectory seems a little more certain. Most importantly, what the Legacy family has achieved is not complicated or expensive—and it is the most important part of legacy planning.

## LEGACY PLANNING FOR YOUR FAMILY: HOW TO GET STARTED

Beginning to develop a legacy plan is simple—and also challenging. Overcoming the inertia of not knowing how and where to begin can be difficult. While it may sound like an oversimplification, you should start right where you and your family are today. Then, take individual steps so that the process of planning is less daunting. The following example for how to proceed is adapted from Oregon State University's *Ties to the Land* program:

- 1. Discuss and write down your goals (vision) for the property and the family.
- 2. Discuss these written goals with your family.
- 3. Create a family business entity to own the land.
- 4. Have regular family meetings to discuss the business and share your passion.
- 5. Set family employment policies before you hire any family members.
- 6. Discuss and write down important decisions.
- 7. Create non-financial reasons for the family to keep the property.
- 8. Get your kids and grandkids out to work and have fun on the property.
- 9. Create a governance structure that will survive your passing.
- 10. Remember to have fun!

Don't skip over the last step too quickly! If it's all work and no play, a lack of interest should come as no surprise. However, considering each of these steps is important, and you will likely devote considerable time and energy to the planning process.

# IS ESTATE PLANNING RIGHT FOR YOU?

Legacy planning is the ongoing process of engaging and educating the next generation to transfer the values of family and land stewardship associated with your property, and making prepartion for a change in ownership. It is *what* you want to have happen, and legacy planning can be done by you before you consult with professionals. You, the landowner, are solely responsible

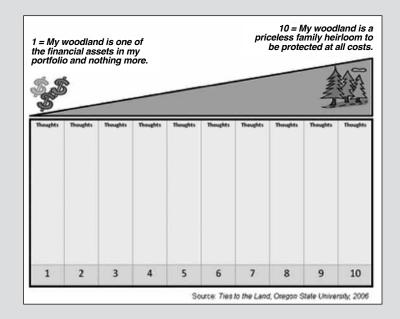
-continued on page 9.



Forest landowners Linda and Clay Jones are developing a legacy plan for their property.

## THE HEIRLOOM SCALE A SIMPLE ASSESSMENT TOOL

This simple exercise helps family members assess how they regard their forest land. Is it strictly a financial asset with no emotional attachment (1), or is it a priceless family heirloom that should be protected at any cost (10)? Each family member should rate how they feel about the land and discuss the results.



# WOODLAND LEGACY PLANNING

## **ESSENTIAL INFORMATION CHECKLIST**

Woodland legacy plans can take years to establish. Be patient. Putting a plan together and maintaining it is an adaptive, active, and dynamic process, that is not "one size fits all."

Just like every family and forest is unique, your legacy plan is also. It's a living document that adapts to changing forest and family conditions and tax laws. Your legacy plan must account for family dynamics, finances, goals and objectives, property attributes and your comfort with various legal, financial and conservation tools.

The following information should be compiled prior to meeting with professional advisors to give them a good picture of your situation. This will help them to find the best mix of legal, financial and conservation tools to meet your goals, not to mention save thousands of dollars in fees.

- 1. Forest Property and Estate Overview: Include your land's history and deeds in the chain of title, improvements, the value of the land, improvements and other assets, and how they are titled.
- 2. Forest Stewardship Management Plan: The primary vehicle to convey goals and management of your forest land to the next generation.
- 3. Who Does What on the Land: A list of all the conservation professionals, managers, operators and contacts who help steward your woodlands, their affiliation, and a brief description of what they do. Include copies of contracts, cost share agreements and conservation easements.
- 4. Heirloom Scale: Assesses how each family member feels about the property. Have each owner, and perhaps the potential heir(s), independently complete the heirloom scale and reflect why they responded the way they did.
- 5. Individual Values and Goals: Owners and first generation heirs write down what they value about their forest land, their family and their long range goals for both. Identify major challenges they foresee in reaching those goals. Note any shared values and goals.
- 6. Family and Family Woodlands Mission or Vision Statement: A succinct statement that clearly expresses shared values, goals and purpose of the family and for the family forest land. This is a mutual declaration of what you, your woods and your family are all about, and it's the filter through which future decision will be made.
- 7. Identify Potential Heirs and Their Roles: Objectively consider each potential heir's strengths, weaknesses and aspirations, as well as his/her involvement in the family forest land; think of each person as a future land manager or even business partner. Where do they live, how engaged are they, and have you started cultivating their interest? If there are gaps in interest/engagement/skills, how can those be addressed? If none of the heirs are up to the task, explore other options to keep the land intact and in forest, and provide an inheritance for your children.

### WHAT'S NEXT FOR YOUR LAND? — continued from page 7

for legacy planning; it is the bigger umbrella under which estate planning falls.

Estate planning is an occasional undertaking with legal and financial expertise to identify and coordinate the available legal and financial tools available to transfer personal assets (including your land) to the next generation. It is *how* you're going to implement the legal and financial transition part of your legacy plan.

Estate planning usually includes the services of an attorney or other professional advisor who is skilled in helping you prepare legal documents related to your estate. These professionals can't help you plan unless they know your goals. (It's like buying plane tickets and packing before deciding where you want to go!)

Without the ongoing efforts that are part of legacy planning, estate planning will have limited success. The best legal structures and financial tools do not transfer the values and passion it takes to own and manage land well.

## LEGACY PLANNING: WHY BOTHER?

#### Reason 1 = Your Family

Your land represents more than a recreational or financial resource. Regardless of where you find yourself in the intergenerational timeline of your land, your stewardship has established or maintained a family woodland legacy. Numerous landowners have shared with us how the land has served as the "glue" that has kept them talking and working together. Without planning, family forest landowners stand to lose more than just property out of the family; they stand to lose the family heritage, family identity or a portion of their accumulated wealth.

# THE BEGINNING FOREST LANDOWNER WEEKEND RETREAT PROGRAM

by Jennifer Gagnon, Coordinator, Virginia Forest Landowner Education Program

We have a high rate of woodland ownership turnover in the Commonwealth. The upshot of this challenge is that many new people get to experience the privilege of owning land. The new challenge that comes with this is that, while most new owners hold a conservation ethic, many are unfamiliar with sustainable woodland management practices, such as planning and seeking professional assistance.

To reach these new Virginia landowners, the Department of Forestry, Cooperative Extension, and the Forest Landowner Education Program teamed up to develop the Beginning Forest Landowner Weekend Retreat Program. This day-and-a-half program combines classroom, field, and hands-on learning experiences to introduce landowners to basic forest management concepts, skills, and natural resource professionals. Since 2008, 14 retreats have been held with over 300 participants.

In response to a five-year follow-up survey sent out to retreat participants, over 80 percent of the respondents had created a list of woodland ownership goals since attending. The most common ownership goals included, among others: wildlife habitat, esthetics, water quality and saleable wood products.

Less common, but a concern for many new landowners, is to pass their land on to the next generation. Landowners need a team to help them meet their goals, and this is one of the primary purposes of the outreach efforts—to help them get connected. Over 80 percent of the attendees of the Woodland Retreat Program have met with one or more resource professionals and 50 percent have obtained a written management plan. Since only 18 percent of landowners nationally have a written management plan, this is good news indeed.

While goals and networks are important, the real litmus test is action. And act they have by:

- Improving wildlife habitat (63%)
- Cutting and removing trees for sale (50%)
- · Eliminating or reducing invasive species (50%)
- Cutting and removing trees for own use (44%)
- Constructing or maintaining roads (50%)

Finally, as we continue to work with these landowners through other programs, we expect all their efforts will outlive them and their land will continue to be managed for productive, profitable outputs while increasing overall ecosystem integrity.

IF SOMEONE YOU KNOW IS NEW OR NEW-ISH TO OWNING WOODLAND, VISIT FORESTUPDATE.FREC.VT.EDU FOR UPCOMING BEGINNING FOREST LANDOWNER RETREATS.



