



## Conservation Options for Forest Landowners

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8<sup>th</sup> Annual Woods & Wildlife Conference  
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### Discussion Topics

- Context
- Conservation Tools
  - FSMP
  - Land Use
  - AFDs
  - Conservation Easements
- Estate Planning



## Majority of Virginia's Forests are Controlled by Family Forest Landowners



- 373,600 family forest landowners
  - Control 10.1 million acres of VA's forestland (64%)
  - Control 75% of Virginia's timber supply
- Unprecedented intergenerational transfer of family forests
  - Family forest landowners aged 55 years and older:
    - Comprise 63% of all family forest owners
    - Own 70% of forestland in private ownership

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## VA Family Forest Landowners



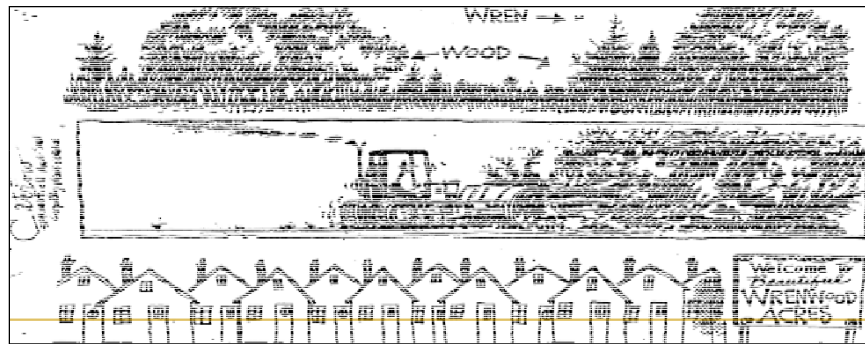
### "Strong Feelings"

- Care about their woods
- Want to do the 'right thing'
- Want to leave a woodland legacy

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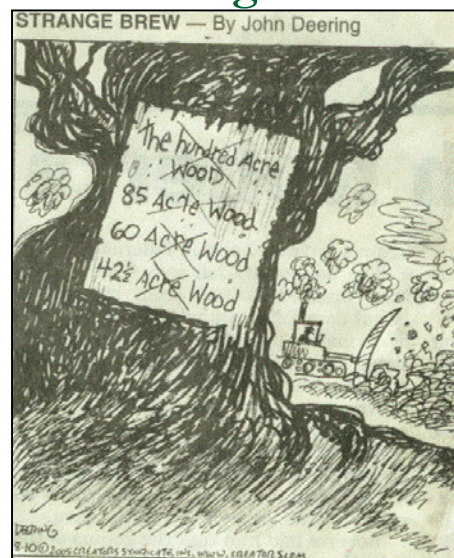
## Forestland Base is Decreasing

- Rate of loss is increasing
  - ~27,000 acres annually
  - Lost over 1 MM acres since 1977
- 75% attributable to development
  - Most from family-owned forestlands



## Remaining Forest is Becoming More Fragmented

- 95% of ownerships in tracts less than 100 acres.
  - Average size = 27 acres
- 47% of total forest land acreage in tracts less than 100 acres
  - One-third of total forest land area in holdings of 50 acres or less.





## Why is This Important?

- We can't get our water quality offshore
- We can't get our wildlife habitat offshore
- We can't get our viewsheds offshore
- We can't get our air quality offshore



## Challenges Facing VA's Family Forest Landowners

- Changing 'family values'
  - Generational disconnect
  - Poor communication – poor planning
- Decreasing profitability or affordability
  - Flat stumpage values
  - Inflated bare land values
- Unfavorable Tax structures
  - Property
  - Income
  - Estate
- "Hostile" Environment

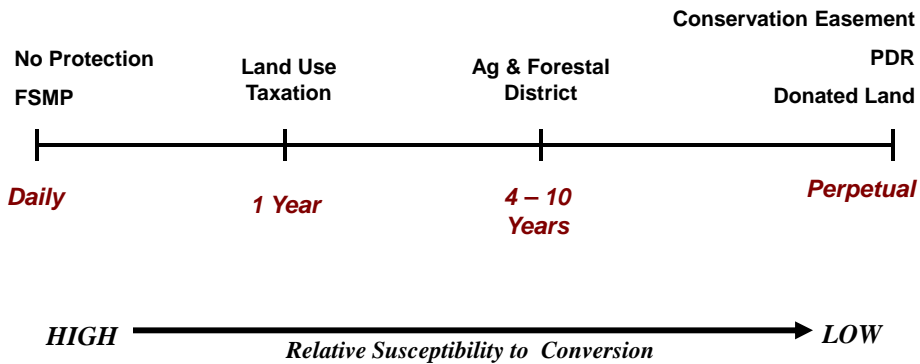
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## Forest Conservation Tools

