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Pennsylvania State Conservation Easements vs.
Small Forestry Operations

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Thanks Carol. I do appreciate the invite and I've been wanting to come to this a long time but I finally was able to do it. Unfortunately I severed my Achilles tendon a couple of weeks ago. I just had surgery. If you've ever talked to anybody that's done that or been around somebody that's done it, when they say it sounded like someone fired off a shot... they're accurate. I thought something hit me in the back of the leg and I heard this loud pop and boom and it was unbelievable. I had no idea what had just happened. My right Achilles is severed but my wife drove here. She doesn't like to drive but she did it, so I appreciated that.

I'd like to start out talking about a humorous story that I heard. It relates to the forest products industry. Most of you know that back in the turn of the century there was a lot of clear-cutting going on and the hillsides were just bare. We've seen the photos of the stumps and the mud and millions of logs going down the rivers. There's a humorous story from Warren County about a young reporter in the 1920s in Erie. The urban folks even then had started being so concerned about what was going on out in the woodlands. So, she contacted a farmer down in Warren County and wrote to him and said, "Can I come down to your wood lot? I really want to see what's going on." So, the farmer said, "Sure come on down." She got on a train and went down to his farm and he hitched up the horses and the wagon. They went down into the wood lot. She was just fascinated. It wasn't anything like she'd thought. It looked pretty darned nice. She saw lots of wildlife. She said, "What's that big tree over there with the gray kind of tight bark and a big beautiful top to it. And the farmer said, "That's a sugar maple. We tap those in the spring and we get maple syrup. I'll give you some when we get back up to the farm." And she was just fascinated. She had no idea that you could get maple syrup out of a tree.

So then she said, "What's that big tree over there with a kind of dark black bark and the big crown and looks like there's some nuts laying on the ground?" The farmer explained, "That's a red oak. It's good for furniture and supplies lots of food for the wildlife with the acorns." She was just fascinated. Then she said, "Well, what about that tree over there with a real shaggy bark? It looks like there's some nuts there." And he said, "Oh, that's a hickory tree and it makes really good furniture, good firewood. The hickory nuts are loved by the squirrels and everything." She was just fascinated. She then says, "What about that real kind of ugly tree with the real tight gray bark and real spindly looking?" He said, "That's a big old daddy beech tree. It provides the beechnuts and it's good firewood." She looked really kind of stumped and she said,

"What are all those little gnarly trees, those little saplings underneath that beech tree?" She said. "There's just hundreds of them." He said, "That's easy. There are sons of beeches."

Okay, we'll get started here. Conservation easements in Pennsylvania started with the Farmland Preservation program. I'm not going to talk about that but it's been around a long time. They've spent billions of dollars so-called "preserving" farmland. I know their rules and regulations are a lot tighter than forest conservation easements. But I'm going to talk about the forest conservation easements today.

Pennsylvania was introduced to the conservation easements through the federal Forest Legacy program. This is a program funded through the farm bill through the USDA (United States Department of Agriculture) and the money is funneled to state forest stewardship committees. They're run by the state Bureau of Forestry. I just happened to just come on the Forest Stewardship Committee as a member when all this was getting started.

The program was originally sold, as the way to protect working forests and stop subdivision and fragmentation of forestland. I had just started buying and selling some timber and timberland and I'd done some small subdivisions. So, I was pretty familiar with the process and some red flags went up immediately. But unfortunately, the committee, as you can envision, was made up of six state employees, three federal employees, six members of conservation organizations like the Natural Lands Trust, you know, conservancies and land trusts, and it was Paul Lyskava from the Forest Products Association which is a trade organization in Pennsylvania and myself. We were outnumbered. At that time, Congressman Tom Ridge, who was our champion of property rights when he was in congress, had just become governor. He was corrupted by the green money almost immediately. So, we knew he was going to be in favor of this and he would have had to sign off to get this started.

Paul and I knew that we couldn't stop this especially with our governor. We talked about how can we slow this down and maybe illuminate it just from using common sense and exposing it for the scam that it really was.