(I. to r.) Jason Fisher, Virgina Cooperative Extension; Aurelia and Joel Cathey; Ryan and Sharon Smith with their son; and Adam Downing, Virginia Cooperative Extension.

Families are the underpinning of our society; this reason alone makes legacy planning a worthwhile effort. And there's another reason—one that will last lifetimes—for keeping your land intact and in forest.

#### Reason 2 = The Resource

A majority of Virginia's forest landscape is a mosaic of individual family ownerships—405,000 of them. Collectively, private forest landowners control 10.6 million acres, or two-thirds of Virginia's roughly 16 million acres of forest land. Your lands are the backbone of a \$17 billion timber economy and support another \$9 billion in social and environmental benefits. Your woodlands are the fabric that stitches together Virginia's pastoral landscape. What you do on and with your forest land impacts every Virginia resident and will determine the long-term health and viability of the Commonwealth's forest resources.

Each of these reasons is compelling enough on its own, and combined with this is a challenge we all—landowners, public service resource professionals and consulting foresters—need to take seriously: Succession Happens. It's a slogan fit for a bumper sticker, and perhaps we all need a regular reminder like that. At some point in the future, your woodlands will pass into the hands of someone else. The only question is, will it be planned ... and will a legacy follow?

Mike Santucci is Forestland Conservation Program Manager at Virginia Department of Forestry. He can be contacted by email at Mike.Santucci@dof.virginia.gov.

Adam Downing is Northern District Forestry and Natural Resources Extension Agent with Virginia Cooperative Extension. He can be reached by email at adowning@vt.edu More information on Legacy Planning for Forest Landowners is available online at http://tinyurl.com/genNEXT-VA



# **Legacy & Estate Planning for Virginia Forest Landowners**

# RECOMMENDED READING

# Planning Family Forests

# How to Keep Woodlands Intact and In the Family

by Thom J. McEvoy Forestry Press, 2013, 260 pages

by Sara S. Hollberg, AICP

#### ADDITIONAL BOOKS FOR FOREST LANDOWNER LEGACY & ESTATE PLANNING:

*Family Wealth* by James E. Hughes Jr.

Landowners Guide to Conservation Easements by Steven Bick and Harry Haney

*Preserving Family Lands: Books 1, 2 and 3* by Stephen J. Small

Legal Aspects of Owning and Managing Woodlands by Thom J. McEvoy

*Positive Impact Forestry* by Thom J. McEvoy

With its dual goal—keeping the forest intact and in the family —this helpful resource is worth a look from every forest family. It is especially suited for landowners who value the long-term health of their woodlands and seek practical and equitable ways to constrain future generations to that goal.

At core are the case studies, twelve in-depth stories of what real families have done and how it worked out for them (or not). In these complex, evolving circumstances and recurring themes, readers may well recognize similar possibilities in their own families.

The case studies come from every region and run the gamut from extreme wealth to living off the land and from large extended families to a couple looking for heirs. All are worth reading because the meaningful lessons lie in the family situations and choices. The book delivers some hard wisdom on what can happen once the founding generation passes.

Many caveats emerge:

- Set pen to paper; don't rely on the "paperless trust" of expecting heirs to follow your wishes.
- Avoid the "cardinal error of gifting land to in-laws." (One family with four children now has more than 60 percent of the land tied up in trusts that provide support for surviving spouses.)
- Separate ownership shares from parcelization (as with an LLC).
- Choose ownership structure carefully.
- To truly keep a forest intact, a conservation easement may be needed.

This book does a great service by presenting detailed consideration of the very real and messy issues in intergenerational transition. Readability could have been improved by providing summaries of best practices and basic features of the different case studies.

Supplemental resources are a plus. Estate planning basics, a glossary, and forms of organization help explain concepts that come out in the case studies. Advice on family meetings and a sample LLC Operating Agreement add important pieces.

McEvoy wants forest landowners to seize their opportunity. With vision and passion, a founding generation can choose a legal structure to keep the land intact and establish patterns to keep the family connected to the land. In fact, the forest can have its own "unifying effect on the family."

I hope forest owners take inspiration. As stated in the foreword, "the legacy of your forest is in your hands...but we all have a stake in the outcome."  $\mathbf{x}$ 

Sara S. Hollberg, AICP, is a land use planner with Valley Conservation Council. Her family's Tree Farm is one of Virginia's inaugural Century Forests. It been in the family for more than 200 years and may for many more, with the help of a conservation easement and an LLC operating agreement.

# **Legacy & Estate Planning for Virginia Forest Landowners**

# Legal Considerations of Intergenerational Forest Land Transfer

by Julie King, Esq.



ike it or not, you already have an estate plan in place even if you have never met with an attorney or signed a will. In Virginia, the laws of "intestate succession" apply to individuals who die without a will and specify how your estate will be administered and distributed. This default plan usually does not work for forest landowners that wish to transfer their property intact and for their next generation. Further, relying on these default laws will end up being more expensive and time consuming (and public) than if a succession plan had been implemented during your lifetime.

There are many steps and components to effective estate planning. Your attorney can detail these but the one that is often overlooked is open communication. It is crucial to understand, between generations, what the hopes and goals are. Too often, I meet with clients who think they know what their children want but have never taken the time to ask them.

#### **Common Ownership Options**

The ownership structure you select for your forest land will have taxation and liability implications. Each option has advantages and disadvantages, and it is important to remember that your succession plan will be unique—it is not a "one size fits all" concept.

**Sole Proprietorship.** Most landowners hold their property in their individual names as sole proprietorships—the simplest form of ownership. However, for some, the risk of personal liability is an issue, as sole proprietors are directly and personally responsible for any debts, losses, violations and court judgements.

With a sole proprietorship, all activities of the owner cease to operate when the business owner is no longer living or becomes incapacitated; continuity of the business in such cases is an advantage of other ownership structures. But with a properly structured legal entity, the business operations can continue on without the need for court approval. For a forest landowner, this continuity can be important. Consider if the forest land owner died or became incapacitated during a time when timber harvesting is needed or if access to cash or other assets is necessary.

Limited Liability Companies (LLCs). The LLC has become the preferred entity for many landowners. In an LLC, the owners (called members) can both retain control over the business affairs of the company and, if properly structured and administered, also receive liability protection from the activities of the business. And, the owners can designate management decisions to one or more of the owners. Shares of the LLC (called membership interests) can be sold or gifted to the next generation so that they have equity in the company. The senior generation can retain as much or as little control as they desire and may continue to shift membership interests over time to their heirs.

For tax purposes, generally an LLC doesn't pay taxes directly. Instead, it passes all profits and losses through to the LLC members.

**Corporations.** Unlike LLCs, a corporation generally must pay income taxes on its profits. In some cases, such as a when the business is a C-Corporation this can lead to double taxation, where the corporation is taxed first on its profits and then again when the owners take the profits out.

The S-Corporation is often preferred over a C-Corporation because it retains the liability protection of a corporation but also the single level of taxation of an LLC or partnership. One distinct advantage of an S-Corporation is that it can save a business owner employment taxes. S-Corporations are liable for self-employment taxes on the salary portion of income, but only pay ordinary income tax on the distribution portion. By comparison, all income of an LLC is subject to self-employment tax.

**Revocable (Living) Trust.** A Revocable Trust is a commonly used estate planning tool but also can be an effective type of ownership for forest landowners. A trust is a legal arrangement in which property and assets can be transferred from personal ownership to the trust with a trustee who administers the assets for the benefit of the beneficiaries. By transferring assets to a Revocable Trust, you can still have control and access to the assets during your lifetime. During your lifetime, the Revocable Trust is treated as your own for tax purposes.

A primary benefit of establishing a Revocable Trust is that upon death, the assets are not subject to the public court probate process, thereby allowing the forestland business to continue without interruption. Unlike a will which only takes effect upon death, a Revocable Trust can address the situation where you become incapacitated by naming a back-up (successor) trustee to administer the trust for your benefit.

