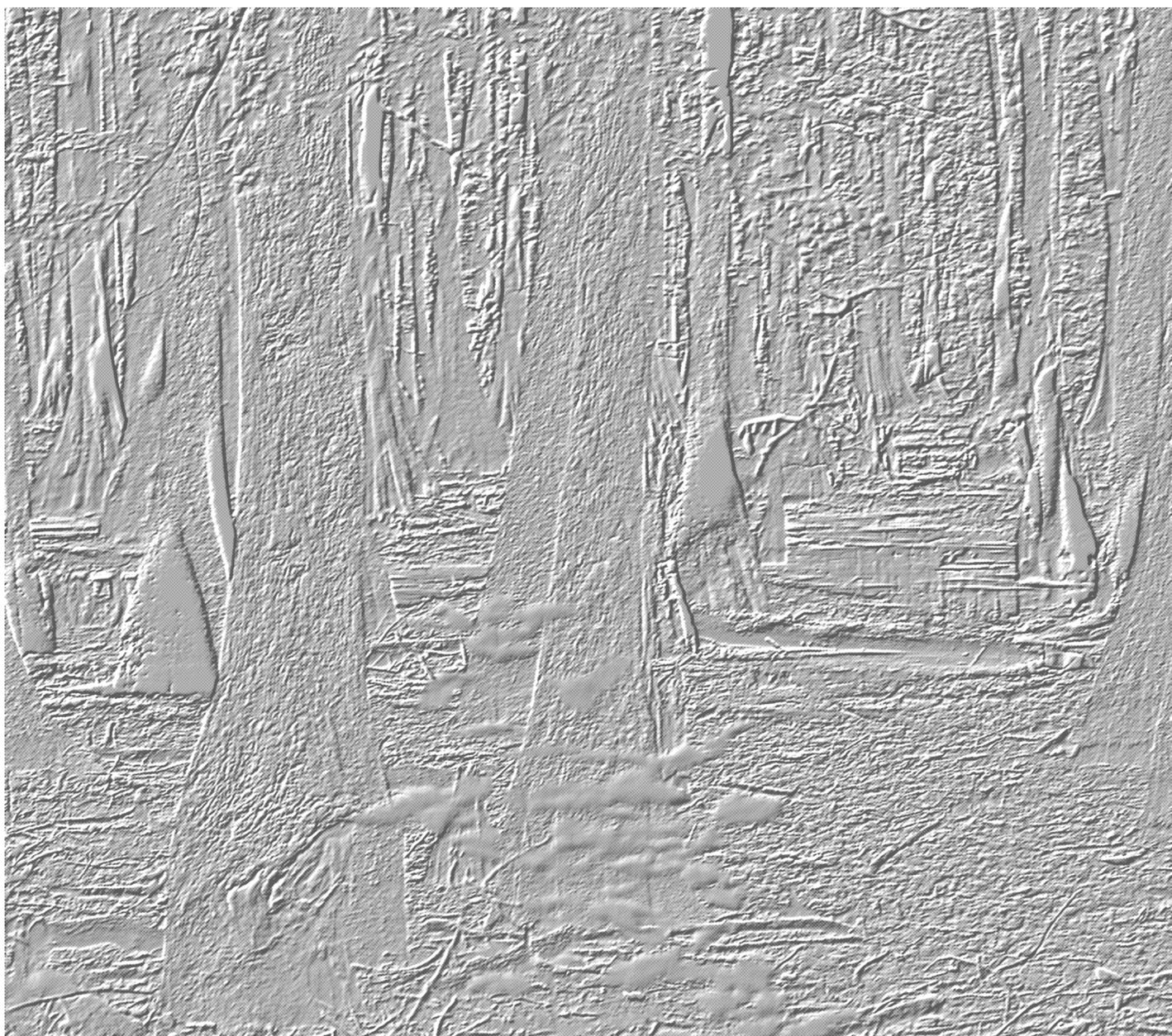


Alabama Forestry Commission

COASTAL PRE-HARVEST GUIDE FOR FOREST LANDOWNERS



Contents

MESSAGE FROM THE STATE FORESTER	1
INTRODUCTION.....	2
ALABAMA'S WETLANDS: WHY DO WE CARE?	4
SILVICULTURE AND WATER QUALITY.....	14
THINGS TO KNOW BEFORE HARVESTING TIMBER.....	18
Follow Your Management Plan.....	20
Understanding Forest Tax Law	22
Know, Mark, and Protect What You Own.....	25
Ensure Accurate and Complete Property Title.....	29
Timber Theft – Criminal or Civil?.....	31
Regulatory and Environmental Concerns.....	35
Plan and Prepare Timber Sale Contract	40
ADDENDUMS	42

Message from the State Forester

Healthy forests, waters, and wetlands are necessary for sustainable ecosystems and human society. Alabamians are fortunate that our state has an abundance of these natural resources, and we should never take for granted all of the benefits they provide.

Unfortunately, our waters and wetlands are among the most threatened ecosystem types of all. It is estimated that along the Gulf Coast, almost half of our wetlands have been lost due to land use changes and other harmful practices. As population growth and development increases along the Gulf Coast region, the pressures on our wetlands will only increase. That's why forest landowners and natural resource professionals must understand the linkages between forests, waters, and wetlands, and apply management techniques that help maintain forest ecosystems.

This *Coastal Preharvest Planning Guide* is written to help forest landowners, foresters, and other natural resource professionals do just that. It is designed to help everyone work together to protect our wetlands through sustainable forestry practices. This document provides a broad perspective that can help landowners make wise decisions involving forest activities that impact wetlands, especially with regard to timber harvesting.

I want to thank the many subject matter experts and partner organizations who contributed to the development and review of this publication, including the Alabama Department of Conservation and Natural Resources (State Lands Division), Alabama Department of Environmental Management, USDA Natural Resource Conservation Service, and Auburn University School of Forestry & Wildlife.

My hope is that this publication will strengthen cooperation between forest landowners, natural resource professionals, and other stakeholders in protecting our state's wetlands through sustainable forestry.



Linda Casey
State Forester
Alabama Forestry Commission

Introduction

Wetlands are a unique and valuable natural ecosystem. They can be found in every state throughout the country. Along the Gulf Coast, wetlands are an essential ecosystem that is extremely important to society. Essential services include reducing floods, trapping sediments, recycling and removing nutrients, supporting a rich biodiversity, and yes - producing timber products.

Unfortunately, the U.S. is losing wetlands at a steady pace. The U.S. Fish and Wildlife Service estimates over half of the wetlands in the Gulf of Mexico were lost between 1780 and 1980. They estimated 396,800 acres of Gulf Coast wetlands were lost between 1998 and 2004. This is six times the rate of wetlands lost along the U.S. Atlantic Coast.

Many individuals own forestland that contain areas classified wetlands. They have an added reason to be concerned that forest management activities not only protect, but help enhance our fragile wetlands. This guide has been prepared to help forest landowners and natural resource professionals do just that. It navigates through the many considerations that should be taken when making a decision to carry out a forest practice in or near a wetland.

Alabama's Wetlands: Why Do We Care?

By Randy Shaneyfelt

Mobile Branch – Coastal Programs
Alabama Department of Environmental Management

"Trees can reduce the heat of a summer's day; quiet a highway's noise, feed the hungry; provide shelter from the wind and warmth in the winter. You see, our forests are the sanctuaries not only of wildlife, but also of the human spirit. And every tree is a compact between generations."

-U.S. President George H.W. Bush (1989)

Alabama has been blessed with a rich and plentiful array of natural resources. Foremost of these are our quality water resources and our extensive forests, which comprise millions of acres throughout the State. These two resources are of vital importance and are connected to each other hand in hand. Management and conservation of these resources are critical to sustain and enhance the quality of our American way of life, so that it will continue and prosper. Alabama's water resources are of great importance to Forestry operations and concerns throughout the State. The conservation of these water resource areas includes lakes, rivers, streams, headwaters, wetlands and marshes. Despite increasing development pressures Alabama is fortunate to have a



Coastal stream and bottomland hardwoods in Perdido River Watershed, Baldwin County, Alabama (Image by Randy Shaneyfelt)

large amount of hydrologic resources with rivers and wetlands of quality that may be conserved and managed to maintain our needs. In recent times more attention has been given toward protecting these riverine and wetland ecosystems and their associated habitats.