We got the US Forest Service to admit that they had no legal authority to force anyone to ever harvest a tree. That took the working forest component right out it. We made sure that there were thirty people sitting at the table when we exposed that. We said, "How can you go to the private sector, to the forest land forest companies and say that there's always going to be forest products coming through these properties when you have no legal teeth to enforce that?" They do have legal teeth to enforce the subdivision part of it but not the working forest. You cannot force someone to harvest a tree. That raised a lot of eyebrows especially with the conservancies and land trusts sitting at the table.

The Forest Service was really upset about this. They had never been questioned like this before. They said, "We're going to have a stewardship plan. We're going to encourage them to follow it." I said, "You and I know that if somebody gets desperate for money they can clear cut it or a pure preservationist, they may never cut a tree." We made sure that as many of the forest products companies that we could get to knew about this, knew that they could not guarantee that.

Then we focused on the development end of it. Having done some small subdivisions and knowing what Pennsylvania's subdivision regulations are like because you can have a township with regulations. You can have county subdivision regulations, and then the state DEP (Department of Environmental Protection) subdivision regulations that are much heavier. They deal with on-lot sewage regulations that state, "Any property that has a slope over fifteen percent you can not put an on-lot sewage system on."

If you drive down Interstate 80 that runs east and west in the middle of Pennsylvania and you look at those wooded hillsides, how much if that land is less than fifteen percent slope? I knew that these properties were not being subdivided and developed but yet that was the scenario they kept telling us. It was, "Oh, these tracts are being subdivided, developed and being fragmented," and on and on when it just wasn't the case.

I was the only one sitting at that table then that had ever subdivided anything. I kind of told them what you have to go through. Again, the Forest Service was just like, "Who is this guy? You need to get rid of him." And Paul Lyskava was pretty good too. They have a ticker that they call it. It goes out every week that they get information from. He was updating the PFP (Pennsylvania Forest Products Association) members and that was all the big timber companies in Pennsylvania. The word was getting out there. We kind of put our heads together and we thought, "Okay, now what do we do?" We can't stop it. The governor is going to approve it. I think at that time there was maybe 150 million available throughout the United States. Our projects that the conservancies and land trusts would bring to this committee were just one of many across the country. I got into the Forest Service documents and I realized that they had a ranking system that they wanted this stewardship committee to implement. It was kind of vague. I took the regulations that I knew about at the state level and we incorporated them into the federal ranking regulations, you know, their vague guidelines. We developed a pretty heavy ranking system that the conservancies and land trusts didn't like because they're the ones that are going to have to go through with every project that they brought. But they really couldn't fight it because everything was well documented and they knew that these things were realistic. Things like proximity to public water and sewage. Public road frontage throughout the property. Some of the properties that they brought to us had no public road frontage. They had a right-of-way to a thousand-acre tract of land. They had no public water and sewage. They knew that these properties really didn't have any development threat. They didn't fight us too much on this ranking system. I have it here if anyone wants to see it all the different things that we got implemented in there. It really slowed it down tremendously.

What happened was they kept bringing these properties to us and we made them go through all the hoops that you and I have to go through when we want to develop something. But they didn't have to actually go through the subdivision process like we all have to do in Pennsylvania. You have to have a backhoe. You have to get a sewage enforcement officer to go to every single lot where there's no public water or sewage and have each lot tested for on-lot sewage. You have to have twenty inches of good soil before clay. You have to be under fifteen percent slope. They were never going to do anything like this. But they would get these appraisers to come in and appraise the

development rights and just use these arbitrary numbers and the appraisers had no idea these lands could ever actually be legally subdivided. None! There's no way you can put a value on development rights until you go through the subdivision process and get all the approvals.

We brought all these things out and we started waking people up. This has been going on for about fifteen years, this legacy program, in Pennsylvania. Today, they've only approved about ten projects. Recently, the conservancy and land trusts have basically given up. Unfortunately, in this whole process Paul Lyskava passed away from Leukemia at only twenty-four years old. That was a tragic, tragic loss. He had a young son. It was just terrible. That happened last year.