Revocable Trusts can hold forest land and other real property interests and greatly simplify the transfer of these properties upon death and, if desired, place restrictions on the use or transfer of the forest land beyond your lifetime. For example, property can continue to be held in trust for your beneficiaries' lifetimes to protect property from your beneficiaries' creditors and ex-spouses in the event of divorce.

Liability protection, however, with a Revocable Trust is generally not afforded to the current owner (grantor), but generally is only for other/future beneficiaries if held in further trust. However, used in connection with another legal entity that offers liability protection, such as an LLC that owns the forest land, and in turn having the LLC interest owned by your Revocable Trust, the combined benefits of privacy, flexibility and limited liability can be achieved.

#### **Fundamental Documents**

In addition to selecting an appropriate entity for forest landownership, several fundamental legal documents should be prepared. Regardless of the ownership structure, a Last Will and Testament is an essential document that everyone should implement. Beyond naming your beneficiaries, a will allows you to name the executor who will handle the administration of your estate after death, including the transfer of your land or interests to your beneficiaries.

A General Durable Power of Attorney names an agent that you select to act on your behalf to handle your financial affairs in the event of incapacity and avoids what would otherwise require lengthy and costly court involvement.

An Advance Medical Directive addresses end-of-life treatment (a Living Will) and allows you to appoint an agent to act on your behalf for medical decisions (Medical Power of Attorney).

Don't let the many options and unfamiliar terminology be an excuse not to start your succession planning. A qualified estate planning attorney familiar with forest landowners leads you through this maze. To make the best use of time and save legal fees, have all your personal and financial information organized and provided to the attorney ahead of time.

The attorney, together with a team of qualified professionals, including an accountant, financial planner and forester, can help you put a succession plan in place so that your vision can come to pass. If transferring your forest land to the next generation intact and "in forest" is a priority, succession planning should be your priority.

Julie is the owner of Julie A King, PLC in Charlottesville where she represents individuals, landowners and others. King is a regular presenter at landowner programs and a charter member of the Generation NEXT program team. In 2016 she was recognized with the Crown Award from the State Forester.

# Legacy & Estate Planning for Virginia Forest Landowners

# Matters of Tax For Landowner Succession Planning

by Matthew Von Schuch

axes are an important part of succession planning for landowners who intend to keep their land in the family. There are principally two types of taxes that landowners and their advisors must consider in the developing a succession plan: income taxes and gift and estate taxes. These taxes will be imposed on either the sale, gifting, or inheritance of the principal part of a landowner's legacy: his land. Below you will find answers to some of the more frequent questions landowners have about planning for these two types of taxes.

# How do income taxes affect a landowner's succession plan?

Income taxes affect the value of the land both in the landowner's hands and in the hands of his or her heirs. Land and other associated assets like buildings, land improvements, roads, landscaping, etc., are capital assets. When held for more than one year, any gain from the sale of these assets are taxed at preferential federal tax rates up to 20 percent, the regular Virginia income tax rate up to 5.75 percent, and may be subject to a 3.8 percent net investment income tax. While a landowner may intend for his or her land to stay within the family, transferring land with a large built-in income tax will place a burden on the landowner's heirs limiting their flexibility (i.e., to make inter-family sales) and jeopardizing their ability to fulfill the landowner's legacy.

# How are the gains from the sale of land and other capital assets taxed?

Taxable gains are realized when a capital asset, like land, is sold or exchanged for money or other property. Taxable gains are calculated by subtracting the landowner's adjusted basis in the asset from the amount of money and property received from the sale. For example, when an asset with a \$50 adjusted basis is sold for \$100, the seller has a \$50 taxable gain.

#### How do you determine adjusted basis in a capital asset?

First, a landowner's original basis in the asset is determined based on whether the asset was acquired by purchase, gift or inheritance. The original basis of a purchased asset is the cost paid to acquire the asset. The original basis of a gifted asset is the lower of either the donor's basis in the asset or the fair market value of the asset at the time of the gift. The original basis of an inherited asset is the fair market value of the asset on the date of decedent's death. Second, the landowner's original basis is adjusted by increasing it for any costs paid to improve the asset and decreasing it for any depreciation deductions taken on the asset.

The dichotomy between the basis of gifted and inherited assets is an important planning consideration. The preference is to gift high basis property and devise (give through inheritance) low basis property. This will reduce the income taxes the recipient will pay if some or all of the property is later sold, whether by choice or out of necessity.

#### What are estate and gift taxes and how do they work?

Estate and gift taxes are imposed on the value of property that a person transfers during his or her lifetime or on death. It is important to note that gift and estate taxes are imposed on the total fair market value of the property transferred—so basis is not considered. The top marginal tax rate is 40 percent. A generation-skipping tax is also imposed on the value of property given or devised to a person who is more than one generation removed from the donor, i.e., grandparents to grandchildren. This extra 40 percent transfer tax is meant to prevent a family from avoiding one layer of estate taxes by skipping generations.

# What are the most important estate and gift tax provisions to take advantage of in succession planning?

First, and foremost, each person is granted a lifetime exclusion permitting the transfer of \$5.49 million (adjusted

for inflation) worth of property without incurring any gift or estate tax. This exclusion is portable between spouses so that a married couple can transfer almost \$11 million without being subject to any estate or gift taxes. There is also a \$5.49 million generation-skipping tax exemption although it is not portable between spouses.

Second, transfers of property to spouses and charities are not subject to estate and gift taxes. Unlimited deductions are available for both such transfers.

Finally, there is a \$14,000 annual gift tax exclusion. This allows each person to give up to \$14,000 to as many individuals as desired each year without triggering gift tax and without using up any portion of his or her \$5.49 million exclusion. Married couples can give up to \$28,000 to as many individuals as they desire each year.

# Is it better to make lifetime gifts or give property as an inheritance?

Gifting property, or an interest in property, or a limited liability company owning property, during the donor's lifetime has the benefit of removing from the donor's taxable estate any appreciation in the property's value that occurs after the gift is made. The preference is to gift property that is currently undervalued (say due to a market downturn), property that will significantly appreciate in value before the donor's death (say valuable agricultural land owned by a young couple), or property that can be divided into smaller pieces and gifted under the annual exclusion amount. Any growth in value of this property after the gift will escape the donor's estate tax.

# How do income taxes figure into deciding whether to make lifetime gifts?

The estate tax benefit of removing appreciated value from the landowner's estate must be weighed against the potential built-in income tax gain the recipient will take with the property due to a lower, carryover basis.

# Where should landowners focus tax planning: estate taxes or income taxes?

It depends on the landowner's net worth. Landowners who are not currently, and are not likely to be, subject to gift and estate taxes due to the high \$5.49 million lifetime exemption should focus on income tax planning by ensuring that beneficiaries take property with the highest basis possible. On the other hand, for landowners who are, or may be, subject to gift and estate taxes, their priority should still be minimizing gift and estate taxes—in most cases a 40 percent estate tax on the total value of an asset is greater than a 29.55 percent income tax on the gain from the future sale of an asset. Estate planners and tax advisors ought to be engaged to help those landowner caught in the middle develop a flexible plan that address both income and estate taxes.

# How does owning land in a limited liability company (LLC) change the income and estate tax treatment discussed above?

For single member limited liability companies—that is, LLCs with only one owner—there is no change. The IRS completely ignores their existence and treats the owner of the LLC as if he or she directly owned the land. Moreover, owing a single member LLC, will not change any estate taxes that may be due because the value of the LLC interests are going to be the same as the value of the land it owns. Things become more complicated, however, when more than one person owns an interest in a LLC.

On the income tax side, when a LLC has multiple members it is treated as a partnership. Partnerships are pass-through entities. Partnerships pay no tax; their partners do. For example, if a partnership sells land for a gain, the partnership will calculate its gain from the sale and allocate the gain among its partners who will each pay tax on their allocable share of the gain. In simple partnership structures, the income tax treatment of a multi-owner LLC will be the same as if the multiple owners directly owned the land. Partnership tax and accounting becomes quite complicated, however, when a LLC generates losses, uses debt financing, operates other businesses, or when owners turn over.

