Property Rights Concerns

Nothing has raised the eyebrows of more woodland owners across the nation than the mention of property rights. Although landowners obviously possess many rights regarding their property, court actions and numerous regulations in recent years suggest that those rights are shared with the public and can be limited.

Nature of Property Rights

What we call property really involves a number of separate rights that can be likened to a bundle of sticks. Each stick represents a specific right. These rights include the right to sell, to lease, to subdivide, and to pass to an heir, as well as rights involving air, water, mineral and development interests. When owners have all the rights individuals are permitted to hold in property, they are called fee simple owners. However, there are four "sticks" reserved by society that never get into the owner's bundle of rights. These include the right to tax, to take for public use, to regulate or control the use of, and to escheat.

Society's right to take private land for public use or to regulate or control the use of that land has raised concerns among many private landowners. They feel that many of the regulations or controls used by government can so restrict the ability to use the property that it consists of a taking without just compensation. They believe landowners should be justly compensated under the Fifth Amendment "just compensation" promise.

Many grass roots property rights organizations have been formed to address this issue. In 1993, more than 20 state legislatures considered "compensation bills" that would require states to provide compensation if the damage to landowners from a regulation reached a certain threshold.

Regulations and Restrictions

The activities of woodland owners in Maryland are directly affected by many forest harvest regulations intended to protect water quality and sensitive habitats. Compared to other eastern states, Maryland has significantly more forest harvest regulations. Harvest restrictions imposed by the critical areas law, tree conservation act, forest buffer regulations, wetlands regulations, and the endangered species act, not to mention county ordinances, have often made it difficult or impossible to carry out sound forest management activities.

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As legal challenges increase, enforcing regulations becomes increasingly expensive. Many governments are realizing the value of educating citizens to make them fully aware of the effect of regulatory proposals and to
encourage voluntary actions to protect the environment.

**Stewardship, Not Exploitation**

The forest stewardship program provides an avenue by which the rights woodland owners enjoy are balanced by responsibility. It is to society's advantage that owners use their land to produce wildlife, timber, open space and other benefits, but exploitative practices must be avoided. Woodland owners must understand the consequences of their actions and use professional assistance to accomplish their goals. Participation in forest stewardship seminars to learn about sound forest stewardship practices is a good start. Beyond this, woodland owners should consider membership in forest landowner organizations so they can keep up-to-date on the consequences of new and existing regulations.

While no one can be certain how far the trend to broaden the power of the public over private property will go, woodland owners need to educate themselves, stay informed and make their voice heard in land-use decisions.

**Crop Tree Management**

Crop tree management is a relatively new practice that is designed to improve communication between landowners and forestry professionals while achieving multiple woodland goals. In this type of management, trees are evaluated based on the benefits they provide the landowner. While most crop trees are selected for timber, they also can provide wildlife benefits, aesthetic benefits, and water-quality benefits.

Crop tree management is different from traditional area-wide thinning. In most cases, area-wide thinning involves removing all of the poor-quality trees and leaving the good trees. Crop tree management on the other hand, involves singling out the trees that best meet the landowner's needs and freeing the crowns of these trees from competition. This often means cutting down trees that would not have been removed in a traditional thinning.

**Objectives Guide the Selection**

Based on the goals they have for their property, landowners establish objectives for each forest stand and use them to guide their selection of trees to retain. Once these trees are chosen, all other trees whose crowns touch the crown of the selected trees are removed (Figure 1). Releasing the selected trees' crowns leads to increased diameter growth and helps ensure better survival.

Crop trees selected for timber production should be a high value species such as walnut, ash or oak, be at least 25 feet tall.

**Figure 1.** A crown-touching release viewed from above.
Planting a Forested Buffer

Growing trees is something new to John and Sue Hegeman. About a year ago, they contacted the Maryland Forest Service for advice on how to plant trees on their historic 125-acre Maiden's Bowers Farm purchased in 1968.

It was a decision to change their way of farming from a mixed operation, growing row crops and raising some livestock, to a rotational grazing operation for beef cattle that led them to plant a forest buffer. Under the rotational grazing system, they converted all crop fields to pasture. Although the grass-legume cover in the pasture holds the soil in place better than the crops grown under the old operation, there were still water quality concerns for Tobacco Run, the stream that runs through the farm.

John was concerned about the impact his cattle would have on the stream. To reduce his impact, he fenced the cattle away from the stream and installed a permanent stream crossing. However, even after these changes were made, Tobacco Run still had, as John puts it, “no decent fish.”

To help remedy this, the Hegemans decided to plant a forest buffer along the stream to provide the shade and debris necessary for better trout habitat. According to John, “The cost-share programs the State was offering were in line with my goals for water quality.” He used Stewardship Incentive Program (SIP) and Buffer Incentive Program (BIP) funds to help cover the planting costs.

The task of planting 3000 seedlings last spring on 5.2 acres of former pasture along the meandering Tobacco Run was accomplished with the help of 37 volunteers from seven Harford County high schools. John and Sue were very appreciative of the students' contribution, commenting that “they did a fine job”. This opinion was supported by the fact that about 90 percent of the seedlings survived after the first growing season.