In this chapter of the *Coastal Pre-Harvest Guide for Forest Landowners* our emphasis will be placed on those wetlands ecosystems associated with forestry practices, primarily those in coastal Alabama. So the question should be "what are wetlands and where are they located"?

What are Wetlands?

According to *Alabama's Best Management Practices for Forestry*, wetlands are described as those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support (and under normal circumstances do support) a prevalence of vegetation typically adapted for life in wet or saturated soil conditions.

The U.S. Army Corps of Engineers, using the *1987 Corps of Engineers Wetland Delineation Manual* and its *Regional Supplements*, determines that when the three key parameters of hydrophytic vegetation, hydric soils, and wetland hydrology occur together on a site, under normal circumstances and of sufficient duration, for an area to be classified or *determined* to be a wetland.²

Wetlands may include: marshes, swamps, wet meadows, natural depressions, bogs, impoundments, ponds, and sloughs. Wetlands are present in many environmental settings including: riparian areas, floodplains, and upland forested areas. Some wetlands are fresh water, some are saline, and others are created by underground water that is very close to the surface. Wetlands can be vegetated or nonvegetated. They can be dry part of the year but are wet long enough and often enough to have unique natural functions. Consequently, wetlands perform such unique and complex processes that few definitions adequately describe all wetlands well, or completely.³

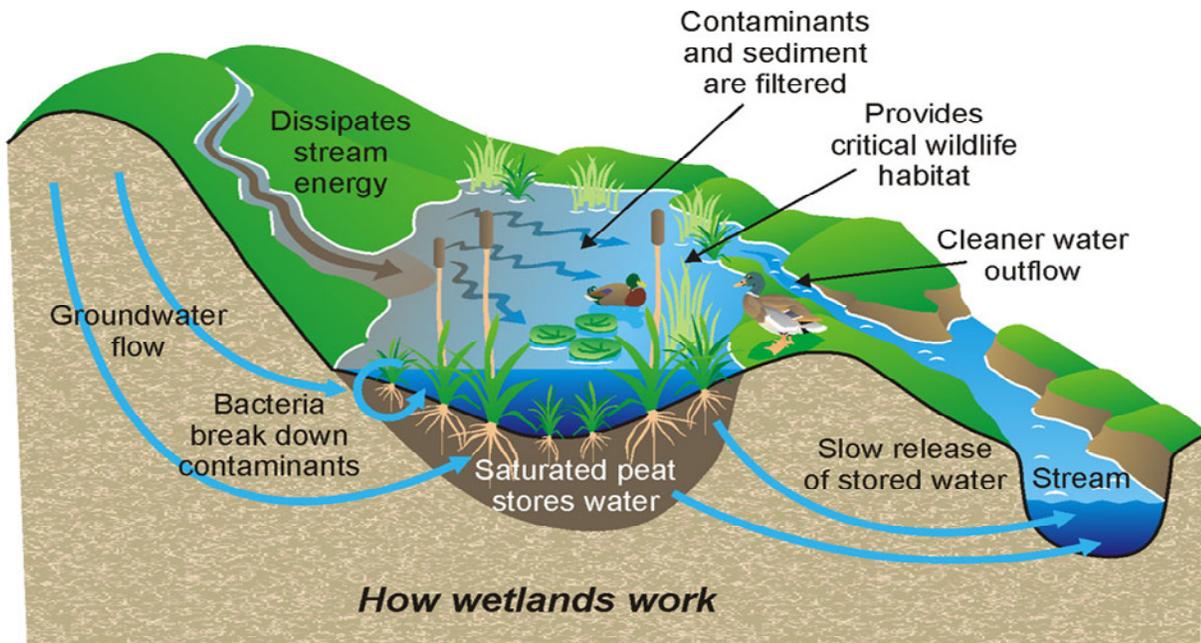


Figure 1: Wetlands Work To Allow Infiltration Into Soils and Streams

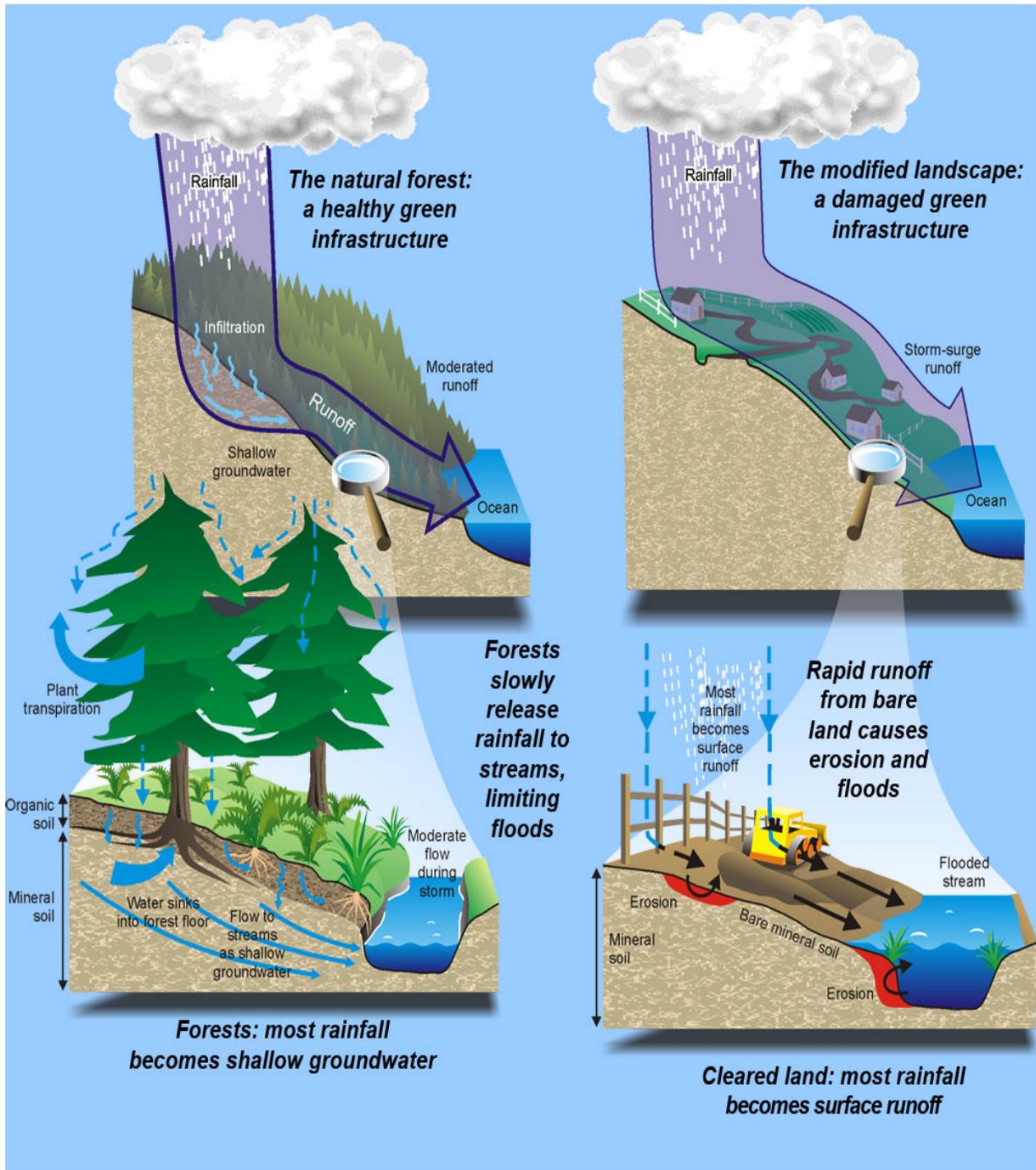


Figure 2: Forests and Wetlands Protect the Watershed

Where are Wetlands and Forested Wetlands Located?