On the gift and estate tax side, multi-member LLCs present planning opportunities. The value of small, minority interest in a LLC can be reduced by structuring them to have little or no managerial control and restricting their transferability. So, a one-third interest in a LLC owning land may be worth less than a direct one-third interest in the land. While a landowner has the right to use the land, control the land, and to force a sale of the land, a minority interest in a LLC that owns land can be structured so that its owner has none of these rights. By reducing the value of a LLC interest in this way, the gift and estate tax paid on the transfer of such interests can also be reduced.

Matthew Von Schuch lives in the Shenandoah Valley and is a CPA and lawyer. He is a director in the tax department of Brown Edwards & Company. He has generously been part of many landowner education programs offering legal and financial insights.



# Legacy & Estate Planning for Virginia Forest Landowners

# **Conservation Easements and Succession Planning**

#### by Rex Linville

conservation easement is an agreement that a landowner voluntarily enters into with a private non-profit "land trust" or governmental conservation agency such as the Virginia Department of Forestry, the Virginia Outdoors Foundation, or others. The purpose of the agreement is to ensure that conservation values such as productive forest and farm land, wildlife habitat, scenic views, and clean water and air are preserved and protected for the benefit of future generations. The agreement accomplishes this primarily by limiting the future subdivision and development that is allowed on the property.

When rural land passes from one generation to the next, it is often vulnerable to subdivision and development for a variety of reasons. The heirs might have differing ideas about what to do with the land, or they may not have the same commitment to forestry or agriculture as the prior generation. Even when heirs do desire to keep the land intact, they may find that the only way to settle the estate is to sell the family land. A conservation easement can help ensure that the land is not developed and the conservation values will be protected forever, even if the family sells the property.

In addition to the peace of mind that comes with knowing that the family land is protected to be enjoyed and productive for the next generation, a conservation easement donation could result in various financial benefits. The two main financial benefits are a Virginia Land Preservation Tax Credit (LPTC) and a Federal income tax deduction. The Virginia LPTC is one of the most successful land conservation programs in the nation and has resulted in the protection of more than 750,000 acres since its inception in 2000.

From an estate tax perspective, land in a conservation easement will have a lower value in the taxable estate, and therefore the heirs won't pay estate taxes on the foregone development rights. Further, when land under easement passes to the donor's heirs up to 40 percent of the remaining value of the land may be excluded from the estate.

Finally, in those counties that do not have land use assessment programs, local property taxes on property subject to a conservation easement may be reduced with respect to land (but not dwellings, farm buildings, or other improvements to the land). However, if land is already enrolled in a local landuse assessment taxation program, an additional reduction in taxes from a conservation easement is unlikely.

#### The details on these tax benefits can be complicated, and it is always a good idea to consult with a qualified tax and legal advisor.

Rex Linville is a Land Conservation Officer for the Piedmont Environmental Council based in Charlottesville. He has assisted countless landowners conserve thousands of acres of forest and farmland in Albemarle and Greene Counties. Contact Rex at 434-977-2033; rlinville@pecva.org.

# Legacy & Estate Planning for Virginia Forest Landowners

# Rural Property Appraisal An Overview of the Process and Terminology

by Gary Bratton, ARA

A t some point in time you may need opinion of value—an appraisal of your rural property. A qualified appraiser can provide this, and most will follow a distinct process in developing the appraisal. Understanding this process and appraisal terminology may make it easier for you to work with the appraiser and to better understand the value conclusion you receive at the end of the assignment. Following is a brief overview of some items of consideration common to most rural property appraisals.

**Uniform Standards of Professional Appraisal Practice (USPAP).** USPAP is developed and maintained by the Appraisal Standards Board, of the Appraisal Foundation, and outlines generally accepted methodologies that appraisers follow in order to develop and communicate their appraisal results to their clients. Virginia has incorporated USPAP into its appraisal laws.

**Client / Intended User / Intended Use.** The party (or parties) engaging the appraiser is the client, and the appraiser must protect a confidential relationship with the client. The appraiser must identify who will be using the appraisal (intended user) and for what purpose (intended use). This helps him or her understand the level of detail necessary in reporting, and can ensure that the appraisal will be suitable for the desired purpose.

Value Definition. There are numerous types of value (market value, investment value, use value) which are reflective of the many reasons people or entities own property. The most common value sought in appraisals for lending, property transfers, charitable gifts or estate purposes is market



Photos courtesy of Gary Bratton

value. In layman's terms, the market value is a probable cash price for which two unrelated parties would buy and sell a property when neither is under undue stress or motivation, and when the property has had a reasonable amount of time to be exposed to the market.

**Effective Date (Value Date).** This is the date on which the value estimate is applicable. For most appraisals the effective date is current and reflects current conditions. A retrospective appraisal has an effective date of a point in the past, and is common in estate appraisals. A prospective appraisal has an effective date of a point in the future.

**Property Rights.** It is important to understand the rights specific to the property being appraised. Fee Simple Ownership implies absolute ownership of all rights, limited only by governmental powers. Absolute ownership is rare in rural properties, however, and usually some rights have been severed from a property. The severance, encumbrance or leasing of a right (either permanently or temporarily) creates a Partial Interest in a property. The appraiser must be able to evaluate and determine the exact bundle of rights to be appraised and the appropriate valuation methods to employ.

**Property Components.** Rural properties can be broken down into physical components which become the basis of analysis in the appraisal. Some of the more common components are:

- *Land type.* This is the acreage in cropland, pasture, productive woodland, swampland, or other relevant land classes on the property. The appraiser may use aerial imagery, Geographical Information System (GIS) data or other sources to estimate the acreage in each class. The appraiser can use the land mix of the property and land values as derived from comparable sales to determine the value of the land component.
- *Merchantable Timber Volume*. This is older timber that may be harvested immediately for use in a wood processing facility, such as a paper mill or a sawmill. The timber volume may be determined by a professional forester, and is commonly measured in cords, board feet, or tons. Stumpage prices are the prices received for forest products in timber sales, and are dependent on timber size, species and quality, as well as the location, logging conditions and other market conditions. The appraiser uses the timber volume and appropriate stumpage prices to derive an estimate of the timber value on the property.

- **Premerchantable Timber Acreage.** This is the acreage of younger timber that cannot be harvested immediately for use in a wood processing facility. Although the timber does not have a current harvest value, it may be assigned a value premium based on age, site productivity (for growing trees) and prevailing timber prices. This is because investors/buyers recognize future benefits from existing timber stands (a stand is a group of similar trees), even though they are not yet marketable. This is most common in planted pine stands, although some well-stocked natural timber may merit a value premium.
- *Improvements.* These are man-made structures present on the property. The appraiser will consider the physical dimension, quality, condition and functionality of each structure as part of the valuation process.
- *Minerals.* For landowners who own subsurface rights, if there are proven mineral reserves this may may affect the highest and best use of the property. Mineral valuation is a unique circumstance and may require additional analysis by specialists. The deed to the property can provide information regarding ownership of subsurface rights on the land.

**Highest and Best Use Analysis.** This is a series of tests as to potential, probable uses of the property. In an appraisal, a possible use must be legal, it must be physically possible, and it must be financially feasible. The appraiser analyzes local land use regulations and trends, physical property characteristics, and local economic trends to develop potential uses for the property. The potential use that passes each of these tests and is the most profitable is determined to be the highest and best use. Occasionally the current use of the property is not the highest and best use, depending on how the market views the potential use of the property.

This analysis is performed as if vacant (no improvements) and as improved (with improvements) to test whether improvements contribute to the overall value of the property. As long as the improvements contribute to the overall value, the property should remain under its current use.

**Comparable Sale Analysis.** Transactions of properties are analyzed to extract estimates of the contributory value of the components under each sale's highest and best use scenario. This analysis may reveal general land values attributed to each land class within a market. It also may reveal market-driven discounts applied to timber and improvements under that scenario. The appraiser selects sales with a similar highest and best use to the subject for use in the appraisal. **Contributory Value.** Each component has potential to contribute to the value of the property as a whole. Analysis of sales will indicate whether a component's value is typically discounted in the market. A component that has value under one highest and best use situation may not necessarily have the same value under a different highest and best use. For example, a premerchantable stand of timber would be likely to have value on a rural property with a timber production highest and best use, but is unlikely to contribute value on a lot in downtown Richmond with a commercial highest and best use.

