

# Branching Out: Maryland's Forest Stewardship Educator

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Published quarterly and distributed to more than 4,800 woodland owners, resource professionals, and others interested in forest stewardship. For a free subscription or to send news items, dates, and comments, phone 301-432-2767 x310; fax 301-432-4089; e-mail vs12@umail.umd.edu; or mail to *Branching Out*, c/o Maryland Cooperative Extension, 18330 Keedysville Road, Keedysville, MD 21756. Deadlines are the 10<sup>th</sup> of January, April, July, and October. The sponsoring agencies' programs are open to all citizens without regard to race, color, sex, or physical ability.

*Supported by the Maryland Tree Farm System*

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## Landowner Liability and Recreational Access

If a child on a school field trip stumbles over a rock on your property and is hurt or if a hunter is injured while trespassing, are you liable? As a woodland owner, you probably enjoy sharing the recreational pleasures of your property with others; however, concern over liability may arise when granting others access.

Private lands in Maryland are in demand for recreational activity because of the growing interest in outdoor recreation, the limited amount of public land available, and increasing development of open space. At the same time, woodland owners may be looking to recreation and tourism on their property as a source of income.

Under English Common Law the duty of care owed a visitor depends upon his status, i.e., *trespasser*, *licensee*, or *invitee*. A landowner has little responsibility to a *trespasser*. A *licensee* enters the property at the invitation of the landowner but at no benefit (charge) to the landowner, and the landowner has the responsibility to warn the visitor of dangerous conditions or activities. With an *invitee*, who is on the property for the financial benefit of the owner, the landowner has the duty to seek out and correct dangerous conditions and to warn the invitee of conditions that cannot be corrected. It is easy to see how the status of a visitor and your duty of care changes depending upon if you invite someone or they trespass.

## Maryland's Recreational Statute

In the 1960's, Maryland and other states passed recreational statutes that encouraged rural landowners to make their properties open to the public by limiting the liability toward any recreationalist, as long as no charge is made. Bartering for services or goods may be interpreted as a charge under the current statute. Recreational activity is broadly defined and examples include educational activities, hunting, firewood cutting, and hanggliding.

If no fee is paid, all recreationalists entering your property, invited or not, are *considered trespassers*. Under Maryland law, the landowners are under no obligation to keep the premises safe for entry or use

by others for any recreational or educational purpose. However, the landowners are not protected against *willful or malicious failure* to guard or warn against a dangerous condition, use, structure or activity, or when they charge a fee. This legal standard gives landowners reasonable protection.

Even with these protections, landowners perceive that recreationalists can easily win lawsuits against them. The fact is few cases of this type go to court. However, while your chance of being held liable for an injury on your property may be small, your chance of being sued may

not. And the cost of defending yourself could be expensive. For this reason, adequate liability insurance coverage is essential since insurance will typically cover your legal defense. Check with your insurance agent on your coverage and increase it if necessary.

The simplest and least expensive way to minimize your potential liability is to practice "*risk management*" which involves preventing accidental injuries. Seek out obvious hazards, such as old wells, tree stands, and buildings, and either remove them or post them clearly. Your goal is to show responsible behavior in case any problems arise.

### **Controlling Access**

Often landowners make enormous efforts to keep everyone off their property when they should be considering, whom to let on. One effective way to reduce trespass problems is to allow a responsible person or group to use your property for recreation at no charge. They will typically respect this privilege and keep others out.

Other effective methods to control access on your property are the proper use of gates, posting, and most importantly, working cooperatively with your neighbors. The recreational statute does not apply to landowners who charge for hunting or other recreational activities and they must exercise the higher duty of care due a licensee. If proper insurance and lease arrangements are made, this can be a manageable income opportunity and trespass control strategy.

Details on laws that apply to recreational access, posting, trespass, liability, and how to exercise your rights are found in the Maryland Annotated Code. Unfortunately, locating and interpreting the numerous statutes can be a difficult and complicated task.

A new publication helps landowners. *Recreational Access and Landowner Liability in Maryland.- Guidelines for Managing Free or Fee Access* discusses liability,

Maryland's recreational statute, lawsuits, areas of concern for landowners, risk management, liability insurance, trespass and property rights, access on tidal and non-tidal waterways, controlling access and timber trespass, developing fee-hunting enterprises, insurance sources, and other resources. The publication gives basic information but is not a substitute for counsel that may be needed from a lawyer or insurance agent. The publication is listed on page four and will be available from your Cooperative Extension Office in October.

### **Update on Incentives Programs**

- **Rural Legacy** - The Maryland General Assembly passed the "Smart Growth" legislation mentioned in the last *Branching Out*. Smart Growth is to channel new development into designated growth areas and to conserve existing agricultural, forested, and other natural resources areas by limiting "suburban sprawl." Included in the legislation is the Rural Legacy program. Local governments and nonprofit land trusts can apply for funds to purchase perpetual conservation easements or fee estates (property) in areas threatened by sprawl development.
- **New Conservation Buffer Program** - Tree and grass conservation buffers are eligible for federal funds under a new U.S. Department of Agriculture initiative. This Farm Bill program encourages the use of buffers on marginal land while maintaining the best land in crop production. For information on the cost-sharing program, contact your local Natural Resources Conservation Service (formerly SCS) office.
- **Forest Stewardship Incentive Program (SIP)** - Federal cost-share funds have helped private woodland enhance wildlife habitat and recreation opportunities on their land. The funding of these programs was being debated as *Branching Out* went to press. The House had included both at last year's levels but the programs were not included in the Senate version. Contact your Maryland Department of Natural Resources forester to apply for stewardship cost-sharing.
- **Federal Taxes** - In discussion in the U.S. Congress are several capital gains and estate tax bills that could affect private forest landowners. Proposals are many and wide-ranging --- from reducing the capital gains tax to raising the minimum amount subject to estate taxes or eliminating estate taxes altogether. Any changes will probably be beneficial to woodland owners.

