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MEMORANDUM

DATE: December 28, 2011

TO: Joint Committee on Government and Finance

FROM: C. Randy Dye 
Director/State Forester

SUBJECT: Annual Managed Timberland Impact Assessment

Attached is the annual report which assesses the impact of the Managed Timberland Program on West Virginia as required by West Virginia Code §11-1C-118.

CRD:plc

Attachment

cc: Jeffrey A. Amburgey
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REPORT ON MANAGED TIMBERLAND PROGRAM

Prepared by the West Virginia Division of Forestry

C. R. Dye, Director/State Forester

December 13, 2011

Brief Overview

In 1946 the residents of West Virginia passed a constitutional amendment that provided a property tax incentive to forest landowners that practiced sound forest management. The Managed Timberland Program act, passed by the West Virginia Legislature during the 1990 Regular Session, was done to comply with the "Forestry Amendment." Legislative rules for the act were passed during the 1991 Regular Session. **The legislative rules specified how property in managed timberland was to be evaluated.** Stumpage price was the major factor in computing the appraised value of the property enrolled in this program. As stumpage prices began to rise in the early 1990s, the appraised value of managed timberland properties also rose. The number of acres in managed timberland increased each year until 1995, at which time Managed Timberland properties became the highest valued forested properties in many counties. This resulted in many individuals withdrawing their properties from the program. In 1998, the Legislature amended the law incorporating a new method of appraisal, which relies heavily on land productivity. Since 1998, the number of acres enrolled in the Managed Timberland Program has stabilized.

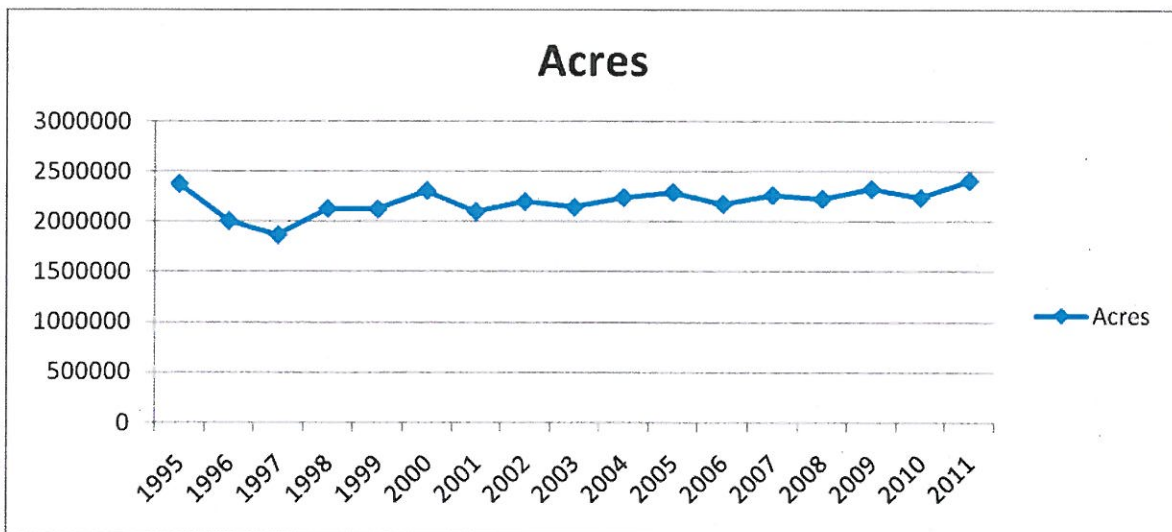
A major change is occurring in who owns West Virginia's forest land. During the last few years, the forest industry has been liquidating their land. Although some of this acreage is being sold for development purposes, most is being purchased by TIMO's (Timber Investment Management Organization) or REIT's (Real Estate Investment Trust). These organizations appear to be initiating more intensive forest management practices than ever before.

An increasing number of non-industrial landowners are enrolling in the program. Some of these owners are small sportsman clubs or hunting clubs who generally own less than 1,000 acres. In fact, there are many misconceptions about the program. Some people would believe that Managed Timberland only helps large landholding companies, but this is not true. Only 2% of all landowners in the Managed Timberland Program hold over 1000 acres, with the majority of landowners enrolled being below 250 acres. However, it should be noted that the top 2% of landowners do hold 79% of the total acreage in the program.

History of Managed Timberland Acreage

(Acres as certified by the Division of Forestry By September 1 of each year).