**Approaches to Value.** There are three common approaches to value that an appraiser may utilize in the appraisal process: the Cost Approach, the Sales Comparison Approach and the Income Approach.

• *Cost Approach.* The appraiser takes the components of the subject property and values them separately using market data. After determining the contributory value of each component (by considering depreciation and other discounts or enhancements), the values are summed to derive an estimate of value for the subject property.

- Sales Comparison Approach. The appraiser analyzes sales of properties similar to the subject property and adjusts each sale price for differences based on components and market conditions to derive an estimate of value for the subject property.
- *Income Approach.* The appraiser analyzes likely future cash flows from the property and applies a market-derived discount rate to derive an estimate of value.

Some approaches are more relevant than others in different situations, so the appraiser will use some combination of these three approaches to derive an opinion of value for a property.

It is my hope that this article has served to introduce you to the appraisal process and related terminology. Good communication between the appraiser and the client will result in better appraisals, which is the goal of appraisers and clients alike.

Gary Bratton is Director of American Forest Management's Appraisal Services Group. He is a Certified General Appraiser in several states, including Virginia, and a Registered Forester in South Carolina. Gary lives in Sumter, S.C.

American Forest Management has offices located in Richmond, Va., and Danville, Va.



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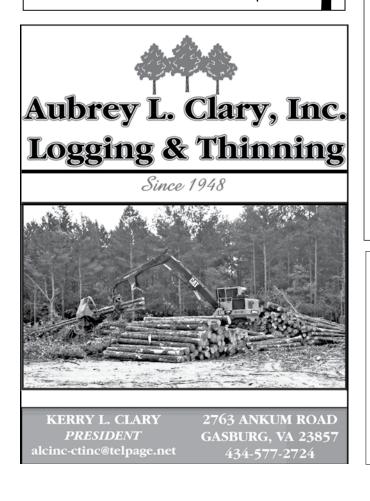
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# Introducing the Virginia Tree Farm Foundation

by John Matel, President

# Virginia Tree Farm Foundation Needs Your Help

e launched the Virginia Tree Farm Foundation late last year and it is now becoming operational. The Foundation is both a bold new step and the continuation of something that has been around a long time, a logical evolution.

The American Tree Farm System came to Virginia in 1947, when the first twelve Tree Farms were certified in the Commonwealth. On October 24th of that year, Governor William Tuck presented the certificates at a meeting of Virginia Forests, Inc., in Richmond.

We have been at it ever since. The Tree Farm Foundation grew from the Virginia Tree Farm Committee, which has been inspecting and certifying Tree Farms for decades. This key function will still be done, now by the Inspection Committee. The Foundation's key purpose is to support this work.

### What has changed?

The Tree Farm Foundation differs from the Tree Farm Committee in that the Foundation is a 501(c)(3) corporation. That means the Foundation can raise funds through requests for charitable donations to our organization or cause, and has a broader mission for both outreach and fundraising as well as participation in public events to support the American Tree Farm System (ATFS) in Virginia. The goals of the Foundation are the same as those of ATFS—to promote the growing of renewable forest resources on private lands while protecting environmental benefits and increasing public understanding of all benefits of productive forestry.

Tree Farmers know that their land is part of a larger system. Our choices about what to do on our land affect others, and we are affected by the choices others make. Air, water and wildlife do not care about boundary markers. We all depend on healthy markets for forest products. Changes in rules and regulations can make our lives easier



and healthy habitats through the power of private stewardship.

The American Tree Farm System\* is a program of the American Forest Foundation.

Virginia Tree Farm Foundation 3808 Augusta Ave Richmond VA 23230 P: 804/278-8733 Email: vatreefarm@vaforestry.org



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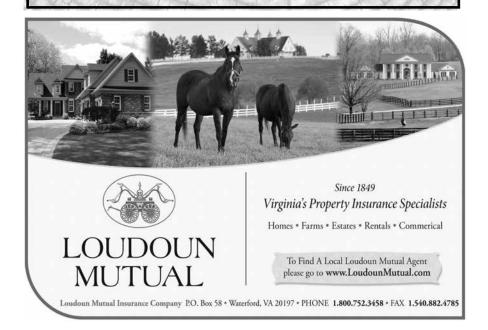


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or harder and make our work more or less profitable. We also know that a forest is much more than just the trees, and that our interests go beyond harvesting and planting.

You may or may not be a tree farmer already, but your interest in reading *Virginia Forests* magazine likely means you are interested and probably connected to the success of forestry in Virginia. Maybe you are a landowner who wants to become a certified Tree Farmer.

We have about 1,300 Tree Farmers in Virginia today, and it may be that Virginia has many more landowners who share the Tree Farm goals to sustain and improve their land for themselves and others. We all benefit if more landowners become certified Tree Farmers. If this is you, please join us.

Maybe your company's wood comes from Tree Farms. If this is you, please help us support sustainable forestry.

Maybe you are a concerned citizen. If this is you, let us know what you think.

To better support tree farming in Virginia, the Tree Farm Foundation will be reaching out to listen, understand and share information, ideas and insights from a wide cross section of Virginians. We will be asking what Tree Farm can do for each other and for the wider community, and how together we can work toward common aspirations.

I mentioned that we need help from all of you. This is the help we need. We need to hear from you and meet you. Tree Farm Foundation board members are eager to speak to groups or at events. Ours is a work in progress. If you want to help, please be in touch. We are developing a webpage with more information and ways to contact us at www.VirginiaTFF.org. We look forward to hearing from you.







by Scott Barrett, Ph.D. Extension Specialist, Forest Operations and Blomass Utilization SHARP Logger Program Coordinator Virginia Tech Department of Forest Resources and Environmental Conservation

# Forest Harvesting has an Extensive Role in Managing Virginia's Forests

Wirginia has over 15 million acres of forest land, with the majority of that held by private forest landowners. While landowners typically have a variety of objectives for managing their forest land, many of their plans will often include timber harvests on their property.

Timber harvests can help to meet a variety of landowner objectives, including providing an economic return on an forest land investment. Virginia's logging businesses work with landowners, foresters, mills and others in the wood supply chain to harvest standing timber and deliver it to mills where it is processed into the products consumers demand. Collectively, Virginia's forest landowners and the loggers that harvest

# In one year (July 2015-July 2016) 5,169 commercial forest harvesting operations occurred on over 232,000 acres in Virginia.

their forests play a major role in managing large areas of forest land each year.

When loggers harvest timber, they are required to notify the Virginia Department of Forestry (VDOF) so the harvests can be inspected for compliance with the silvicultural water quality law. As a part of the notification and inspection system, VDOF tracks the harvest notifications reported by loggers as well as inspections of completed harvests. I recently worked on a project along with Andrew Vinson to take a closer look at the details of Virginia's forest harvests. VDOF provided us with one year of harvest data (July 2015 – July 2016) for the state. There were approximately 1,000 logging businesses or individuals that were listed in the VDOF system as being the operator on at least one timber harvest during that time period.

During that one-year period, there were a total of 5,169 commercial forest harvesting operations on over 232,000 acres. These harvests were spread across the state's geographic areas with 924 harvests in the Mountains, 2,681 in the Piedmont, and 1,564 in the Coastal Plain. The





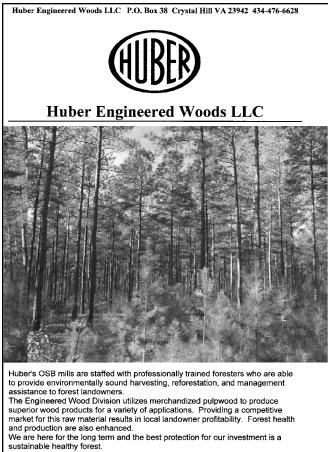
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average harvest size varied somewhat by region with the Mountains having the smallest average harvest size at approximately 28 acres. The Piedmont had an average harvest size of approximately 45 acres and the Coastal Plain had an average harvest size of 55 acres.