- Forest Stewardship Management Plan
- Land Use Assessment
- Agriculture & Forestal Districts
- Conservation Easements
- Estate/Succession Planning

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## Comparative Threat to Conversion & Fragmentation



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## Forest Stewardship Management Plan



- Visual aid and guide for intergenerational planning

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## Land Use Value Assessment

- Assesses property tax based on current use
  - Not fair market value
- Localities may enact special assessments for the following categories:
  1. Agriculture
  2. Forestal
  3. Horticulture
  4. Open-space

## Agricultural/Horticultural Use

- Consecutive 5-year production history
  - Currently in production
- Applicant must certify that real estate is in a program intended to:
  - Use Best Management Practices
  - Maintain soil fertility
  - For crops: Average crop yield per acre >1/2 the locality 3-year average
  - For livestock: Minimum of 12 animal unit-months of commercial livestock (For poultry: per five acres)

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## Forestal Use

- Commercially valuable trees of any size in sufficient numbers to comprise at least 40% of normal stocking.
- Recently harvested forestland regenerated to new forest.
- Land devoted to forest use but not capable of growing commercial timber due to inaccessibility or adverse site conditions.
- Applicant must certify that real estate is in a forest management program intended to:
  - Enhance growth of commercially valuable timber species through the use of generally acceptable silvicultural methods.
  - Use Best Management Practices
  - Protect from unregulated livestock grazing.

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## Open-Space Use

- Consistency with local land use plan
- Required to be one of the following:
  - Within Ag-Forestal District
  - Subject to a perpetual easement held by a public entity
  - Subject to a recorded commitment between landowner and a governing body
- Real Estate must be used for one of the following:
  - Public park or recreational uses
  - Conservation of land or other resources
  - Floodways
  - Wetlands
  - Riparian buffers
  - Historic or scenic areas
  - Assisting in the shaping of the character, direction, or timing of community development or for the public interest

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## Land Use Assessment – Acreage Requirements

- Agricultural, Horticultural, Open-space: 5 acres
- Forestal: 20 acres
- Exceptions:
  - Aquaculture and specialty crops (as defined by local ordinance) can be less than five acres.
  - For Open-space, local ordinance may prescribe:
    - Greater minimum for open space use
    - That some open space uses be a minimum of ¼-acre

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## Land Use Value Assessment – Utilization by Localities

- 121 localities report land use value assessment in effect for at least one category
  - 74 counties
  - 28 towns
  - 19 cities

Assessment Type	Cities	Counties	Towns	Total
Agricultural	14	74	25	113
Forestal	12	61	17	90
Horticultural	11	64	14	89
Open-space	9	45	11	65

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## Land Use Assessment – Land Values

- Specific “use value” is calculated per locality
  - Determined by State Land Evaluation Advisory Council (SLEAC)
  - Locality may set own rates
- Agriculture:
  - Based upon Land Capability Classifications
  - Cropland: I – IV; higher value
  - Pasture: V – VII
  - Other Land: VII
- Forestal:
  - Based on Site Productivity
    - Fair – Good – Excellent
    - Non-productive forestland
- Open-space:
  - Rates for golf courses, swim clubs
  - Other open-space: Ag or Forestal rates
- <http://usevalue.agecon.vt.edu/>

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## Land Use Assessment – Example without LUA

- Farmer Brown
  - Home valued @ \$200,000 on two acres of land valued @ \$5000 per acre
  - 50 acres of pasture land and 100 acres of forestland valued @ \$1500 per acre
- Assessed values
  - Home + 2 acres of land = \$210,000
  - Pastureland + forestland = \$225,000
- TOTAL ASSESSMENT = \$435,000
- Tax rate = \$0.75 per \$100 of assessed value
- TOTAL TAXES DUE = \$3262.50

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## Land Use Assessment – Example with LUA

- Farmer Brown
  - Home valued @ \$200,000 on two acres of land valued @ \$5000 per acre
  - 50 acres of pasture land and 100 acres of forestland valued @ \$1500 per acre
- Assessed values
  - Home + 2 acres of land = \$210,000 (SAME)
  - Pastureland = \$1500 (\$30 per acre use value)
  - Forestland = \$40,000 (\$400 per acre use value)
- TOTAL ASSESSMENT = \$251,500
- Tax rate = \$0.75 per \$100 of assessed value (SAME)
- TOTAL TAXES DUE = \$1886.25

**SAVINGS OF \$1376.25**

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## Land Use Assessment – Rollback

- Rollback fees are charged:
  - If land changes to more intensive use (development).
  - Landowner fails to re-validate.
  - Land changes ownership and new owner fails to register or re-validate.
  
