

Intergenerational Transfers and Long-Range Forest Planning

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How have forest sustainability concepts evolved?

1992 – Earth Summit

1993 – Montreal Process

1994 – The Working Group on
Criteria and Indicators for the
Conservation and Sustainable
Management of Temperate
and Boreal Forests

Outcome?

7 ‘Criteria’ defined by a total of 64 ‘Indicators’

NASF “Stewardship Principles” are restatements of the Montreal Process ‘Criteria & Indicators’

The ‘Criteria’ intended to address
Intergenerational Transfer of Forests
are

MP-C6: Long-term Socioeconomic Benefits of Forests
&
MP-C7: Legal, Institutional & Economic Framework for
Sustainable Forests

Guess how many indicators?

40 of the 64 ‘Indicators’ address just these two Criteria

Basis for Webinar?

National Association of State Foresters...

A Stewardship Handbook for Family Forest Ownerships –

A Handbook for Planning, Managing
and Protecting
Your Woods, Your Investments
and Your Environment
2003 - 2004

And...

Basis for Webinar?

Redesign Report Card
National Assoc. of State Foresters
March 2009

Describes \$23 million worth
of effort across 124 Projects

How many times do these terms occur in the MP C&Is and the two NASF documents?

‘Intergenerational planning’
‘Estate planning’
‘Passing lands’
‘Heirs’
‘Intergenerational transfer’
‘Next generation’
‘Death’

How many times do these terms occur
in the MP C&Is?

Intergenerational planning	0
Estate planning	0
Passing lands (forests)	0
Heirs	0
Next generation	0
Death	0
Intergenerational transfer	0

How many times do these terms occur
in the two NASF documents?

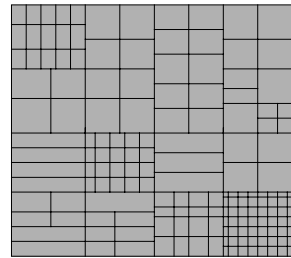
Intergenerational planning	0
Estate planning	0
Passing lands (forests)	0
Heirs	0
Next generation	0
Death	1
Intergenerational transfer	1*

* A \$25,000 project in MI, one of 124 projects funded nationally with a total of \$23,000,000.

Try as we might, one of conclusions I've come to is this:

If the current title-holder(s)
fails to plan for the
future of forests,
subsequent generations are
more apt to sub-divide...

Parcelization is inexorable....



*If you always divide a remainder in half
how many times can you divide?*



Is 'sustainable development' an oxymoron?

Situation...

NIPF owners are getting older.

Few have estate plans and almost none have planned for forests.

Humans *are* impatient

The future is just beyond the immediate past.



Situation...

Owning Forest Land is Expensive.

Stumpage Yields are Marginal.

Current Tax Policy is Ridiculous...

Based on FMV at "highest & best use" in near-term economic sense.



Truly Sustainable Forests are an Intergenerational Proposition...

Premises for inter-generational planning...

"The shorter the planning horizon of any forest, the more likely it is to be sold. Most children of forest owning families do not want to pass the forest on to their children. If the forest is sold to a developer, the forest will be converted to a less sustainable use. Unless parents have set up an alternative that prevents such a sale, the less sustainable woodlands become."

Assumptions...

Heirs will follow parent's traditions

Ecosystems take precedence over timber

Future is more important than present

Forming a Family Forest involves...

A 'charter' that defines purpose.

A 'control' mechanism.

A gifting strategy to 'vest' heirs into the family forest.

Resolving Long-term Goals & Objectives

The 3 most important things are:

Communication

Communication

Communication

Choose a Form of Organization...

That can exist independent of ‘founders.’

No personal liability.

Allows varied forms of participation.

Restricts ownership to family but grows with it.

Can exist for a long time.

Of the options available, my personal favorite:

Limited Liability Company or Partnership

LLCs are formed in 2 parts, one public the other private...