## **Tree Farm System Marks 50 Years**

The American Tree Farm System is celebrating 50 years of recognizing private landowners who make a commitment to managing their forests for renewable forest products, wildlife habitat, recreation, and water quality. Maryland has 1,508 certified Tree Farms, managing 275,000 acres or 12 percent of the state's total forest resource. Tree Farms take many forms, from orderly plantation forests to natural stands of pine and hardwood.

The Maryland Tree Farm program is administered by the Maryland Tree Farm Committee, composed of representatives of the forest industry, private forestry organizations, the Maryland Forest Service, the Maryland Cooperative Extension Service, consulting foresters, and Tree Farmers. The Maryland Tree Farm Committee recently organized a grassroots effort to encourage Tree Farmers to contact legislators to ensure federal funding for forest programs. A Grassroots Subcommittee has held regional discussions and is planning a statewide educational meeting for all Tree Farmers next year.

Tree Farmers are encouraged to participate in the committee's next quarterly meeting September 4 in Washington County. To get involved contact Jeff Bracken, 304-258-4681, or Howard Anderson, 888-455-7400.

## **Forestry & Wildlife Volunteers**

Educating rural and residential landowners to adopt forest and wildlife habitat management practices is a constant challenge. Experience shows an effective method to encourage landowners to implement practices is through the efforts of credible, trained volunteers. By implementing practices on their own properties, volunteers can educate others they know and help them seek and understand the assistance available from natural resource professionals. Advice from a friend, neighbor or relative is often accepted, while the best advice from others is often suspect.

Landowners now have several opportunities to be advocates for forest and wildlife conservation in their communities. The Coverts Project and Master Wildlife Habitat Naturalist (MWHN) programs are examples of two programs focused on two different audiences. However, their outreach principle is the same. Both use an intensive 3 ½-day workshop to train volunteers who then share their knowledge and experience with others in their communities.

This fall, 30 Coverts Cooperators will learn how sound forest management practices can improve wildlife management and other forest benefits on rural forestland. They will join the 164 Cooperators, who since 1990, have reached out to thousands of landowners and citizens. Coverts is sponsored by the Maryland Cooperative Extension Service and the Ruffed Grouse Society.

Last May, 28 Marylanders became the first Master Wildlife Habitat Naturalists in the nation. Volunteers carry out a wildlife habitat program for their own property and help others with small residential properties to restore wildlife habitat. A one-day seminar will be held in September for the many program applicants who were not selected as volunteers (See "Upcoming Stewardship Events"). The MWHN program was founded by Coverts Cooperator Tom Patrick of the Windstar Wildlife Institute. Partners in the program are the Maryland Cooperative Extension Service and several state and federal agencies, with funding from Communicators, Inc.

For information on the Coverts Project, contact *Branching Out*. For the Master Wildlife Habitat Naturalist program, call 301-834-9238, or access the web site: [wildlife@windstar.org](mailto:wildlife@windstar.org).

## **Keep Some Deadwood**

Woodland owners are tempted to remove all standing dead trees to improve the appearance of their woodland. However, standing dead trees --- called snags --- and dead parts of live trees are "room and board" for many kinds of wildlife.

Woodpeckers, sapsuckers, flickers, chickadees, squirrels, raccoons, and bears all use tree cavities in forests. Bluebirds nest in snags in recently cut areas or in fence posts along farm fields. Insects in snags provide food for many woodland creatures.

## **Forestry Seminar Receives Honor**

The annual Mid-Atlantic Forest Stewardship Seminar, held each year the first Saturday in November, recently was named northeast regional winner and national finalist for "Excellence in Forest and Woodland Enhancement/Tree Farming." Begun in 1982 and coordinated by Terry Poole, Frederick County agricultural science extension educator, the seminar was honored by the National Association of County Agricultural Agents.

This year's seminar on Saturday, November 1, features eight workshops and a panel of forest landowners discussing "Forest Stewardship in Action." Workshops include forestry and wildlife computer software, grasses for wildlife, growing black walnut and paulownia, forest reptiles and amphibians, landowner liability and recreational access, riparian forest buffers, wildlife conservation, wildflower meadows, and managing deer damage.

## Take Note . . .

- **Controlling Deer Damage in Maryland (EB354):** 22-page revised edition of publication of which over 2000 copies were sold. Integrated pest management approach discusses fencing, repellents, population, and vegetation management options; \$2. Order from your Cooperative Extension Service.
- **Forest Landowners' Guide to Federal Laws and Regulations Affecting Their Forest.** Close look at 12 regulations that impact woodland owners; \$19.95 from the American Tree Farm System, Washington, DC; 202-463-2462.
- **Recreational Access and Landowner Liability in Maryland. Guidelines for Managing Free or Fee Access (EB357):** Covers landowner liability and strategies to manage liability risk. Available in October from your Cooperative Extension Service. There will be a nominal cost.
- **Web sites - Maryland General Assembly:** <http://mlis.state.md.us>; U.S. government: <http://www.libertymatters.org>.