- 5 years of tax benefit plus interest

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## Agriculture & Forestal Districts

- Areas where landowners join together to encourage and protect rural land uses
  
- Landowner benefits include:
  - Use value taxation
    - Even if not approved in locality
    - As long as property would qualify otherwise
  - Protection from nuisance ordinances
  - Localities must take districts into account when making planning and zoning decisions
  - Enhanced eminent domain protection

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## Agriculture & Forestal Districts – Criteria

- Landowners must ask localities to create
- District must contain at least 200 contiguous acres
  - Once formed, any size property within 1 mile of boundary may petition to join
  - Local districts: No less than 20 acres
- Applicants can propose district creation requirements
- Applicants suggest term length
  - Between four and ten years

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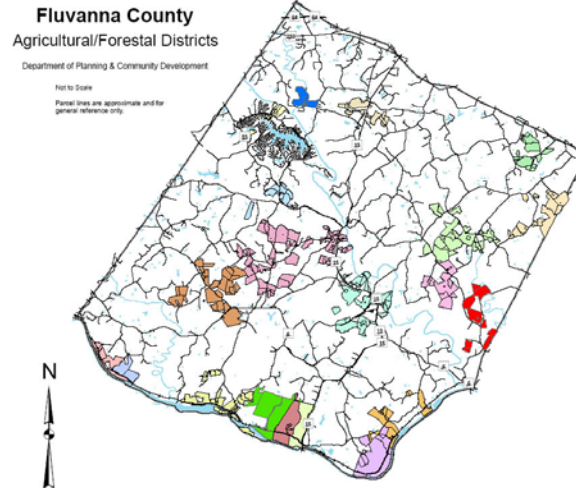
## Agriculture & Forestal Districts – Criteria

- Locality must establish advisory committee
- District reviewed at the end of the “term”
  - Renew or dissolve district
  - Landowners can petitions to:
    - Be added to district
    - Be removed from the district without penalty
  - District must maintain 200-acre core
- Withdrawal
  - “Good and reasonable” cause
  - Within 2 years of death of landowner

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## Agriculture & Forestal Districts – Criteria

- 295 districts
- 30 localities
- 684,236 acres



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## What is a Conservation Easement?

- A *voluntary* land preservation agreement between a landowner and a qualified easement holder.
- Easement *in gross*, meaning it does not benefit a specifically identified property owned by the easement holder like a right of way.
- Landowner gives up “sticks” from their fee simple bundle of sticks.
- To be eligible for tax benefits, the easement **MUST** last in *perpetuity*.

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## Why Do Landowners Convey a Conservation Easement?

- Because they *love their land!*
- Because they *love their land!*
- Because they *love their land!*
- Because they may be eligible for federal and state income tax incentives, estate tax savings, and property tax relief.



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## Conservation Easement – Requirements

1. A “qualified” real property interest given to
2. A “qualified” organization
3. Exclusively for conservation purposes.

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## Conservation Easement – “Conservation Purpose”

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

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## Conservation Easements – Federal Tax Deduction

- Size of deduction = Easement value
- Use limitations:
  - Deducted at a rate of 50% of AGI per year.
  - Qualified farmers (includes forestry) can deduct at a rate of 100% of AGI.
  - Excess contribution can be carried forward for 15 years.

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## Conservation Easements – VA Land Preservation Tax Credit

- 40% of easement value
- Two options:
  1. Pay income tax liability
    - Rate of \$50,000 per year
    - Excess credits can be carried forward for 13 years
  2. Sell excess credits at discounted rate
    - Private transactions or through brokers
    - Brokers typically charge a commission
    - VA-TAX charges a transfer fee
- VA also allows deduction against income for easement donations.
  - Essentially carried over from federal AGI.

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## Conservation Easements – Property Tax Relief

- Land subject to an easement in a locality that has adopted “land use” valuation:
  - Assessed as “Open-space” and will be taxed at use value
- Land subject to an easement in a locality that does NOT have land use:
  - Interest of the easement holder shall not be taxed
  - Landowner won't be taxed on the value of extinguished development rights.

