

WEST VIRGINIA DIVISION OF FORESTRY
Cooperative Forest Legacy Program

Sample Conservation Easement

This document is included in the forest legacy kit as an example for information and possible guidance only in deciding a future course of action. It is not and should not be considered to be a model easement.

This Conservation Easement Deed (Deed) made this _____ of _____, 200__ between the owner, _____ residing at _____

_____ and all subsequent owners, hereafter known as Grantor and the West Virginia Division of Forestry, having an address at _____, hereinafter known as the Grantee.

WHEREAS, Grantor(s) are the owners of _____ acres of real property situate on the waters of _____, _____ District, _____ Quadrangle, _____ County, West Virginia, recorded in the offices of the County Clerk (DB__ Page____) and the Assessor (Tax Map__ Parcel____) in the Court House in _____, West Virginia; and

WHEREAS, the property is an environmentally important forestland area as described in the West Virginia Forest Legacy Assessment of Need that indicates it possesses characteristics over and beyond those generally accepted as being forestland benefits or it will expand a tract already protected by providing additional protection for the originally designated purpose, as described in Appendix B attached hereto, and has been proven to be in danger of development for non-forest uses; and

WHEREAS, Grantor intends that the forested values of the property be preserved and maintained in its present state as a natural area devoted to the production of forest products of all kinds including, without limitation, such products as timber and pulpwood, ornamental shrubbery, scenic vistas, wildlife habitat, wetlands, woodland recreation and others that do not significantly interfere with those values; and

WHEREAS, Grantee is a qualified recipient of this conservation easement under the West Virginia Forest Legacy Program and commits to preserving the forestland values of this property and to upholding the terms of this conservation easement; and

WHEREAS, Grantor desires to sell the development rights of the property to the Grantee and the Grantee desires to purchase and forever protect and conserve such development rights; and

WHEREAS, the parties hereto are desirous of entering into this conservation easement to provide for the protection and conservation values of this property in perpetuity for the public good and the benefits of this and generations to come.

WITNESSETH

NOW, THEREFORE, in consideration of the payment to be made by Grantee to Grantor, the terms and conditions to be performed by the parties as set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor and the Grantee hereby agree as follows:

1. Grantor agrees to hereby convey unconditionally, unencumbered and irrevocably to Grantee and its successors, forever and in perpetuity, a conservation easement to the extent set forth herein for the consideration of *-spell out the amount-* (\$_____) per acre to be delivered in one check made out to the Grantor(s) at easement signing.
2. Grantee agrees to honor the intentions of Grantors expressed herein and to prevent the use or development of the property for any purpose or in any manner that would conflict with these features and characteristics and the overall maintenance of the property in its forested condition.
3. Grantee Rights. The following rights are conveyed by Grantor to Grantee by this conservation easement:
 - a. To preserve and protect the forested values of the property.
 - b. To enter upon the property during regular working hours to monitor Grantors' compliance with and otherwise enforce the terms of this easement; provided that such entry shall be upon prior reasonable notice to Grantors and Grantee shall not unreasonably interfere with Grantors' use of the property.
 - c. To place signs on the property which identify the land as being protected by this conservation easement under the auspices of the West Virginia Forest Legacy Program.
4. Grantor's Rights. The Grantor retains all ownership rights which are not expressly prevented or restricted by this conservation easement, including, in particular:
 - a. The right to sell, bequeath, mortgage or donate the property, although the subsequent owner shall be bound by all obligations in this agreement.
 - b. The right to maintain, renovate, and replace existing structures (as noted in the baseline documentation report) in essentially the same location and size. However, prior to begging such renovation or construction of existing structures, the Grantor will supply a written plan to the Grantee for the Grantee's approval. Such approval shall not be unreasonably withheld.
 - c. The right to engage in or permit others to engage in all uses of the property that are not expressly prohibited herein and are not inconsistent with the uses of this agreement.
 - d. The right to practice professional forestry subject to the general environmental safeguards proscribed by the federal and state governments.
 - e. The right to restore any damages to the property accruing from fire, flood, storms, earthquakes, or other natural acts beyond the Grantor's control and to take prudent actions under emergency conditions to prevent, abate or mitigate significant injury to the property resulting from such causes.
 - f. The right to maintain all private roads, trails and bridges now on the property.
 - g. The retention of all water rights within the easement area, including, but not limited to riparian, groundwater and appropriated rights and the right to construct water extraction facilities and related distribution facilities in accordance with local, state, and federal laws.
 - h. The right to prevent hunting, fishing and trapping or entry upon the property for other purposes by posting the property in a legal way or by requiring advance written permission.
 - i. The right to use pesticides and herbicides necessary to maintain the natural ecological processes and systems.