Eight trees species and three shrub species adapted to the streamside site were planted in a random pattern as requested by the landowner to provide wildlife and aesthetic benefits. Competing vegetation was controlled by spraying herbicide around the seedlings three to four times during the growing season.

John and his forester are both confident that the plantings will shape up nicely and continue to do well. The Hegeman's, who purchased their property because of its “good water, good land, and good house” are doing their best to keep it that way.

Forest Casualty Losses

There have been many questions lately about the possibility of federal tax benefits related to casualty losses on forest lands. Some of these losses may be deducted up to the adjusted basis value of the timber lost. Examples of casualty damage are losses from fire, windstorms, and hail. Insect and drought losses “generally” do not constitute a casualty; however, these losses may result in an allowable non-casualty business or investment loss deduction.

In order to qualify for tax treatment, the timber loss must be traceable to an identifiable event and must have occurred suddenly and quite unexpectedly. The amount of loss must be established by a fair and objective procedure. A consulting forester would know the proper procedure to follow.

Your claim as a loss is the difference between the adjusted basis value and the amount received from salvage if the latter is less than the basis. The deduction cannot exceed the adjusted basis value of the timber lost. Reimbursements from insurance and other anticipated recovery strategies are deducted in computing the loss. You would report these losses on Federal Form #4684.

No deduction is allowed if the damage does not make the trees unfit for use. Accordingly, damage must be measured in units of timber actually destroyed. The loss of future profits or potential income due to a reduction in the rate of growth or quality of the timber is not a casualty, because it does not result in an actual loss of tangible or measurable property.

Because many of these areas are confusing, you should contact a consulting forester and a CPA for advice. If you would like additional information on forest tax issues, you may want to buy a copy of Agricultural Handbook #681, titled Forest Owner’s Guide to Timber Investments, the Federal Income Tax, and Tax Record Keeping. Copies can be purchased for $5 from the U.S. Government Printing Office, Washington, D.C. 20036. If you need additional information on record keeping, call Bob Tjaden at 410-827-8056.
**Take Note ...**

**Seedlings Available from State Nursery**

The Maryland Forest Service will sell seedlings to individuals and organizations wishing to plant trees for conservation purposes on at least one-quarter acre. Seedlings are sold in minimum quantities: 250 conifers or 100 hardwoods. Wildlife packets are available for $4 each for individuals and $2 each for fund-raisers. For a catalog, call: (800) 873-3763.

**Tax Resource List** - The publication, *Keeping It In The Family: Estate Planning and Timber Tax Resource Lists For Woodland Owners (FOR1)*, lists resources to help you in planning your estate and sources of tax information, with descriptions of each and where it can be obtained. To obtain a copy of this contact your local Cooperative Extension Service office.

**Mile-a-Minute Weed Threatens Trees**

Mile-a-minute weed, a native of Asia, is becoming a pest in forests, orchards, and nurseries. In Maryland, it is found mostly in the central region of the state, but has spread west to Allegany County, south to Calvert and St. Mary's counties, and to Kent County on the Eastern Shore. This plant is a vine with barbs, triangular leaves, and blue fruit. Control of this weed by mowing or using herbicides is recommended. For information contact: MD Dept. of Agriculture, Plant Protection, 50 Harry S. Truman Pkwy., Annapolis, MD 21401; (410)841-5920.

**Maryland Forests Association**

The Maryland Forests Association (MFA) is a nonprofit citizens organization interested in trees, forests, and forestry. It is dedicated to the protection, utilization, and intelligent management of all forest resources in the state. The MFA currently has over 500 members, many of whom are woodland owners. It has sought and participated in activities relating to issues of concern to Maryland's woodland owners, including getting the "Right to Practice Forestry" bill passed. For information contact: MFA, 6907 Avondale Road, Baltimore, MD 21212; (410)823-7215.

**Forest Health Publications**

The following publications relating to forest health are available: *Discula Anthracnose of Dogwood, Pest Alert - Buck Moth, Pest Alert - Hemlock Woolly Adelgid, and Forest Pest Leaflet - Southern Pine Beetle*. Each publication provides a description of the pest, with color photos, and advice on how to control it. Also available is the *Maryland Forest Pest Management Report*, a newsletter covering forest health issues. To receive these contact: MD Dept. of Agriculture, Forest Pest Management, 50 Harry S. Truman Pkwy., Annapolis, MD 21401; (410)841-5922.

**Upcoming Stewardship Events**

- **FEBRUARY 4: Eastern Shore Forest Stewardship Seminar** - at Queen Anne High School. Contact Bob Tjaden, Wye Research & Education Center, P.O. Box 169, Queenstown MD 21658; (410) 827-8056.
- **JANUARY 19: Landowner's Roundtable** - at SMECO building in Hughesville. Sponsored by Coverts of Southern Maryland - a volunteer group of woodland owners - to enable other woodland owners to hear from experts on issues of interest. Contact William Miles, P.O. Box 251, Huntingtown, MD 20639 or call (410)257-0173.

**Editors' Note:** Write us if you know another person who would like to receive *Branching Out* or if you want to stop receiving *Branching Out* or have a change of address!