Actually, forested wetlands may be found at any elevation or place on the landscape in Alabama, since these wetlands usually occur whenever the local water table is near the surface. Designated or protected wetlands may be found in the following areas:

- Seeps, along slopes of hills and sloughs
- River, creek and branch or stream bottomlands
- Bayheads, "grady ponds", bayous and "bogues"
- Muck swamps, peat swamps and cypress/gum ponds
- Wet meadows, savannah and coastal prairie flats
- Tidal fringe marshes, hummocks and swales
- Barrier island lagoons and backwater bays

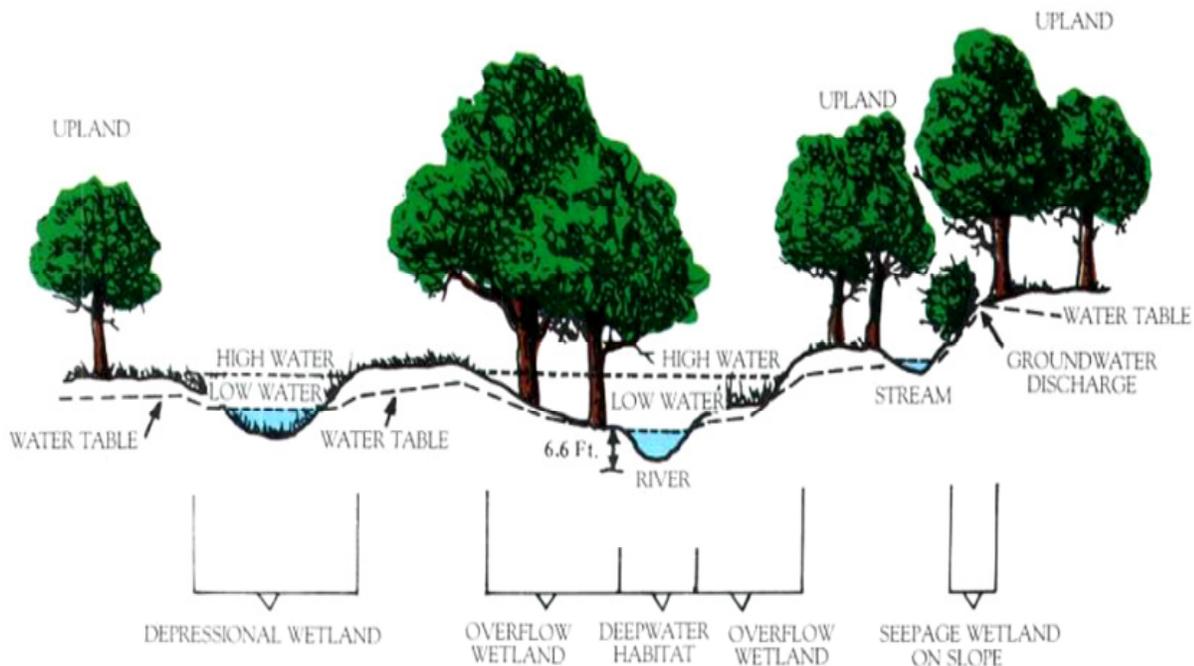


Figure 3: Forested Wetlands on the Landscape

Often when a landowner hears the word "wetlands" or any other related term (swamp, marsh, bog, etc.); it usually creates images that are not so favorable. Early coastal settlers commonly associated these 'wet' areas with disease and regarded them with disdain or even fear. They referred to the Yellow Fever borne by mosquitoes, as "swamp fever", which caused many deaths in the early 1800's; or they constantly warned their children not to play too close to the "blackwater swamps," for fear that their "vapours" might cause illness or other strange maladies.

Traditionally people have been taught that those "wet bottomlands" serve little good purpose unless they are drained and "put to good use". Despite many years of regarding wetlands in this negative manner, these landowners have come to learn that these open and forested wetlands

actually contain many beneficial uses with various important functions that serve to enhance water quality and our ecosystem as a whole.²

Just from looking at a wetland, it can be very hard to imagine what kind of important value or use it might contain. But we have found that these 'wetland worlds' house many of our biological wonders and serve many useful functions that make them of increasing value in their natural state. In order to protect these dynamic ecosystems, our forestry landowners and the public must first understand the positive values of wetlands and their functions. These functions include flood control, erosion control, water quality and availability, atmospheric benefits, fish and wildlife habitat, natural resources, and opportunities for recreation, education, research and natural beauty:³



Hummock in West Fowl River tidal marsh in Mobile County, Alabama
(Image by Randy Shaneyfelt)

"In the end we will conserve only what we love; we will love only what we understand; and we will understand only what we have been taught."

– **Baba Dioum,**
1968 International Union for Conservation of Nature

Functions of Forested Wetlands:

- **Flood control**

Perhaps one of the most important aspects of a wetland is its ability to protect the surrounding forests and lands by acting like a natural sponge. In Alabama, wetland and river floodplains may cover wide areas of specific geographic regions. Floodplains allow the flow of water across or through large areas of the landscape, eventually being received by another stream, wetland or waterbody. The wetlands hold and absorb water during heavy rainfall, snowmelt, or from flood waters and then slowly releases it downstream. Trees, bushes, shrubs, grasses and the other wetland vegetation help to impede the flow of water through the wetland, thereby decreasing the velocity of water coming through; while absorbing much of the water into the water table, which is situated in the ground below. As floodwaters move across a floodplain, this combined water storage and braking action lowers flood heights and prevents further waterlogging of valuable forestry or agricultural lands.

Another important value is the protection a wetland or forested wetland area offers to nearby urban settings. Because of its flood control capabilities, a wetland is able to offset and counteract the increased volume and rate of water runoff from roadways, pavement and rooftops of buildings. This is especially critical for Alabama's coastal area where hurricane and tropical storms may drop as much as 3 feet of rain in a single storm event.

On the other end of the spectrum, when a stream or waterway becomes dry during periods of drought, a forested wetland (because of its protective canopy and nearness to groundwater) may continue to slowly discharge its reservoir of water into the nearby streams. In essence, it may allow the wetland and stream's dependent plants and animals to remain alive and functioning for a much longer period of time. Often the forested wetland's stored water makes an important difference, especially to those creatures and plants.²

• Erosion control

Storm surges and intense rainfall from hurricanes and tropical storms cause incredible damage to nearby coastal areas through flooding and destruction of property. Many times our coastal forested wetlands act as buffers to lessen the impact of these destructive storms. They are the first line of defense, as they reduce the advance of wind and wave energy, plus reducing currents that flow into them from surges and intense rainfall. The intertwined, steadfast roots of the wetland vegetation and their protective forests hold the soil and sand in place, preventing or minimizing shoreline erosion for rivers, streams and our important coastline areas.²

"Not all wetlands perform all functions, nor do they perform all functions equally well. The location and size of a wetland may determine what functions it will perform."

-U.S. Geological Survey

• Water quality and availability

It has been shown that much of the coastal wetlands intercept surface-water runoff from the higher elevation uplands before it continues into the open waters; their filtering capabilities here are of extreme importance. Similar to how the human kidney filters our bloodstream of toxic and harmful products, wetlands also function to purify water that runs through it. Once water containing chemicals, pollutants, and unwanted sediment from upstream flow through these wetlands, this water is slowed down and filtered in a seemingly simple process through the associated vegetation. With shallow coastal gradients, the slowing of water allows for suspended sediment to drop and settle on the riverbank terraces, levees, wetlands and wetland bottoms. This turns out to be most beneficial further downstream, since this process prevents excessive deposition of sediment that could eventually block main waterways.

At the same time, metals, nitrogen and phosphorus wastes (associated with various pesticide and fertilizer uses from upstream) are processed or retained by wetland plants acting as "sinks" that are adapted to break down, or actually utilize, these potentially harmful chemicals. Other organic pollutants are naturally decomposed in the same manner. This purification of the water "treats" many of the negative effects associated with urban, agricultural or forestry uses and other associated runoff that could have detrimental effects on smaller creatures and ultimately impact our food-chain

"... safeguard thy fields from soil erosion, thy living waters from drying up, thy forests from desolation, and protect thy hill..., so that thy descendants may have abundance forever."