VDOF harvest information also includes the general type of harvest performed. Complete harvests were the most common type of harvest reported with 3,294 harvests (63.7 percent). Thinnings accounted for 1,121 (21.7 percent) of the harvests. There were 705 (13.6 percent) commercial selection harvests, and 49 other types of harvests (0.9 percent).

VDOF harvest notification data highlights the extensive nature of Virginia's forest operations that make a significant contribution to forest management on a substantial amount of acreage each year. These harvests are a management tool that help regenerate forest stands, manage forest land to improve growth of the remaining trees through thinning operations, and provide significant revenue to forest landowners. Forest harvesting operations on private forest land make a major contribution to supplying the raw materials needed by Virginia's forest industries while meeting the forest landowners management goals.



# **Virginia Forestry Educational Foundation Update**



# Life Changing Support

by Jimmy Jones, VFEF Board of Directors

hen Ken Morgan asked me to serve on the Board for the Virginia Forestry Educational Foundation (VFEF), I accepted without hesitation. Ken wasn't necessarily looking for a quick yes, and he used the opportunity to tell me about how personally rewarding it had been for him to be on the Board and to support the VFEF. He also took the opportunity to explain what the mission of VFEF is and detailed some of the programs the Foundation supports. One area, as he explained, was the awarding of scholarships to forestry students at Virginia Tech and the impact that the scholarships can make for students. In that sense, Ken was preaching to the choir. Scholarships at Virginia Tech had given me the opportunity that I needed to pursue my career in forestry, and were a real life changer for me.

## "...forestry remains my dream job. It's been a satisfying and fulfilling career that, and as I look back, I wouldn't change a thing."

Having grown up in Emporia in rural southeast Virginia, I was exposed to forestry early on. Forestry was everywhere—in industry, logging or just riding through the countryside. Southeast Virginia was noted for the three P's—Pine trees, Pork and Peanuts.

Along with the forestry business, the forest resources attracted something else to our community and that was, as you can guess, foresters. I got to personally know many of them and looked up to them. Some were active leaders



in our church, and others I met as they stopped in for a friendly visit at my Dad's place of business. It was in those formative years that I realized that becoming a forester was my dream job.

Fast forward 40 years (which is more years than I like to admit), and forestry remains my dream job. It's been a satisfying and fulfilling career that, and as I look back, I wouldn't change a thing if I had to do it all over again. It is important that I not lose sight of what gave me a jump start to pursue my dreams—education and the additional financial support to obtain that education through scholarships. In addition, I had support from family, friends and some great folks that I came to know and work with along the way.

Now that I have served a year on VFEF's Board of Directors, I've seen firsthand the involvement and positive results of their efforts. I had no idea the magnitude of the Foundation's support or the number of youths that it reaches out to each year. Remarkably it's done this since the 1950s. Just in 2016, VFEF provided the following financial support:

- Forestry scholarships at Virginia Tech \$92,000
- Project Learning Tree \$25,620

- Awards and Recognition for 4-H forestry \$6,000
- Forestry Internships at 4-H Centers \$16,000
- SAF Trees to Products \$5,500
- Holiday Lake Forestry Camp \$1,600

Also in 2016, 14 scholarships were awarded to students pursuing degrees in forestry. Project Learning Tree, a forestry and environmental educational program, reaches nearly 700 educators a year. Just imagine, if each of these educators goes back to their classrooms and promotes forestry, there is a potential to impact over 17,000 students per year! Now, that's huge!

I've also seen that funding for these programs comes from many generous donors, as well as from dividends in well-chosen mutual fund investments. But it takes continuous financial support for VFEF to maintain this high level of participation and success. Please consider making a tax-free donation to support two very worthy causes for generations to come—our youth and forestry education in Virginia! After all, your gift could very well be a life changer!

For more information about this valuable Foundation, or to make a contribution, please visit www.vfef.net.





by Harry L. Haney, Jr., Ph.D. Garland Gray Emeritus Professor of Forestry, Virginia Tech and Consulting Forester

VFA provides this opportunity for questions about income tax, estate tax and gift tax issues that affect your Tree Farm. Treat the answers as educational advice for improving your understanding of the tax law and for enhancing communication with your attorney or tax advisor. Your advisors are familiar with the facts and circumstances in your specific case and can provide legal and tax advice as appropriate. All questions are edited to protect your privacy.

**Question.** Dear Dr. Haney, We have experienced a discouraging decade with our forest land. Markets have disappeared for timber products and prices have been soft for the remainder. Regulations, imposed and proposed, impede effort to manage efficiently. The Trump administration promises tax reform and regulatory relief; however, it remains unclear how this will affect our timber business. Will the estate tax be repealed? We have spent considerable energy on leaving the timber in good condition for the children. Have our efforts been wasted? Sincerely, Worried Family Tree Farmer.

**Answer.** Dear Worried, Your questions cover lots of ground. Wills, estate tax and capital gains are current hot button topics in the news. Forestry specific estate planning tools for special use and deferral which are at risk from tax reform are reviewed. Your question on wasted effort provokes thought, but it is less profound than ideas some other are pursuing. In the meantime, a recent event focused attention on estates and timber.

I was visiting a forestry friend in the hospital where I stepped aside to allow nurses to pass with a patient's gurney. Their column moved quietly, solemnly. A quick glance to see if an encouraging smile was appropriate turned to dismay for a covered body in route to a final resting place. Was he (she) male or female, young or old, alone or with survivors? Remembering that all are terminal, did this person have a plan for the estate? Did timberland comprise part of the estate, and was it taxable?

Wills. Do you have a current will? In the absence of one, the first priority should be working with a qualified attorney to plan to dispose of property in accordance with your goals. Dying intestate (without a valid will) allows the state to distribute your assets as specified by state law. Under most circumstances your plan will be more satisfactory. For example, the will permits you to name an executor, save expenses by waiving bond and save on other expenses. In addition a guardian can be named for minor children, charitable bequests can be made and certain assets can be included in a trust created by the will for disabled or otherwise occupied family members. Without a will this is not possible.

Even if you have a will, uncertainties in markets, taxes and family circumstance warrant a periodic review with changes in any of the above factors. Note that a will is a sound investment whether the estate is taxable or not.

**Estate Tax.** The "Estate Tax" is dying declared a *Wall Street Journal* headline (Carter, p. B7, 12/10-11, 2016). The estate tax which turned 100 years old in 2016 was initially levied to help finance World War I, and evolved into public efforts to limit concentrations of wealth. This so-called death tax has been widely reviled for disrupting family farms and timber businesses. Opponents call it unfair since estate assets have already been subjected to income tax. Although increasing exemptions in recent years, currently \$4.5 million, have limited taxable estates to a relatively small percentage of taxpayers, considerable legal and accounting expense has been expended to avoid paying estate tax.

Thus, its greatest cost may be uncertainty and inefficiency expended in its avoidance. The Trump administration and members of Congress have publicly expressed support for repealing the tax; however, its demise remains somewhat uncertain. Previous efforts at repeal have fallen one or more votes shy of success due to the demand for its limited tax revenue.

Even with repeal lifetime transfers by gift will likely still face a transfer tax, perhaps over a specified threshold. Currently, each individual can make nontaxable annual gifts up to \$14,000 per recipient. Split gifts by one family partner can transfer up to \$28,000 if the other partner concurs. Due to the lack of clarity on the future of the gift tax, it may be prudent to hold off on taxable gifts until the outcome of tax reform is better defined. **Capital Gains.** Big changes to capital gains appear likely given the positions expressed by President Trump and Congress. Also, their approaches differ over how to reduce tax rates to spur the economy without increasing the national debt unnecessarily. One thing on which both seem to agree is removing the 3.8 percent surtax on "net investment income." Its threshold is \$250,000 of adjusted gross income for couples and \$200,000 of singles.