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## Conservation Easements – Estate Tax Benefits

- 36% of Virginia farmers do not have a will, trust, or other estate plan.
- Between 1996 & 2006:
  - 38% of forested estates owe federal estate taxes.
    - Compared to 1 – 2% overall
- 2.4 million acres of forest are harvested and 1.3 million acres are sold every year to pay estate taxes (Greene, 2006).
- Failure to plan for the transition of the farm or forestland can lead to it passing from family ownership.

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## Conservation Easements – Estate Tax Benefits

- Land subject to an easement may be eligible to two estate tax benefits:
  1. The easement will reduce the value of the land asset in the estate.
  2. In addition, as much as 40% of the value of the land (up to a \$500,000 cap) may be excluded from the estate.



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## Conservation Easements – Estate Tax Benefits Example

- Landowner Brown has property worth \$2,000,000 and enough other assets that estate tax will be due upon his death.
- During his life, he donates an easement that reduces the land value to \$1,000,000.
- When he dies, the farm is still worth \$1,000,000 and his heirs take advantage of 2031(c) and exclude 40% (\$400,000) of the land value from the estate.
- Land is now valued at \$600,000 for the purposes of the estate, saving the heirs \$490,000 in estate taxes.  
(1,400,000 x .35 = \$490,000)

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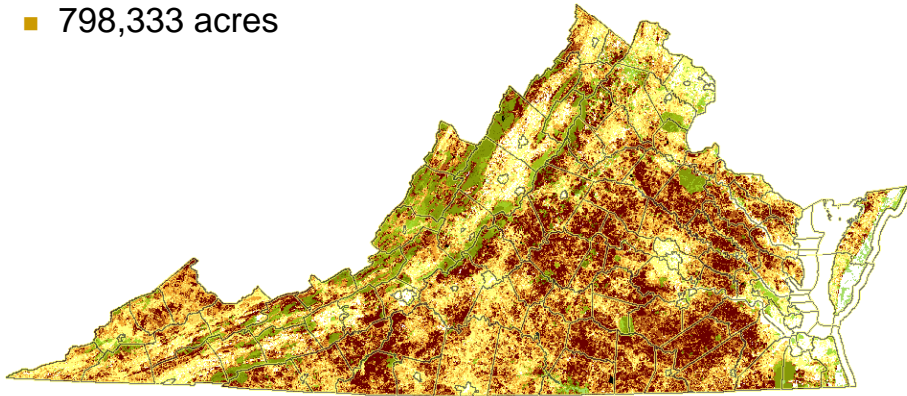
## Purchased Conservation Easements

- 21 localities in Virginia have a Purchase of Developments Rights (PDR) program.
- Examples:
  - Albemarle County: ACE Program
  - Rappahannock County: Farmland Preservation Program
  - State Level:
    - Forest Legacy
    - Virginia Land Conservation Fund
- Can be a good option for the right lands and the right landowner.

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## Conserved Land in Virginia

- 4163 easements
- 798,333 acres



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## Conservation Easement MYTHS

- You can't ~~do anything~~ of your land.
- You can't ~~build~~ build on your property.
- You can't ~~pass~~ pass your land on to your children.
- You can't ~~hunt, fish, farm or harvest~~ hunt, fish, farm or harvest timber.
- You have to allow public access.
- One size fits all.

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## Estate Planning

- Also referred to as “succession planning”.
- Proactive steps for smooth and orderly intergenerational transition of assets.
  - In this case, forestland
- Ensuring woodland legacy is continued intact.

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## Estate Planning vs. Succession Planning

- SUCCESSION PLANNING
  - Preparing family land for change in ownership.
  - Identifying vision and goals for your family and woodland.
  - It's the **WHAT** you want to do.
- ESTATE PLANNING
  - Process of using the available legal, financial, and conservation tools to implement your succession plan.
  - Ensure the transition happens the way you and your family envision.
  - It's the **HOW** you're going to do it.
- Going on vacation?
  - Determining the destination = SUCCESSION PLANNING
  - Means of travel and what to pack = ESTATE PLANNING

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## Estate Planning – Supported by Many Tools