-excerpt from Walter C. Loudermilk,

(once the runoff reaches nearby rivers, lakes, and oceans). It is also important to note that these wetland processes prevent these harmful chemicals from reaching groundwater, which ensure that higher quality water is available for humans that rely on groundwater supplies for potable drinking water.

Wetlands also help combat the environmental problem of eutrophication, or nutrient enrichment impacts, which leads to rapid algal growth and depleted oxygen levels that affect other species. These wetland processes utilize or tie-up the excess nutrients or pollutants that cause the problem to begin with. As beneficial as this process of water purification seems, the public must be aware that the capacity of wetlands to function in this manner is limited.² The "overloading" of the wetland with pollutant chemicals and sediment can be detrimental, and if excessive, may destroy the wetland entirely.



Restored bottomland hardwood on forested wetland site in Mobile County, Alabama (image by Randy Shaneyfelt)

• **Atmospheric benefits**

One lesser known aspect of forested wetlands is their great ability to store carbon, within their plant tissue and residual biomass (peat), instead of releasing it into the atmosphere. What would normally be released into the atmosphere as the greenhouse gas (carbon dioxide) is further trapped in the wetland biomass and peat, all helping to maintain global climates. Consequently, by clearing these types of wetlands, high levels of carbon dioxide are released into the atmosphere—yet another concern for global warming.²

• **Fish and wildlife habitat (biodiversity)**

At first glance it may not be evident that wetlands sustain a warehouse of organisms, ranging from microscopic bacteria to alligators, or rare flowers. Some scientists think that wetlands are comparable to coral reefs and tropical rainforests in their biodiversity. Many of the creatures and wildlife contained within a wetland are wetland-dependent and are only found in these special ecosystems. They rely on the food products and protective shelter provided by forested wetlands. Some of these species are brought to our attention by the endangered or threatened species list, which means that they are near or in immediate danger of being exterminated completely. So it is most curious why we continue to destroy these precious areas that cradle biological diversity.³ According to the US Fish and Wildlife Service there are as many as 115 threatened and endangered species in Alabama; with 79 of them found in our streams and wetland areas. Our extensive Mobile/Tensaw Delta watersheds in coastal Alabama contain many of these endangered creatures - many are only found in these wetland and bayou areas.

Wetlands contain the essential ingredients for the development of organisms that make up the foundation of the food web. These forested wetlands contain high levels of inorganic nutrients, with shallow water, and high rates of primary productivity (plant tissue built up over time through photosynthesis) that help to attract many species of insects, mollusks, and crustaceans. As the built up plant material begins to break down into smaller particles, fungal and bacterial activity causes it to become increasingly enriched with nutrients. This becomes part of food-chain that provides food for smaller fish, which then serve as food for larger predators, such as amphibians, birds, reptiles, and larger mammals. This food-chain within a wetland is of critical value to these creatures and their life cycles.

Wetlands provide the principal habitat for virtually all waterfowl. Certain wetlands act as migratory "pit stops," so to speak, during a flock's cross-country travels. Some 75% of these birds court and breed only in wetlands! Also, these waterfowl and wading birds, along with many other animals (particularly amphibians) require water as a medium for the growth and development of their young. Our forested wetlands may be short-term or seasonal habitats for many of these animals (such as the American alligator, blue heron, and many species of ducks), while a vast number of reptiles and amphibians use these wetlands as their primary year-round habitat.³

• **Natural resources**

As is the case with most other ecosystems, we humans use various natural products from wetlands in the form of timber, mammals, fish, shellfish, medicinal plants, and peat. Certain non-medicinal edible plants are also found in or near wetlands; most notably these include blueberries, and blackberries. Common fur-bearers like the muskrat, beaver, otter, and mink all make their homes in wetlands, as do alligators, which are valued for their skin and meat. Without a doubt, the most abundant natural resources stemming from wetlands are fish and shellfish. The National Marine Fisheries Service estimates that almost 70% of the annual commercial fish catch depends upon inshore-wetland habitats.² As mentioned above, many Alabama fish and wildlife species are wetland dependent at some stage in their life cycle. Both commercially and recreationally valuable species such as crabs, shrimp, trout, and snapper spend their early lives in wetlands. Threatened and endangered species such as piping plover and bald eagles depend on wetlands. Wetlands provide habitat for many upland game birds and stopover feeding and breeding grounds for migratory birds. Some of the nation's most valuable migratory bird areas are the coastal counties of Alabama.³

The intrinsic values of wetlands were not recognized until their loss started to reveal problems. For example, sportsmen gradually began to notice a decline in the numbers of fish and wildlife. Also, flooding along rivers and shorelines increased over historical levels. This led the public to recognize that wildlife habitat; water pollution control, groundwater recharge and flood control are direct benefits of wetland preservation. With this recognition has come an expanded interest in protection, conservation, and management of Alabama's remaining wetlands.²

• **Buffers for wetlands and forested wetlands**

Forested Wetlands are of unique value and as such, they should be managed more carefully, as a more sensitive ecosystem. Forested wetlands with properly preserved buffer zones, not only protect the plants and animals within the wetlands themselves, but also provide additional help to protect the surrounding lands from flooding. Much like Streamside Management Areas, the use of additional vegetative buffers serves to protect the aquatic functions that are vital for our forested wetlands. Vegetative buffers next to Forested Wetlands also offer a visual signpost for work-crews in the field, that these areas should be treated differently.

- **Recreation, education, research, natural beauty**

Forested Wetlands provide cool shade, unrivaled natural beauty, opportunities for wildlife viewing and unique areas for fishing and hunting. For a private landowner, a forested wetland can be a special sanctuary for family and friends. Aside from providing various environmental benefits to us, many landowners are finding that the “old swamps” and surrounding buffers can create lucrative eco-business opportunities. According to the EPA, nearly half the adults in the United States are involved in hunting, fishing, boating, bird watching, or photographing wildlife in these areas. “They annually spend more than \$59.5 billion!”

Forested Wetlands are usually underestimated and undervalued, for they often provide many rewarding adventures and memories with family and friends. They are ideal spots for repeated visits. Whether you are a scientist looking to research water quality or plant life, an avid birdwatcher hoping to snap a contest-winning photograph, a hunter waiting in the trees for the next trophy to walk by, a fisherman wanting to try out some new gear, or simply a person in need of a beautiful landscape to put your mind at ease, these wetlands have your name written all over them.²

- **Regulations that protect Wetlands**

“A people without children would face a hopeless future; a country without trees is almost as helpless.”

*-U.S. President **Theodore Roosevelt***

Wetlands are identified for various legal and scientific purposes, including regulation, functional assessment, ecosystem and landscape management, and human use. In general, wetland definitions have evolved from two main sources; from the academic or scientific arenas, and from entities which have a regulatory responsibility related to wetlands management. For

scientific understanding and academic research, wetlands are defined primarily for classification based on ecological function or position in the landscape. Scientific definitions or classification systems are not required to be as concrete or rigid with regard to interpretation as are regulatory definitions, since they are rarely subject to legal scrutiny. In regulatory programs, wetlands are defined primarily for legal purposes, in order to develop rules and standards that can be interpreted consistently to assist in those management efforts. Regulatory definitions require wetland *delineation* and are usually interpreted more conservatively, since they restrict the use of wetlands in regards to private property and development issues, in order to preserve the health, safety or welfare of our waterways, as well as our communities, under the government's regulatory powers.³ Please note that the regulatory aspects that further apply to forested wetlands have been described in more specific detail in the section on “Regulatory and Environmental Concerns.”