Otherwise, proposals diverge with President Trump's plan returning to the three-tier rate structure (0%, 15% and 20%) for capital gains on assets (including timber) held for longer than a year. Thresholds would kick in at new levels. For example, the 20 percent rate would become effective at \$225,000 for couples and \$112,500 for singles. Thus, depending on changes in what is taxable income, this could raise income taxes for some taxpayer while lowering rates for high income bracket taxpayers.

In contrast, the House plan reverts to a structure more familiar to the system in effect prior to the Tax Reform Act of 1986. A portion of investment income would be taxed at regular rates and exclude the balance. For example, 50 percent of capital gain would be excluded including dividend income and interest income. High bracket taxpayers would face an effective rate of 16.5 percent with investment income while lowest earners, currently in the zero percent rate, face a six percent rate.

Change appears certain; however, the final shape of the rates on capital gains is unclear. In addition the effective date of change, historically made retroactive, also remains uncertain. Investors have pushed the stock index to new highs reflecting expectation of reduced capital gains and expectation of rollbacks in onerous regulations on business. The slow rate of economic growth for the last eight years reflected in lower prices for forest products should gradually improve returns to timber investment. This may take longer than usual due to the overhang of forest growth accumulated during the slow growth period. Recent improvements in housing starts promise higher market prices for solid wood product, but increases in capacity for example in certain grades of wood pulp may dampen the gains.

**Forestry Specific Estate Planning.** Although tax reform is expected to repeal or modify Federal estate and gift taxes, there are two forestry specific planning tools that should be remembered in the meantime even with current high estate tax exemptions. They are special use valuation (SUV) under IRC Section 2032A and Deferral and Extension of Estate Tax Payments (DAE) under IRC Section 6166.



SUV permits certain real property to be valued for Federal estates tax purposes on the basis of its "current use" rather than highest and best use. Real property may qualify for SUV if it is located in the U.S. and is devoted to use in (1) farming including forestry, or (2) use in a closely held business other than farming. SUV can reduce the fair market value (FMV) of the gross estate by up to \$1,120,000 in 2017 (originally \$750,000 in 1999 before indexing). It could provide potential tax saving of \$448,000 at the current 40 percent marginal estate tax rate. For forest land owned by both spouses the limitation applies separately to each estate so that up to a maximum of \$2,240,000 reduction in the gross estate value for qualifying property. This can also have a profound effect for use of the marital deduction to a forested estate and must be used with care. Qualifying conditions begin with the taxable value of the gross estate which in 2016 must exceed the combined Federal estate and gift tax exemption of \$5,450,000 per individual.

Under certain conditions SUV can save a substantial amount of estate tax in 2017 over the exemption amount. Careful planning under pre- and post-death circumstances is required by each spouse in order to qualify and receive the maximum tax saving benefits. These conditions are outlined in *Estate Planning for Forest Landowners*, 2009. Gen. Tech. Rep. SRS-112. USDA Forest Service, SRS.

With a large tax bill and or liquidity problems the DAE provides a means to defer payment of taxes until you can get these business affairs in order. Note that the Federal estate tax is due and payable at the same time the estate tax return is due which is nine months after the decedent's death. It must be paid in a timely manner to avoid assessment of interest and penalties.

The estate of an individual who dies owning a closely held "business interest" may qualify for a special elective method of paying estate tax attributable to that interest. Under IRC section 6166 payment may be deferred for the first five years with the estate paying annual payments of interest only. This is followed by payment of the balance in up to 10 annual installments of principal and interest. The maximum payment period is 14 rather than 15 years because the due date of the last payment of interest only coincides with the due date of the first installment of tax.



The election of SUV discussed previously does not prevent an election of DAE under Section 6166. The closely held business interest must comprise more than 35 percent of the decedent's adjusted estate. The business interest may be comprised with all or part in forest land, but it must be an active business. If the estate has elected SUV that is the value used for purposes of determining whether or not the 35 percent test had been met.

Interest on deferred tax is payable at a special two percent rate, compounded daily. It is attributable to the first \$1 million in taxable value of the closely held business. That is, the first \$1 million in excess of the effective exclusion amount of \$4.5 million. At the 40 percent estate tax rate the maximum amount of tax eligible for the two percent rate is \$400,000. On the excess, the interest is 45 percent of the rate charged by the IRS on late tax payments. The interest is not deductible for estate or income tax purposes. If the advantages of this method with favorable interest rates appear to be advantageous for the estate, details on making the election, what constitutes a closely held business, and other details are discussed in Estate Planning for Forest Landowners. Depending on the outcome of tax reform one or both of these measures or some variant may be retained.

Wasted Effort? A fresh response to the question depends on the weight put on financial returns compared to more esoteric values. Consider Peter Wohlleben's *The Hidden Life of Trees* (2016 Greystone Books Ltd, 272p). This New York Timers best seller provides a fascinating way to think about how forests and humans fit into the broader scheme of things. It is both entertaining and challenging. Should the business plan of planting trees with the expectation that our families will find the forest in better condition than we found it be modified?

**ADDITIONAL TAX REFERENCES:** Federal Income Tax on Timber: A Quick Guide for Woodland Owners, (2012) USDA Forest Service FS-1007 has been updated by Linda Wang. The Forest Landowners Guide to the Federal Income Tax (2013), Ag. Handbook No. 731 is available from USDA Forest Service. Estate Planning for Forest Landowners: What Will Become of Your Timberland? 2009. Gen. Tech. Rep. SRS-112, Asheville, NC: USDA Forest Service, Southern Research Station, 180 p. is a useful guide for estate planning. For additional information about timber tax questions, or upcoming programs, send an email to Harry Haney at hhaney@vt.edu.











#### Cary Deffenbaugh with C&I Thinning, Inc. participated in the Bowling Green Town Christmas Parade. As the truck passed the following information was read to the crowd:

"Forestry is a \$17 billion business making it the third largest industry in Virginia while employing over 114,000 people. Local loggers also donate to the Log a Load For Kids which gives money to the Children's Miracle Network Hospitals. C&I Thinning, Inc. uses sustainable forestry timber harvesting practices of pine thinning to maintain forest health, improve wildlife habitat and conserve water quality."





#### VDOF Seeks Nominations for Summer Forestry Camp

Virginia Department of Forestry (VDOF) is seeking nominations for its annual Holiday Lake Forestry Camp scheduled for June 19–24 at the Holiday Lake 4-H Educational Center near Appomattox.

The camp provides participants with a field-based learning experience related to natural resource career paths with topics including wildlife habitat, tree identification, forest ecology, responsible timber harvesting, reforestation, and environmental protection.

Nominees must be Virginia residents, between the ages of 13 and 16, with good academic standing. They should have an interest in natural resources and not have attended the camp in the past.

Any non-related adult who knows of a student's interest can submit a nomination. To nominate a teen, visit http://www.dof.virginia.gov/forestry/ camp/index.htm. Nominations must be submitted by April 7.

The camp is financially sponsored by forest industries, conservation agencies, associations and individuals, which means each camper selected to attend the week-long residential program must pay just \$85.

For more information, contact Ellen Powell at (434) 220-9083 or email ellen.powell@dof.virginia.gov.







#### **Resource Review**

#### Enviva Forest Conservation Fund to Protect 220 Acres Along Nottoway River

Virginia Department of Conservation and Recreation (DCR) announced that a matching-fund grant from the Enviva Forest Conservation Fund will help permanently protect a 220-acre easement known as the Crowder and White tract in Southampton County. According to Enviva, the tract will be the first of two parcels of environmentally sensitive land in Southampton County to be protected with financial assistance from the Fund.

When the second easement is completed, a total of 385 acres of floodplain forestland, dominated by mature cypress-tupelo, will be protected. The land protected through this first award is across the Nottoway River from another parcel already protected by the DCR. Together, the two parcels form "The Narrows," an important transit point for river herring, shad and alewife—fish species that rely on floodplain forests for spawning and nursery habitats. The Narrows will now be permanently protected.