My point is, don't give up. When these things come to your state, even though it looks like an uphill battle there are things that you can do if you do your homework and you're persistent to get these thing slugged down and stopped. Unfortunately in other states the money is just flowing. The ranking systems are so vague it's just ridiculous. In the last two years I have not seen any indication that forest legacy is still in the farm bill. I think that he may have been X'd out by the Trump Administration because right about 2016 is when we stopped having meetings and it has kind of gone away.

Think about the ramifications though, I know up in Maine there was a 30,000-acre landowner who got \$500 an acre for forest legacy. That property couldn't have been developed and we all know that. Can you imagine what a timber company or an investment company could do with tens of millions of taxpayer dollars paid to them for worthless development rights out in the private sector marketplace. Nobody can compete with them when their pockets are full of taxpayer cash.

We've done everything we can to expose all this. What's happened in the last couple of years? Unfortunately we have a very, very liberal governor in Pennsylvania. Fortunately, we have GOP control of the House and Senate. We have a very liberal DCNR (Department of Conservation and Natural Resources) head that runs all the state forests and state parks. They saw all this coming. They said, "What can we do at the state level?" They developed a green-ribbon task force with stakeholders similar to the forest stewardship committee, heavily loaded with conservancies and land trusts, which by the way, there's about a hundred of them in Pennsylvania right now. Twenty years ago there was maybe six. They've all got their hands out. They all want free this and free that. Their goal is to eliminate private property and private property rights.

They got the stakeholder [Unintelligible] going, of course, I was not invited. Paul Lyskava was in the middle of leukemia at the time. They developed a document at the end of their meetings, which came out last year in 2017. Right from the very beginning they start laying the groundwork for a conservation easement program in Pennsylvania. Here's one of the things they say in the very first paragraph under the sustainability section. They say, "There's seven hundred and thirty-eight thousand private forest landowners in Pennsylvania." Well, during the forest legacy meetings I had heard that number. So, I asked a dumb question with the Forest Service sitting there. "Can you define a private forest landowner?" One acre and one tree. You are a private [forest] landowner in Pennsylvania under the Penn State DCNR Forest Service guidelines if you own one tree and have one acre. That's how crazy this is. This number is thrown out there to all of our politicians, all of the public, all of academia,

and they accept it. They don't ask the question. So then I said, "What about twenty acres and up?" It goes down to two hundred and some thousand. Big difference. It gives you a whole different picture. And, of course, they go on and say that these large tracts are being converted to non-forest uses and being subdivided and developed. They know that's a lie. It's a blatant lie.

I went to the ten county planning commissions in the Northern Tier where most of this effort is because we're already inundated with government land. We have, I think it's around seven million acres of public lands in Pennsylvania. We have counties that are over fifty percent government ownership. We have townships with over eighty percent government ownership. I found, when talking to these planning commissions, that there have been no subdivisions of tracts over two hundred acres. Zero in the last ten years.

They don't want to hear this because it breaks their narrative in half. It destroys it. These tracts are not being subdivided. They can't be subdivided. You could never get through the regulatory process and on top of that most of the tracts, especially in the Northern Tier are in what we call "Clean and Green" tax status that eliminates any subdivision and development unless you pay all those back taxes and penalties. I also asked that question. "How many tracts of land over two hundred acres have the owners paid the back taxes and penalties and taken them out of Clean and Green?" And you know the answer. Zero. But here you have Penn State DCNR throwing this stuff out there to the public and they buy it because they don't know any better.