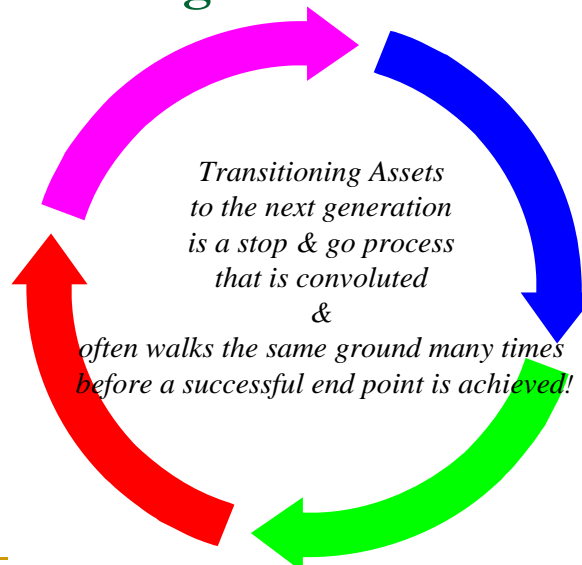


### What is Your Objective?

- Minimize tax liabilities?
- Maintain family ownership?
- Revenue stream?
- Environmental ethic?
- Legacy?

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## Estate Planning



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## Estate Planning – Shared Values

- Makes issues easier to address.
- Promotes family unity.
- Perpetuates family values and traditions.
- Heirloom Scale
  - 1 = My property is one of the financial assets in my portfolio and nothing more.
  - 10 = My property is a priceless family heirloom to be protected at all costs

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## 10 Steps to Successful Succession Planning

1. Discuss and write down your goals and vision for the property and 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 recreate on the property.
9. Create a governance structure that will survive your passing.
10. Remember to have fun!

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## Estate Planning “Obstacles”

- **“I already have a will.”**
  - *A will transfers property. It is not designed to transfer values, goals, ideals, management strategies or business arrangements.*
- **“My kids just don’t get along.”**
  - *By not addressing the issue during your lifetime, you practically guarantee the outcome.*
- **“I don’t care if the land stays in my family. My heirs are better off selling it.”**
  - *Maybe. However, planning and preparation can potentially save them thousands in estate tax liability.*
- **“It’s too expensive. I can’t afford to hire lawyers and accountants.”**
  - *Do you know the true worth of your estate? What is the worth of your woodland legacy? Failing to plan has greater costs.*
- **“The laws change every few years, and we just end up paying lawyers more money.”**
  - *A good plan will help you be prepared for changes. It is cheaper to revise a good plan already in place than to cobble something together at the last minute or under duress.*
- **I’m only \_\_\_ years old. I plan on living another \_\_\_ years. (You fill in the blanks!)**
  - *Does life always go as intended? Better to have a plan too soon than no plan too late.*

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## Estate Planning – Consequences of NOT Planning

- **IRS has a plan for you**
  - *Legislation mandates how property is transferred between generations.*
- **It’s a gamble**
  - *Estate transfer laws may or may not support the older generation’s wishes for the transfer of land and family assets.*
- ***Strained relationships between family members.***

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## Estate Planning – Succession Happens

- You (or your heirs) can sell all or a portion of your property to someone else.
- You can break it up and sell portions, or divide it among your heirs.
- You can give all or a part of your property to charity (conservation easement).
- You can give it intact to one heir.
- You can give undivided interests in the property to your heirs.

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## Estate Planning – Thoughts to Ponder

- Conversion or conservation – you decide.
- As a family forestland owner, you **CANNOT**:
  - Do nothing – if you do nothing, conversion and fragmentation **is** inevitable.
  - Rely on someone else to protect your woodland legacy.
- Pass on an asset or preserve a legacy?

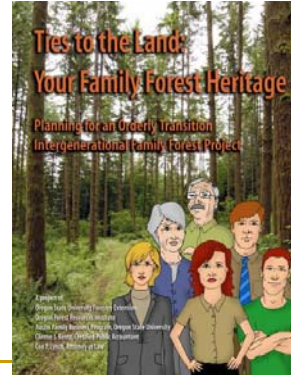
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## GenerationNEXT Workshop



### ■ SAVE THE DATES!!

- ❑ 3<sup>rd</sup> Annual
- ❑ August 9<sup>th</sup> & 16<sup>th</sup>, 2011
- ❑ Lake Monticello Clubhouse
- ❑ More details soon!



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*“My family’s values have more to do with having a place to be than with how much money you could make selling or developing it. Maybe we’ve been in the same place so long we can’t really imagine not still being connected with it.”*

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*“My wife, our children and I believe the preservation of our farm land is the most important legacy we can leave for the next generation and generations to come.”*

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*“We had seen cousins and in-laws subdivide or sell off property at auction, costing far more than any of the family could hope to pay for it; and we simply did not want that to happen to the farm.”*

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## Questions?

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*Thank you!*

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