5. Prohibited Rights.
 - a. Neither the Grantor or Grantee shall dump or cause to be dumped any trash, soil, garbage, waste, abandoned vehicles, sludge, appliances, machinery and other items on the property except such items as may reasonably be necessary for the practice of professional forestry.
 - b. Excavation, dredging, mining and removal of gravel, soil, rock, sand, coal, petroleum, natural gas and other materials except as in 4e above.
 - c. Introduction of non-native plants and animal species that have been shown to be invasive and compete with and result in the decline of native species.
 - d. The general public shall have no rights of use and enjoyment of the Property under this easement (unless conveyed).
6. Enforcement Delay. Any delay in enforcement shall not be construed as a waiver of the Grantee's right to eventually force the terms of this conservation easement.
7. Forest Stewardship Plan. The Grantor shall be in compliance with a Forest Stewardship Plan that is reasonably current, but in no event more than 12 years old, prepared by a professional forester licensed to do business as a forester in the State of West Virginia and approved by the West Virginia Division of Forestry.
 - a. Topographic, soils and forest cover map.
 - b. Physical inventory of the property, including any springs, seeps and other wetland areas, rare and endangered species locations, roads, trails, and structures.
 - c. Minimum of 15 years of planned forestry activities.
 - d. Grantor's signed agreement that all forest management activities will be conducted in accordance with Best Management Practice guidelines prepared and accepted by the West Virginia Division of Forestry, as they may be amended from time to time, or comparable provisions which may replace the guidelines in the future.
 - e. A timber harvest plan that meets the owner's objectives and emphasizes multiple-use.
8. Notice of Violation. If the Grantee determines that the Grantor is in violation of this conservation easement, the Grantee shall provide written notice to that effect identifying the violation and requesting corrective action. However, if at any time the Grantee determines that, in its opinion, the violation constitutes immediate and irreparable harm, no written notice is needed before the Grantee pursues its remedies.
9. Grantor Fails to Act. If the Grantor does not implement corrective action within 30 days after written notice from the Grantee, the Grantee may bring legal action to require the terms of the conservation easement be followed. The Grantee is entitled to temporarily or permanently enjoin the Grantor from additional violations and to seek specific performance, declaratory relief, restitution, reimbursement of expenses, and /or an order compelling the Grantor to restore the property. If the court determines that the Grantor has failed to comply with the terms of this easement, the Grantor shall also reimburse the Grantee for all reasonable litigation costs and reasonable attorney's fees and all costs of corrective action taken on the property by the Grantee.
10. Unreasonable Actions. If the Grantee initiates legal action against the Grantor and if the court determines that the litigation was initiated without reasonable cause or otherwise in bad faith, the court may require the Grantee to reimburse the Grantor for reasonable costs and reasonable attorney's fees for defending the legal action.

11. **Costs and Liabilities.** Grantors retain all responsibility for costs of any kind related to the ownership, upkeep, operation and maintenance of the property including the maintenance of adequate comprehensive general liability insurance coverage.
12. **Taxes.** Grantors shall be responsible for all taxes, fees, assessments, and charges of whatever description levied on or assessed the property, including any taxes imposed upon, or incurred as a result of this easement and shall annually report the payment of such to the Grantee.
13. **Grantee Liability.** The Grantor shall hold harmless, indemnify, and defend Grantee and its employees and agents from and against all liabilities, penalties, costs, expenses, claims, demands, or judgments, including, without limitation, unless so prescribed by law, reasonable attorney's fees that arise from or are in any way connected to the injury or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property under this easement, regardless of cause, unless due solely to the negligence of any of the indemnified parties; and for taxes or costs due to the existence or administration of this easement.
14. **Eminent Domain.** If the property under this conservation easement is taken in whole or in part through the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.
15. **Assignment.** This conservation easement is transferable, but the Grantee may not assign its rights to other than a successor organization with the identical or extended duties in state government.
16. **Termination.** If circumstances arise as will render the purposes of this easement impossible to accomplish, this easement can be terminated by a court of competent jurisdiction. The parties stipulate that, in such instances, the Grantee shall be entitled to a sum equal to the difference between the fair market value of the property unencumbered and encumbered by the easement as shown by the purchase price of the easement which shall remain constant over time.
17. **Subsequent Transfers.** The Grantor agrees to incorporate the terms of this easement in any deed or other legal document under which it divests itself of interest in all or any portion of the property, including a leasehold. Grantor further agrees to provide written notice to Grantee of the transfer of any interest at least thirty (30) days before the closing of such transfer. The failure of the Grantor to perform any act required by this paragraph shall not impair the validity of this easement or limit its enforceability in any way.
18. **Liberal Construction.** The wording of this document shall be liberally construed in favor of maintaining the conservation easement on the property.
19. **Notices.** For purposes of this easement, notice may be provided by first class mail to a party at the last known address of the party.
20. **Severability.** If any portion of this conservation easement is determined to be legally invalid, the remaining provisions shall remain in force.
21. **Termination of Grantor Rights.** A Grantor's future rights and obligations under this conservation easement terminate upon transfer of that party's interest in the property. Liability for acts or omissions occurring before transfer will survive the transfer.

- 22. Entire Agreement. Any general rule of construction to the contrary, this document sets forth the entire agreement of the parties with respect to this conservation easement and is intended to supercede all prior discussions, negotiations, understandings, verbal or written, related to this easement.
- 23. Contract Terms. The terms of this conservation easement will be construed in accordance with West Virginia law.

Grantor: _____

Grantee:
West Virginia Division of Forestry

Type name here

BY: _____

ITS: _____

STATE OF WEST VIRGINIA,
COUNTY OF _____, to-wit:

I, _____, Notary Public in and for the county and state aforesaid, do hereby certify that _____, whose name is signed to the above timber sales agreement as Grantor has this day acknowledged the same before me in my aforesaid State and County.

Given under my hand and seal this _____ day of _____, 200__.

Notary Public

My commission expires _____

STATE OF WEST VIRGINIA,
COUNTY OF _____, to-wit:

I, _____, Notary Public in and for the county and state aforesaid, do hereby certify that _____, whose name is signed to the above timber sales agreement as Grantor has this day acknowledged the same before me in my aforesaid State and County.

Given under my hand and seal this _____ day of _____, 200__.

Notary Public

My commission expires _____