- **-Section 404 of the Clean Water Act**

Section 404 of the Clean Water Act, “forbids the unpermitted discharge of dredge or fill material into waters of the United States”. Section 404 does not regulate every activity in wetlands, but requires anyone seeking to ‘fill’ a wetland to first obtain a permit from the U.S. Army Corps of Engineers or other regulatory entity that may require it.² For example, if a person wishes to construct a building or other development and wetlands need to be filled to complete the project, Section 404 requires that the person first obtain a permit from the Corps, as well as, any that may be needed to meet the State, County, or local town requirements.

-Food Security Act (1985)

The Food Security Act takes a different approach to protect wetlands. Basically it states that landowners who convert wetland acreage into agricultural tracts are ineligible for agricultural subsidies (price supports, loans, or crop insurance) for forests or crops planted in these converted wetland areas.

From the early 1900s to the present, many environmental laws have been directed toward the protection of wetlands, yet there is still a heated debate over how to properly enforce their defense and restoration. The intent of all these programs is to protect and conserve wetlands by way of increasing cooperative efforts among private landowners and local, state, and federal governments.²

References and Citations

All Figures and Illustrations presented in this Chapter were provided by courtesy of the **U.S. Environmental Protection Agency**, unless otherwise noted.

¹**All Photographs** presented in this Chapter were provided by Randy C. Shaneyfelt /ADEM.

²**ALABAMA WETLANDS. 2012.** (<http://www4.samford.edu/howard/biology/wetlands/>)

Samford University, the Alabama Wetlands Website Committee

This website provided invaluable ideas and textual information that were used to develop this *Forested Wetlands* Chapter of the *Handbook*.

³**Coastal Counties Wetlands Conservation Plan. 2001**

ADCNR-Coastal Section / Alabama Coastal Counties Wetlands Working Group

Silviculture and Water Quality

By Neil Letson

Assistant Division Director
Alabama Forestry Commission

Silviculture is the fundamental basis for good forest management. It combines knowledge with proven experience to help people manage forests in ways that satisfy the needs and values of all generations. In general terms, silviculture requires knowing how trees work, the basics of forest ecology, and how people interact with and depend on trees. Landowners who properly follow a silvicultural approach are stewards of their land. They work with the natural forest ecosystem; make forest management decisions with an eye on the entire life cycle of the forest; and strive to protect natural resources in a sustainable manner. Each forest activity is done with future goals and objectives in mind, including establishing trees, stand management, harvesting, and renewing the cycle with reforestation. When landowners correctly practice silviculture, they ensure that our forests produce maximum benefits while conserving all natural resource values, including water quality.

Silviculture -“art and science of controlling the establishment, growth, composition, health, and quality of forests and woodlands to meet the diverse needs and values of landowners and society on a sustainable basis.”
-Society of American Foresters

When landowners correctly practice silviculture, they ensure that our forests produce maximum benefits while conserving all natural resource values, including water quality.

Protecting water quality is essential to all silvicultural activities. Success depends on understanding how forest hydrology works. In a natural and undisturbed setting, trees help distribute, cleanse, and store water through processes such as evapotranspiration, interception, soil absorption, and forest floor runoff. These processes are especially helpful for wetlands. Forests help wetlands function to moderate flooding, trap sediment, retain and remove pollutants, support biodiversity, and provide timber products. But when human disturbances occur, there is an increased risk that wetlands could be degraded. If poorly planned or incorrectly implemented, forest activities could:

- Increase sedimentation
- Alter water drainage
- Obstruct stream flow
- Compact soil
- Contaminate water

So, can a forest landowner safely practice silvicultural activities while protecting water quality? There will always be cases where surface features are too sensitive to allow forest practices. These sites should always be protected from human disturbances. But when the forest activity is appropriate to the site, precautions are included in the planning, and activities implement properly, then it can be done.

Typically, there are four silvicultural practices that need precautions to protect water quality. These include road construction, timber harvesting, site preparation and regeneration, and the application of forest herbicides.

Be aware there are federal and state laws and regulations that apply to wetlands. Landowners considering a silvicultural practice in a wetland should first contact local State or Federal natural resource agencies to learn of any rules or regulations that may apply.

Road Design and Construction Practices

Forest roads are used to provide access for timber management, wildlife habitat improvements, fire control, recreation, and routine inspections of the property. They can be well-maintained with a surface capable of accommodating two-way traffic. They can also be low maintenance and used primarily for forest management access on an irregular, or as needed basis. Forest roads can induce sedimentation during active forest operations. This is a major concern. Landowners should use the services of a Registered Forester, engineer, or other qualified professional for help in forest road construction design and specifications.

In order to meet Section 404 exemption for an ongoing silvicultural operation, there are 15 mandatory BMPs to be implemented when constructing roads and creek crossing in wetlands.

Several considerations will help minimize impact of road construction on water quality. Landowners should plan forest road locations before harvest operations. Constructed forest roads should avoid streamside management areas and, wherever possible, crossing wetlands. If necessary, limit the total wetland road miles to achieve landowner objective. Make sure to know the type and depth of wetland soils to ensure proper design and construction. Build fill roads only when necessary. Minimize road width consistent with safety and road design considerations. Include upland road approaches to wetlands to divert surface runoff before entering wetland.

Harvest Practices

Timber harvests are a primary source of revenue for landowners. Without the ability to earn income off the land, there is less incentive to make investments that improve forest health and productivity. Landowners should remember that an actual timber harvest will involve more than cutting trees. It includes moving severed trees to a landing, processing, sorting, loading, and transporting offsite. Timber harvests will alter forest structure. They can also be detrimental to water quality if there is excessive and poorly planned movement of machinery on site and skidding of logs for delivery to mill.

Good planning is necessary for a successful timber harvest. A timber harvest plan should detail the actual harvest operation with consideration to what type forest or reforestation will follow. Good plans also ensure that all activities will take into account any impact on wetland function. A successful timber harvest will follow Best Management Practices (BMP). This will help reduce potential nonpoint source pollution due to soil disturbance and loss of vegetative cover. BMP guidelines should also cover equipment operations and maintenance.

Site Preparation and Regeneration

Timber harvests are usually followed, to some degree, with treatments that prepare the site for the next stand of trees. The method, species, and density are selected based on the goal of the landowner. Machinery, chemicals, and fire are tools used to prepare sites for tree planting, direct seeding, or natural seeding. Water runoff, sedimentation, and nutrient losses will increase the more intensive the site treatment becomes.

Leaving forest floor litter intact can minimize soil disturbances that reduce water quality. Site preparation methods, such as the proper use of herbicides and prescribed burning, cause less disturbance to soil surfaces than mechanical practices. Natural regeneration, hand planting, and direct seeding are other methods used to further reduce soil disturbances.

Forest Herbicides

Herbicide technology has radically changed forest management in the Southeast. Herbicides are commonly used to control vegetation so that landowners can enhance forest regeneration, increase timber growth, improve wildlife habitat, control invasive plants, and maintain forest roads. The proper use of herbicides during reforestation actually helps sustain water quality by reducing sedimentation, preserving organic matter, and limiting a decline in physical soil properties. Used according to label instructions, today's silvicultural herbicides quickly degrade after application. Studies indicate residue concentrations tend to be low, except where direct applications are made to temporary channels or streams, and do not persist for extended periods of time. Regional environmental impact statements show that forest herbicide presence in surface and groundwater is not a significant risk to water quality or human health.

Today's equipment is designed to control drift and should be used only during stable weather conditions. Herbicides, without an aquatic label, applied directly to the waters of Alabama violate state and federal law. Operations should incorporate no-spray buffer strips along streams, ponds, and swamps that contain standing water. These vegetative strips will be wide enough to prevent any movement of active ingredient to open water.

Things to Know Before Harvesting Timber

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Understanding Forest Tax Law

Know, Mark, and Protect What You Own

Ensure Accurate and Complete Property Title

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Regulatory and Environmental Concerns

Plan and Prepare Timber Sale Contract

Follow Your Management Plan

By Tim Albritton

State Staff Forester
USDA-NRCS

Hopefully every landowner has a picture in mind of how they want their property to look and the rewards they want to receive from their forest. Some want their property to look like a park and they want to enjoy recreating there. Others want to attract game animals to hunt, view and enjoy. And still others just want the financial rewards that an intensely managed forest can offer.