The funding mechanism for this statewide initiative that's being perpetrated on us right now is called "Growing Green and Free." It's a bond issue that they want to push. Fortunately, the House GOP and Senate have stopped that from happening. Hopefully in a couple of weeks, it will remain that way and we get a new governor and I've spoken to Scott Wagner multiple times who's running against Tom Wolf and he doesn't like any of this and he said, "In my administration there will be zero dollars for new land acquisitions or easement acquisitions." You might say, "Why easements instead of fee simple?" Because the state can say, "We're leaving it in private hands." Well, think about it. If you control the resources, you control the management of the timber. You control the development potential. You don't have the tax burden. That's a great scenario for DCNR, but in Venango County where I live, the tax rate for Clean and Green is \$5.60 an acre. The PILT money, payment in lieu of taxes, from state lands is \$6.00 an acre and the landowner could post the land and lease it to a hunt club. So, you could actually have a worst-case scenario if a conservation easement is on a property than if it was actually owned by government. So, I'm for educating the county commissioners. They're starting to understand this. And that's really where we're at right now. It's basically at a standstill.

Be aware of the TIMOs, timber investment management organizations might come to your state. They've been in New York and they'll devalue your property. They'll get easement money they'll get low interest loans from the state to buy tens of thousands of acres and they'll go on to the next state with fifty or sixty million dollars of taxpayer funds in their pockets to go out and buy another sixty, seventy thousand acres. We just went through a scenario like that, that's happening right now in Pennsylvania. Sixty thousand acres by New Hampshire TIMO. They got a one percent

no interest loan from a water and sewer fund in Pennsylvania and they guaranteed DCNR would end up with the development rights on all sixty thousand acres.

This is what's happening right now in Pennsylvania. Conservation easements are a scam from top to bottom and again – expose it. I'm going to go through a couple of quick things of ways to stop it and then I'll take a few questions if there's time.

First thing is you have to expose an error, like I said. Prove that these subdivisions of these large tracts are not happening. Expose it with media, with your legislators. Get hearings. It's very important to get hearings in your state houses so you can go and testify.

Eliminate the funding. Say, "These development rights are worthless. Quit wasting our tax dollars."

Show the tax loss. I have a document here where a conservancy land trust put it in a forestry magazine, of all places, on all the tax breaks when you donate or sell an easement; estate tax breaks, real estate, income tax. So, our legislators can see the tax losses. When you donate an easement you can write off the whole easement. Imagine donating millions of acres of easements, which some of these large companies have done and the tax write-offs are a thousand dollars an acre. The federal government is losing millions of dollars with these tax write offs.

Educate local and state officials tied into land acquisitions. Show them how it's bad or could be worse than if they actually owned it. Get your planning commission to develop a no net loss of private property and private property rights into comprehensive plans. Forest County and Venango County have done that and have stopped all land acquisitions and easement acquisitions in our two counties. Every county in Pennsylvania should be doing that or working on that. Again, no net loss of private property and private property rights because just private property doesn't do it. If they leave it in private hands and then they control everything else. You've got to expand it to oil, gas, timber, mineral rights, recreational rights and all of this, to cover everything.

And, again, the devaluing of the property. And I've passed around just one easement where the property went from being worth half a million down to two hundred thousand dollars. The devaluing of the property. There's a lot of that in the Adirondacks here in New York.

Expose the uneven playing field that this creates when these large corporate landowners put millions of taxpayer dollars in their pockets. The rest of us can't compete with that. We can't buy timberland that's overpriced but they can because they have the taxpayer dollars in their pockets. So, it's an uneven playing field for the rest of us in the private sector that don't have those large checks in our pockets. In the case that I was just talking about in Pennsylvania, that company took key employees away from other existing businesses. Paid them thirty or forty percent more. Took loggers away from businesses paying them thirty to forty percent more because they had the taxpayer funded checks in their pockets and they can do that. Uneven playing field. That company was not a Pennsylvania company.

In closing, check out the Pennsylvania Landowners Association web site. There's a video on there called Big Park. It's excellent. There's a lot of good information on there. You need to see Big Park. It's seven minutes. It will blow you away. It's humorous but it's serious. It's good stuff.

With all the chaos going on and the banging on the Supreme Court doors and the Republican legislators that are getting accosted in restaurants, I always think about a Clint Eastwood quote where he said, "What we need are family trees that produce more lumber and fewer nuts."

I guess there's no time for questions but come up and see me. With this leg I'm not going very far. Thank you.