Year	Acres
1996	2,011,022.71
1997	1,870,960.81
1998	2,133,142.64
1999	2,127,773.09
2000	2,312,340.00
2001	2,104,323.87
2002	2,203,015.20
2003	2,148,463.35
2004	2,245,736.64
2005	2,296,135.00
2006	2,180,337.00
2007	2,268,690.22
2008	2,233,109.00
2009	2,330,501.93
2010	2,242,276.00
2011	2,410,564.00



Since the amendment of 1998, there has been an increasing number of private non-industrial forest landowners who have entered into a contract to enroll their timberland with the Division of Forestry and have their property certified as managed timberland. Many of these landowners have used the Forest Stewardship program to acquire forest management plans for their property at a reduced cost. The U.S. Forest Service Stewardship program is of great assistance in this effort. One of the goals of the managed timberland program is to encourage forest landowners to begin to use sustainable silvicultural practices on their property. This is best accomplished by following a Forest Stewardship plan.

Impacts of the Program on Forest Industry

- The Managed Timberland Program allows landowners to classify their property as timberland rather than as potential development areas in high growth areas of the State. The lower tax rate associated with Managed Timberland, as opposed to potential development property, allows the landowner to continue his or her long-term investment at an acceptable rate of return. The alternative without the Managed Timberland Program would encourage the landowner to liquidate his or her investment to avoid a loss.
- The Managed Timberland Program encourages new forest industries to locate manufacturing facilities in West Virginia. Long-term raw material supply is more favorable in the State because of the Managed Timberland Program. Urban sprawl in many states has increased land values to the point where timber management is no longer a viable economic option for the landowner. Therefore, forest product manufacturing facilities no longer have a raw material supply and are forced to shut down.
- The Managed Timberland Program encourages timberland owners, both private and industrial, to intensively manage their property on a sustained basis. The management of timberland is a long-term investment; therefore, yields are critically sensitive to cost and interest rates. Interest rates are determined by the world's economy; therefore, the forest landowner must control all other costs, including property taxes, in order to obtain an acceptable rate of return. The Managed Timberland Program allows for this by linking property taxes to soil productivity and stumpage prices, which ultimately determine the rate of return on the investment.
- Some investors have been buying property, enrolling it in the managed timberland program and then selling off lots. This has caused some concern, and county commissioners have suggested that a rollback tax be created to penalize people who are receiving the tax benefits without maintaining the property in forest usage. They suggest that a penalty be implemented to have the landowner pay taxes based on the higher evaluation of the present use for up to five years that they have been in the managed timberland program. There could be an exemption for land sold to a county development authority for an industrial park or other new business.
- There has been an instance of a County Commission refusing landowners Managed Timberland Status even though they qualified for the program. The County Commission argued they have this right due to a court decision pertaining to In re The 1994 Assessments of the Property of Righini, 197 W. Va. 166, 475 S.E.2d 166 (1996) wherein the Court stated "If the Legislature had intended to preempt the assessor and the county commission in their respective roles in the assessment process, it would have said so specifically. Absent any specific instruction by the Legislature, we cannot disturb the extant system of valuation of real and personal property." 197 W. Va. at 171, 475 S.E.2d at 171. The Court thus held that the county assessor had the power to ignore the managed

timberland program and appraise the subject property based on its generalized market value rather than the value of its timber as set forth in the managed timberland program. However, in 1998, the legislature amended W. Va. Code § 11-1C-11 (b) to include the word "Shall" in several key spots. One could argue that the intent of this change was to specifically insert the language that was lacking in accordance with the court's findings. Until this is tested and affirmed by a court though it is likely that the Righini precedence will hold. It's something to keep an eye on as it could seriously undermine the benefits of the program if more County Commissions or Assessors begin to ignore MTL status in their valuations.

1. This has now progressed even further and is currently in three law suits. One suit against the County Assessor, and one petition for relief and Mandamus against the Tax Department, the WVDOF, and the County Assessor for the Tax Department's decision to deny the parcel based on a classification issue, and one petition to the supreme court to enforce a ruling by the tax commissioner stating that the assessor has no right to determine MTL eligibility.
 - a. This process has been dragging along in the courts now for at least two years and a time table for resolution is not yet on the horizon. However, it is important to note that the Tax Commissioner has entered a ruling that essentially states that the Division of Forestry is the final authority on whether a property qualifies as "Managed Timberland".