Most people could care less about meeting the ever increasing demands of society for wood products or protecting the habitat of an endangered snail. Such matters are the concern of government agencies and these agencies do everything possible to stimulate landowner interest in proper forest management. But when you boil it all down the chief interest of most landowners is simply their own little part of the world – their “back-forty.”

What some landowners do not realize is that a management plan can be much more useful than simply gaining the approval of a forestry cost-share program. It is a tool that can help turn your “back-forty” into that picture in your mind. You know – the one you have always envisioned your property could be if you just knew what to do.

A forest management plan prepared by an experienced professional forester can be a road map guiding you from where you are now to where you want to be. It will take into consideration your objectives for your property and will lay out a detailed plan to help you move forward.

Goals and objectives often change with the passing of time. Your goals at age 55 may be drastically different than they were at age 25. So your plan will need to be reviewed from time to time. Most plans try to plan out activities for five to 10 years even though the rotation length of a stand of trees can vary from as short as 18 years to as long as 80 years.

A carefully designed management plan can also provide documentation of planned forestry activities in or near wetlands. Harvesting timber in or near wetlands will certainly involve some Federal laws or regulations. A written forest management plan can serve as documented proof of established or ongoing silvicultural operations in the area.

A written plan will not protect you against violations but it can serve as a historical record that the objective of your property was and is timber production. It can also communicate to the harvesting crew and equipment operators the specific activities recommended.

If you have never had a forest management plan your first step is to request one. Where you ask? Several sources are available to landowners from government agencies, forest industry, and consulting foresters.



Professional foresters have the knowledge, skills, and expertise to help landowners develop forest management plans that meet individual goals while sustaining the natural resource.

There are two government agencies in Alabama that have a system in place to assist private landowners in obtaining a forest management plan. The first agency is the Alabama Forestry Commission (AFC). The commission has dozens of professional foresters with offices throughout the state. The AFC promotes certification and participation in the TREE FARM Program, Stewardship Program and the Treasure Forest Program. All three programs require a written management plan before certification is achieved.

A Treasure Forest Plan is based on multiple use concepts; the landowner selects at least two objectives which will be primary in the management of the land. The management objectives a landowner can choose are: **Timber Production, Wildlife, Recreation, Aesthetics, and Environmental Education.**

A Treasure Forest Plan, Stewardship, Plan, or a TREE FARM Plan will all have property information such as a legal description, stand tables and a summary of the landowner's desires for the property. Each plan has a set of maps such as an area map giving the general location and a property map detailing the boundaries, timber stands, roads and other special areas.

Each stand is described and management recommendations made based on the landowner's objectives. Often other natural resource specialists, such as a wildlife biologist, are asked to assist in making specific recommendations.

The second agency is the Natural Resources Conservation Service (NRCS). The NRCS offers assistance in the development of Conservation Activity Plans. Conservation Activity Plans (CAP's) are specialized, in-depth plans that address specific resources and can be used to improve management. Many of the recommendations from the plans can be part of a subsequent application for financial assistance through the Environmental Quality Incentives Program (EQIP). Alabama offers CAPs in Forest Management Practice/Activity Code (106).

For additional information about the CAP plans go to your local USDA Service Center or checkout the NRCS website at: <http://www.al.nrcs.usda.gov/programs/eqip12/cap12.html>

Another source for landowners to consider is a consultant forester. There are many capable consultant foresters within our state. The Association of Consulting Foresters (ACF) currently has 31 members in Alabama, with four foresters listed as candidate status. An experienced consultant can help you develop a plan and assist with the many other forestry projects. For more information checkout the ACF website at: <http://www.alacf.com/Benefits.html>

Obtaining a written forest management plan for your property can be the first step in transforming your "back-forty" into that picture in your mind. It may also help you reach a higher level in forestry management than you ever imagined.

Understanding Forest Tax Law

By Dr. Robert Tufts

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Any expense paid or income received from forest operations has income tax impacts. The purpose of this article is to make you aware of the issues, but space does not allow for a detailed explanation. Be sure to consult your income tax professional to determine the effect on you individually.

The first issue to decide is whether you are going to operate as a business or hold the property as an investment. The advantage of operating as a business is the opportunity to use expenses to offset other income. This is important because the Internal Revenue Code allows for the current deduction, as opposed to capitalization, of most of the expenses associated with forest operations. Two related issues are whether your investment is "at risk" and whether you materially participate in the forest operations, which are also required to deduct losses against other income.

Benefit of Basis. Probably the most important tax issue is determining your "basis" in the land and timber. Basis is your investment (or a prior owner's investment) in the property and the return of basis is not a taxable transaction. In other words, if you sell timber worth \$10,000 and your basis was \$4,000 you would only pay tax on the income or \$6,000.

Determining Basis. If you purchased the property, your basis is the total price paid for the property plus any expenses associated with the purchase, such as the consulting forester, surveyor, or legal expenses. If your parents gifted the property to you, then your basis is their basis plus any gift taxes paid on the appreciation. For example, your parents purchased the property in 1960 for \$25,000 and today it is worth \$100,000. Your basis in the property is \$25,000. If you acquired the property as a result of someone's death, then your basis is the fair market value (FMV) of the property at the date of death. We used to say step up in basis to FMV date of death, but some property values have decreased.

Allocation of basis. Once you know your basis in the property, the basis has to be allocated among the land, trees and any other depreciable assets on the property. Your basis has to be allocated proportionately based on the FMV of the assets. In other words, you cannot arbitrarily allocate a larger amount of the basis to the timber. The basis allocated to the timber is usually further subdivided into accounts such as sawtimber, pulpwood, pre-merchantable and regeneration to accelerate the tax benefit. For example, sawtimber has a higher FMV so it would be reasonable to allocate a larger portion of the basis to that account. Sawtimber will probably be harvested sooner so your basis will be recovered faster (income that is not taxable) which will increase the rate of return from your property. The IRS provides a four-part form, Form T that can (should) be used to record the purchase, basis determination and basis allocation for each property that you purchase. You are not required to file the Form T when you purchase property, but the IRS states that you have to determine the information required on the form; so, you should complete Part 1 of Form T.

Single Identifiable Property. A parcel of land can be divided into blocks or separate depletion units called single identifiable properties. Blocks may be more efficient for claiming basis and expensing replanting.

Harvesting Timber. Prior to 2005 you had to sell your timber with a "retained economic interest" to qualify for capital gains treatment. Section 631 was amended in 2005 to allow "lump sum" sales to qualify for capital gains treatment. To qualify for long-term capital gains, you must have owned the asset for the holding period, currently one year (which starts the day after the purchase). To

determine the amount of proceeds that are taxable, you would deduct your investment or basis in the trees harvested by calculating a depletion allowance

Depletion. The investment in a capital asset (basis) is normally recovered through an annual depreciation write-off with the amount calculated under the modified accelerated cost recovery system. Depreciation is not available for natural resources; instead, a depletion allowance is calculated each time timber is harvested. The format for calculating the depletion allowance is included in Part 2 of Form T, which must be included with your tax return when claiming a depletion deduction. Depletion changes each year because the amount invested remains constant but the volume of timber changes each year with growth. For example, when you purchased the land, there were 10,000 tons of pulpwood with a basis of \$50,000 or \$5 per ton. Five years later when you harvested the trees there were 12,000 tons but the basis is still \$50,000, so the depletion allowance is \$4.17 per ton.

Reforestation. Another somewhat recent change is the opportunity to expense the cost of stand establishment. Reforestation includes site preparation as well as replanting. Up to \$10,000 may be expensed for any taxable year with respect to each qualified timber property. For example, if two 40-acre tracts were harvested and they were separate depletion blocks, then \$20,000 could be expensed, \$10,000 for each of the properties. Any amount over \$10,000 can be amortized over the following 84 months. To maximize the benefit the site preparation could be conducted in July, year 1, with replanting the following January, year 2, to expense \$20,000 for one block.