Carlton Owen, president and CEO of the U.S. Endowment for Forestry and Communities, which administers the Enviva Forest Conservation Fund, said, "Not only is it a valuable property for fish, wildlife and recreation, it is also the first transaction to be completed of the four Enviva Forest Conservation Fund awards made in 2016. It's the first of many more to come." Jennifer C. Jenkins Ph.D., vice president and chief sustainability officer at Enviva, added, "We treasure the forests and communities where we work, and we are absolutely delighted to be a part of this important project."

The fund is a \$5 million, 10-year program established by Enviva Holdings LP and administered by the U.S. Endowment for Forestry and Communities. It is designed to protect tens of thousands of acres of bottomland forests in northeast North Carolina and southeast Virginia.

The Fund awarded \$500,000 in 2016 to help conserve more than 2,000 acres of environmentally sensitive forests.



#### AFF and WestRock Announce Partnership for Forest Conservation

American Forest Foundation (AFF), WestRock Company (WestRock) and the WestRock Foundation recently announced a multi-year partnership in the Cumberland Plateau focused on increasing the number of family landowners in the paper and pulp supply chain sustainably managing their forests for all the benefits they provide such as biodiversity, clean water and wildlife habitat. AFF is a leading forest conservation organization that specializes in helping keep family-owned forests productive for all their benefits, while WestRock is a leading provider of differentiated paper and packaging solutions and a Fortune 500 company. The WestRock Foundation provides strategic grants in three key focus areas that include environmental stewardship.

The partnership will work to increase the number of landowners within the Cumberland Plateau and specifically across southeast Tennessee that are actively managing their forests on a regular basis. The partnership will specifically encourage hardwood habitat improvements, forest biodiversity and certification in the American Tree Farm System, an internationally recognized certification program specifically designed for family and small forest owners.

#### Farm Bureau Hears Updates from State Forestry and Agriculture Officials

-from the Augusta Free Press (Read the full story at http://augustafreepress. com/state-officials-share-updates-farm-bureau-leaders/

State agriculture and forestry officials recently outlined some challenges and accomplishments for the Virginia Farm Bureau. Dr. Basil Gooden, Virginia secretary of agriculture and forestry; Sandy Adams, commissioner of agriculture and consumer services; and Bettina Ring, state forester, addressed the Virginia Farm Bureau Federation board of directors at the board's meeting in February.

Ring cited an active fire season in 2016 and state budget cuts that prompted the Department of Forestry to eliminate five positions and sell some properties that were not state forestland. She also noted the 100th anniversary of the department's nurseries, and reported that the department "raised 33 million loblolly pine seedlings last year," as well as hardwood species. In the coming months, Ring noted, the department will be working with stakeholders to identify potential new sources of revenue.

Adams addressed the passing of SB 1195, which authorizes the Virginia Department of Agriculture and Consumer Services to carry out the federal Produce Safety Rule.

Secretary Gooden noted that Virginia has awarded Agriculture and Forestry Industries Development Fund grants for 44 projects to date. The grants are matching funds that represent a cumulative private investment of \$333 million. Grant projects help support more than 1,600 jobs in 33 localities, Gooden continued, and the projects average 82 percent use of Virginia-grown products.

#### Report Reveals Southern Landowners Want to Help At-risk Wildlife Species

Four out of five landowners state that wildlife is a top reason they own land, and the key motivator to conducting forest management in future, according to a study by the American Forest Foundation (AFF), a leading forest conservation organization that works with family forest owners.

According to AFF's new report, *Southern Wildlife At Risk: Family Forest Owners Offer a Solution* family landowners, who own the majority (58 percent) of forests in the South, are key to providing forested habitat for at-risk species. Eightyseven percent of landowners in the South say protecting and improving wildlife habitat is the top reason they own land. In addition, 73 percent state they want to do more on their land for wildlife in the future. Landowners cite an uncertainty about whether they are doing right by their land, difficulty finding support and the cost of management, as barriers.

"AFF's report shows that family landowners need to be a key piece of any proactive conservation strategy to improve and restore wildlife habitat," said Bob Farris, State Forester of Georgia. "If we can help these families get engaged and address stressors on wildlife with practices such as invasive species control, stream crossing repairs, restoring tree species, active forest management and more, we can better protect our at-risk species."

Across 13 southeastern states, Southern forests rank at the top in terms of biodiversity when measured by the number of wildlife and plant species. But, due to forest conversion to non-forest uses such as agricultural land, housing development and commercial expansion, fragmented waterways, natural fire suppression and an influx of invasive species, a



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significant number of the South's wildlife species are now at risk. Currently, there are 224 forest-dependent species listed as endangered or threatened, with 293 candidate and petitioned species that could be listed in the near future.

In addition, AFF's report highlights, it is possible to both protect at-risk wildlife and continue to meet the demands for wood from family lands. Contrary to popular belief, landowners who harvest or thin their forests, are the individuals doing more for wildlife - 85 percent of those who have harvested have also implemented other wildlife-improvement activities, compared to 62 percent by those who haven't harvested.

"This isn't your typical conservation versus industry story, it's a conservation and industry story," said Tom Martin, President and CEO of AFF. "Landowners who harvest are primed to do more for wildlife because they are already working with foresters or other professionals, and have access to information. And its forest products markets that help landowners finanically overcome cost barriers and allow them to conduct more management."

#### VIRGINIA forever Unites Groups to Support **Conservation Causes**

-from the article by Robert Burke in Virginia Business, Dec. 30, 2016 (Read the full story at http://www.virginiabusiness.com/news/article/building-on-consensus)

Now 10 years old, VIRGINIAforever-an alliance of businesses and environmental organizations-strives to get as much funding as possible in the state budget to support land and water conservation. The group's priorities for the 2018 budget include \$20 million in funding for the state's Stormwater Local Assistance Fund, to help localities reduce urban runoff, and \$62 million to help farmers adopt practices to reduce agriculture runoff. The group also wants \$10 million for land conservation grant programs.

The group's five-year plan produced last year calls for the state to spend \$805 million on water quality improvement, with most of that money directed to agriculture projects to limit runoff. It also proposes a funding goal of nearly \$834 million over five years for land conservation.

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JOI	N TODAY!		VFA DUES STRUCTUR
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## PRESIDENT'S MESSAGE, continued from page 3.

# By reducing the size of the Board of Directors aren't you reducing diversity and membership representation?

The combination of a smaller board supported by an advisory council should satisfy diversity and member representation. There are also other levels of representation we will be considering to ensure our members have a voice, including forming focus groups to represent certain sectors of our membership such as private landowners.

#### Does VFA have an advisory council now?

Presently we do not have an advisory council. This new council would support the Board of Directors. Council members would be appointed by the board and be comprised of ex-officio members, experts, and other members as deemed necessary to maintain balanced representation.

#### Why is adding an advisory council better than keeping a bigger Board of Directors?

Having a large Board of Directors has sometimes not been conducive to facilitating discussion and participation at meetings. It can be difficult to assemble a large board. It can be difficult to get a consensus and make decisions in order to move forward with the association's agenda when the board is large. The combination of a smaller board and an advisory council will give us the means to operate efficiently while making sure we have good member representation. An advisory council also offers the opportunity to have an arena for uniting with other associations, non-profit organizations, and groups. The advisory council will also help to engage those with expertise and talent on the current issues VFA is facing.

# Who comprises the present VFA Executive Committee and who will comprise the new one?

The present Executive Committee consists of our four officers—President, Vice President, Treasurer, and Immediate Past President—plus five additional board members appointed by the President. This committee functions to develop the annual work plan among other things and has the authority to function for and on behalf of the Board of Directors. The new committee will be comprised of the four officers and also function as the Personnel Committee.

#### What does the VFA staff think of the upcoming changes?

VFA staff is very excited about the decision to restructure and has been involved in the entire process of brainstorming options, reviewing plans and collaborating to make a successful transition.

I hope to see you at our upcoming Virginia Forestry Summit, "What's New Now?" to be held at the Hotel Roanoke and Conference Center. Mark your calendars for May 2-5, and register online at www.vaforestry.org today!

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