Public Document – “Articles of Organization”

LLC Life? – “at will” or “term”

LLC Management? – “manager-managed” or “member-managed.”

“Operating Agreement” is a private document...

Describes the organization and purpose of the ‘Your Family Forest LLC’

An Operating Agreement is the equivalent of a forest management plan...

It is the operator’s manual that articulates the function and purpose of the Family Forest LLC.

(Why does it exist? How are members defined? Governance? Treatment of income & expenses? What happens if...?)

Operating Agreement will become historically significant thus clarity is essential.

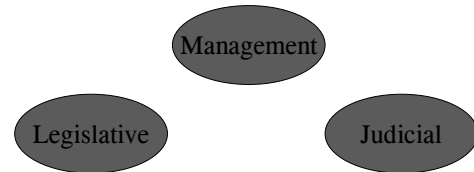
Governance of 'Member-Managed' LLC

Easy to do while 'founders' are alive.
(Articles are easy to amend)

The question is:

How best to manage the LLC after 4 or 5 generations when there are 200-plus members?

Allow family members to participate or not in a power-sharing triumvirate...



Why not model the Family Forest LLC after the 'checks & balances' designed into the U.S. Constitution?

Management Makes day-to-day decisions

Legislative Interprets 'charter' & documents changes...

Judicial Handles all disputes as an arbitration panel...

Vesting Family into the LLC...

Forest assets are appraised and gradually passed to successors using annual gift allowance.

Not as subdivided 'tracts,' rather as 'shares' of an **UNDIVIDED-INTEREST** in the forest.

Current IRS Rules allow annual tax exempt gifts of up to \$13,000 per taxpayer per gift.

Qualified married – or civil union - couples can give \$26,000 per year per gift.

AND BEST OF ALL.....

When a 'gift' is controlled by the terms of an 'Operating Agreement' or otherwise lacks marketability, the IRS allows 'discounting' of assessed gift value (with some qualifications)

So, for example...

In 2009, spouses can give each heir, say, \$32,000 of assessed asset value in the **Family Forest LLC** to create tax-exempt gifts of \$25,600.

In this example, assets are 'discounted' by 20 percent due to conditions imposed by the LLC 'Operating Agreement.'

But, there is a hitch (on discounting)...

According to IRS, the 'annual gift' must be of a 'present interest' in forest, not a future interest (Hackl, 118 T.C. 14 - 2002)

If the donor attempts to exert too much control over the gift, IRS -may- take the position that it is a future interest.

Other Thoughts about LLCs

Make 'buy-out' valuations substantially less than market (to discourage selling).

Prospects of divorce should obviate including spouses in gifts.

At term-end, if members decide to dissolve, forests can be automatically gifted to a land trust or other qualified organization.

Other Thoughts about LLCs

Learn More (8,000-plus current titles)

Communicate well with spouse & family

Explore values, concerns, interests and opportunities.

Think like a forest, and in 'forest time.'

And, don't even contemplate drafting your own documents...

"Truly sustainable forests are a function of forest time, and resetting the clock for many families is not an easy - or affordable - choice."



Some Operating Agreement Guidelines

Intergenerational planning is the current title-holder's responsibility.

'Founders' must be willing to share control with other members.

ALWAYS exclude in-laws.

Consider non-profit status.

Avoid 'over-control' maneuvers.

Prospects for the Future?

Not good...

Owners are reluctant to commit land & heirs to long-term purpose [**ruling from the grave**]

Parents are willing to trust their offspring to maintain forest and to keep 'tradition' alive. [**paperless trust**]

Many anticipate exigencies that will require liquidation of forest & land. [**family first**]

Prognosis...

"Most children of forest-owning families will end up selling the family forest to settle an estate, unless parents have set up an alternative that prevents such a sale."

The Future of Forestry in the U.S.?



What has to change?

Manage ecosystems not timber.

Compensate Families for Positive Externalities of Sustainable Forests.

Eliminate *ad valorem* property tax on Intergenerational Forests.

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