Maintenance expenses. These costs are incurred for the management, maintenance, and protection of the timber stand and are considered "ordinary and necessary" under §162. Amounts incurred for labor and materials for fire, disease, insect, and brush control are deductible. Post-establishment fertilization is also performed for the management, maintenance, and protection of the timber stand and are held to be ordinary and necessary expenses deductible under §162. Operating expenses, such as, fees paid to consulting foresters, other professional fees, and salaries for labor and travel expenses related to the management of the property are also deductible.

Timber cruise. The deductibility depends on the purpose of the timber cruise. Expenses incurred for a cruise not made in contemplation of a purchase or sale and for the purpose of determining the type, quantities, location and growth possibilities of the timber have been determined to be an ordinary operating expense. The costs incurred in connection with a purchase are a capital expenditure and must be added to the basis of the acquired timber.

Surveys. Surveys to defend title must be capitalized into the land account. A survey done to re-establish a lost property line should be deductible.

Forest roads. To be depreciable or amortizable, property must have a useful life to the taxpayer that is determinable. For a permanent road, the roadbed should be useful for an indefinite period of time, and therefore, is not depreciable; so, the cost of clearing, grubbing and rough cut and fill should be placed in a nondepreciable account. Improvements to a permanent road, such as culverts and bridges do have a useful life and are depreciable. The recovery period for land improvements, such as drainage facilities, bridges and fencing is 15 years. If the road is meant to be temporary, for example a road that is constructed for timber harvesting with the intent that it be reclaimed and planted, then it has a useful life and may be depreciated.

Casualty losses. Timber production is usually a business or entered into for profit, and so, ordinary losses would be deductible whether there was a casualty involved or not. The income tax effect of having the loss associated with a casualty is that it provides for the separation of the "ordinary" (as opposed to long term capital) loss from the deferral of income from salvage operations if the income is reinvested in similar assets (involuntary conversion under §1033). In other words, the casualty loss and the subsequent sale of salvage timber are separate events, and need not be combined and set off for tax purposes.

Tax-free exchanges §1031. If an owner exchanges real property rather than selling one parcel and purchasing another he can defer the tax on the gain. The process is not as simple as it sounds and you should obtain tax advice before starting the transaction. You do not eliminate the tax; only defer it to a later sale (unless you leave it to someone in your estate and they get a step-up in basis).

The preceding list is barely an introduction to income tax issues. You should consult an income tax professional before proceeding with any of these operations.

Know, Mark, and Protect What You Own

By Chris Mead

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Boundary Lines

Much of the United States was originally surveyed 175 years or more ago and in most cases many times since. However, even today boundary line disputes happen. As a result, it is very important to know exactly where your property is. Common disputes in the southeast arise from others accidentally trespassing on your property and/or cutting your trees, or you accidentally trespassing on your neighbor's property. Most of these disputes can be eliminated with an inexpensive task of painting your boundary lines. Also, in legal matters, properly marking your property lines can be a distinct advantage if you do discover a trespass has occurred on your property.

Most importantly, you must know the exact location of your boundary line before you even consider marking your boundary lines. This is usually accomplished during the purchase of your property when a deed is surveyed, and recorded. Today, surveyors usually identify property corners with metal pipe and flagging so the property corner can be found later using a metal detector. The idea is to mark the point with something that will not rot, weather, or burn so that it could be easily located for many years.

If you have not located your property boundaries, it is possible to locate them yourself. This requires work and some caution to make sure you don't permanently mark the boundaries in the wrong location. Be very careful because you could be liable for your mistakes. Since most deeds have been surveyed in the past, there should be some evidence, if you know what you are looking for.

First, you must locate the legal description for your property which will describe the distances and bearings (compass directions) of each of your property boundaries. The legal description is usually associated with the deed for your property or a previous deed it references. Your deed is available at the Revenue Commissioner or Circuit Clerk office at the county courthouse the land is located in. Courthouse personnel can help you find this information, if you ask for assistance. Once you acquire the legal description, you are ready to start locating your property lines.

In addition to your legal description, you will need several other pieces of equipment. A compass, biodegradable flagging, and a 100 ft. measuring tape can assist you in your efforts. Now, using your legal description, try to find the most obvious of your property corners. This corner could be along a road, or a well established boundary with a neighboring property owner. In the past, many section corners were identified using concrete markers. Other items used to mark property corners included rocks, piles of rocks, iron, wooden stakes, lightered posts, trees with multiple "blazes" (cuts in the tree, often painted), and iron axles.

Once you have located an obvious property corner, you need to use your legal description, compass, and measuring tape to find your next property corner. In many cases, using the compass and measuring tape will only get you in the vicinity of your property corner. Then you must painstakingly search in detail for some indication of the corner marker. Sometimes it is necessary to work toward a corner marker from opposite directions. After locating the property corner, you can lay out a temporary boundary line between the two corners using biodegradable flagging. Afterwards, move on to the next property corner continuing to work around your entire property. Afterwards, contact your neighbors for agreement regarding the locations you've flagged as the actual property boundaries. Hopefully, some or all of your lines will have significant evidence indicating this is the true boundary. After you've reached agreement about the property lines, you can paint your boundaries.

In recent years, several southeastern states passed trespass laws which have specifications when marking property boundaries. As a result, it is best to determine these specifications before

proceeding with marking your boundaries. These laws make it easier to prosecute when trespass has occurred. If your state does not have specifications marking your property boundary can still benefit you civilly in legal matters.

Boundary lines are usually marked using boundary marking paint. Boundary marking paint is an oil based paint developed for use on trees which can be purchased from suppliers such as Forestry Suppliers, and Ben Meadows. Common boundary marking paint brands include Nelson and BarkMark.

If your state does not have specifications for marking property boundaries in their trespass laws consider these common specifications and practices. Mark trees within 3 feet of the property line at distances of 50 to 75 feet apart. The area where the paint is to be applied should be scraped to allow the paint to adhere longer. A common tool for scraping away loose bark and debris is the draw knife. Safety should be your top priority when using the draw knife. When using a draw knife be careful not to cut into growing tissue of the tree. The mark should be made 3-6ft above the ground. The mark is commonly one vertical line (stripe) with a minimum size of 2 inches by 8 inches, but can be larger depending on the diameter of the tree. The mark should be clearly visible when entering your property. The trees that are actually on the property line can be marked all the way around the tree. The paint is applied using a brush usually when weather will permit drying for 2-3 hours. Corners trees are marked with three stripes and an X with the lower end of the stripes pointing toward the property corner. Property lines that change directions should be marked with two vertical stripes. Paint only the top of monuments. Painting and erecting metal fence posts are common when dealing with young timber.

These are just a few tips to assist with locating and marking your property boundaries. Keep in mind problems do occur, particularly when boundaries have not been surveyed for many years. When problems occur, you should seek professional assistance. Adjusting property monuments is a crime, even when it appears to be incorrectly placed. Remember, there are licensed professionals available for resolving these problems.

Timber Marking

There are many timber marking paint brands with a variety of colors to choose from. Timber marking paint can be purchased from the same suppliers used for boundary line paints. Timber marking paint comes in both oil base and water base and selection is usually based on need. Oil based timber marking paint tends to last longer on the tree while water based timber marking paint cleans up much easier. Timber marking paint on average will last over one year depending on the amount of diluting during preparation. Paint can be purchased in spray cans or containers of one quart and one gallon. Timber marking paint is usually applied using one quart paint guns or larger back pack sprayers. Hand paint guns have pump triggers that attach directly to supplier one quart containers, while others require pouring from containers. Back pack sprayers although more expensive can deliver more paint and cover a larger area before refilling.

First, all boundaries of a timber harvest should be marked to identify the specific area to be cut, and to prevent logging contractors from harvesting across the timber harvest boundary. Just as important, the timber contract between the logging contractor and the landowner should fully describe the method, type, color, and manner used to delineate and identify the specific timber to be harvested.

A timber harvest boundary is usually marked using paint, biodegradable flagging, or a combination of both. Other common boundaries involved with timber harvesting include indentifying sensitive areas such as streamside management zones, and habitat for threatened and endangered species. These areas are usually identified using biodegradable flagging with wording for the particular sensitive area. For example, a typical first thinning of a pine plantation in a southeastern coastal forest could have trees to be harvested painted and the perimeter of the sale area marked with timber harvest boundary flagging.

Marking timber for harvest can be complicated, and in many cases requires someone with experience. First, should the timber be marked for harvest? In situations where all merchantable timber will be harvested the answer is no. Timber marking is necessary in situations requiring identification of specific timber classes that will be harvested, and specific timber classes that will be left after the harvest. In our example, a typical first thinning of a pine plantation in a southeastern coastal forest could have every fifth row of timber removed, and thinning in between on the remaining four rows.

In most cases, timber is marked in a manner which will require the least amount of paint and labor. Typically, individual trees are marked so that equipment operators can easily identify harvest trees, and so it can be easily recognized when unauthorized tree cutting is occurring during the harvest. In our example, a typical first thinning of a pine plantation in a southeastern coastal forest could have the end tree on every fifth row marked with a continuous blaze on the outside face up to 6 feet high to identify this row for harvesting. Harvest trees on the remaining four rows will be marked on one side at eye level with another spot at ground level as a means to recognize unauthorized timber harvesting.

In another example, a mature longleaf pine southeastern coastal forest requiring an establishment thinning could require leave trees marked on three faces and with a spot at ground level so the mature harvest trees can be thrown in any direction to minimize damage to leave trees. Also, leave trees would be marked using a crew of timber markers briefed on a list of established priorities that might include: 1.) Preference to longleaf pine species; 2.) Leaving 14+dbh trees with large cone producing crowns; 3.) Adequate spacing to leave a 25 to 30 Basal Area; 4.) Leaving one hard mast producing hardwood every five acres as a primary food source for native wildlife habitat.

Another activity requiring tree marking is to identify specific classes of merchandized timber as pulpwood, sawtimber, poles, pilings, and transmission poles. The timber is marked before harvest so that it can be better evaluated. In our example, of a mature longleaf pine southeastern coastal forest transmission poles could have be marked using an X, and classes of poles marked with one slash every five feet starting at 30 feet in a thinning effort designed solely to take advantage of high pole prices.

Also important is what is done after the timber contract between the contractor and landowner is finalized. In most cases, harvesting begins and changes to the agreed plan outlined in the contract occur. When these changes occur problems can arise! In many cases what should be settled in a courtroom is not, simply because of a poorly maintained timber contract. It is very important for the landowner to protect their interests by updating timber contracts with contractors when important changes occur. Changes that have led to irreparable damage between contractors and landowners include not using the specified color of tree marking paint because of availability; using flagging instead of paint; or allowing the harvesting contractor to make harvesting decisions because tree marking is behind schedule.

There is a multitude of forest management goals requiring timber marking activities. The method of timber marking is always based on the planned forest management activity to be accomplished. To get desired results, timber marking should be planned in advance, and completed in a systematic manner to accomplish set forest management objectives.

Resource & Improvement Protection

Land ownership implies stewardship, that responsibility toward planning and managing all natural resources found on the property. Conservation and protection of water quality, soil stability, threatened and endangered species, and native habitat is critical in every forest management endeavor. In recent years, tools have been developed for conservation and protection of these natural resources.

These tools are mostly the result of laws such as Section 404 of the Clean Water Act, Coastal Zone Management Act, Water Quality Act, and the Endangered Species Act. Contrary to belief, these regulations, policies, and guidelines are written in to allow silvicultural activities both within and

adjacent to identified sensitive areas. Also, depending on your state there can be additional regulations, restrictions, and procedures that could affect your efforts. You should always check with your local state forestry and/or wildlife personnel beforehand when dealing with forest management activities in and around sensitive areas. Sensitive areas include jurisdictional wetlands, streamside management zones, riparian areas, roads, and threatened and endangered species habitat.

Sensitive areas should be addressed during timber contract preparations. Sections within timber contracts should address minimum standards when dealing with sensitive areas and associated penalties. For example, a timber contract clause could read that trees shall be felled and skidded away from water as much as possible. Any tops or other logging debris dropped into the water or channel shall be removed immediately. Heavy equipment shall not be operated within the SMZ (or within 35 feet of any water of the State and U.S. if SMZ's are not specifically delineated) unless the forest floor and understory vegetation can be protected from unnecessary damage. Wheel ruts shall be filled in with soil. Failure to meet these standards immediately terminates this contract.

Sensitive areas are usually identified with biodegradable flagging around the perimeter of the area and at a spacing determined by equipment operator visibility. For example, a typical first thinning of a pine plantation in a southeastern coastal forest could have trees to be harvested painted and the perimeter of the sale area marked with timber harvest boundary flagging. A drainage area/sensitive area with harvesting restrictions within the timber sale area would be marked using SMZ flagging.

Fences, dams, and structures are valuable improvements to property. These improvements should also be considered during all phases of forest management activities. During planning an effort should be made to minimize potential problems associated with each and addressed within the timber contract. Fences, dams, and structures should be protected in the same manner as sensitive areas.

Timber contracts should also address maintenance and repair of forest roads; sometimes it may be necessary to improve roads prior to the forest management activity. For example it may be necessary to install at contractor's expense a rock ford stream crossing suitable for all equipment planned for the contract period. As a minimum, contractor will install rip-rap (class II or smaller) of a sufficient depth in the stream bottom and 2 to 4 feet beyond to support all equipment to be used during the contract period. In addition, contractor will install smaller crushed rock aggregate (2 to 4 inch sized) to a depth of 4 to 6 inches for a minimum of 100 feet on each side of the ford approaches. Said ford will be in good working order at the end of harvest operations and it and all materials will become the property of the landowner.

In all forest management activities, landowners should set aside sufficient time for careful planning, necessary negotiation, and completion of the forest management activity at hand.

Ensure Accurate and Complete Property Title

By Tom Conway

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One of the steps that you as a landowner should take before attempting to sell forest products is ensuring that you have the legal right to sell the products. Your failure to make certain that you have clear title to the land and the forest products being sold can result in significant legal complications, including litigation which can drag on for years and delay your payment or result in your not receiving payment at all.

One of the first actions to take before selling forest products is to be absolutely sure that you have full and clear ownership of the property where the forest products are growing. There are several ways by which property can be acquired. You may have bought the property from a previous owner. If this is the case, the closing attorney should have conducted a title search to make sure the seller had the right to sell the land to you. You may have inherited the land by will from a parent or other previous owner of the property. In this case, it is unlikely that a title search would have been conducted when ownership of the property was transferred to you.

While property transfers by will are a common and completely valid method of acquiring ownership of land, it is important to note that the person who left the property to you could only transfer whatever legal interest he/she had in the property at the time of death. If the person had clear title to the land without mortgages, liens, or other encumbrances, you are not likely to encounter problems related to your ownership of the property. However, you need to verify that you received clear, unencumbered title to any land acquired by will before planning a timber sale on that property.

There are various other ways of acquiring real property. In most cases, you will find that you do have clear legal title to the property you believe you own. When you contemplate a timber sale, it is imperative that there not be any doubt that you own the land where the timber is located. If you have the slightest question about your ownership, you should not move forward with a timber sale until you have consulted with an attorney to confirm that your title to the property is clear. While no one likes to spend money for legal fees, the cost of ensuring that your title to your property is clear can be small compared to the costs that will be incurred if you sell timber and it's discovered later that you did not have the right to do so.

Validating your ownership of the property is only one step you should take before selling forest products. In addition, you should make sure that you own and have the legal right to sell the timber on the property. It's easy to assume that if you have clear legal title to the property you also have clear title to any forest products growing on the land, but some situations present complications which must be addressed before a sale takes place.

One common situation involves the common ownership of a parcel of real estate by two or more joint owners. This happens frequently when property is left to children or other relatives in a will and the heirs are named as "joint tenants" rather than each individual heir being given a designated portion of the property. In some cases, one joint owner of a parcel of property may sell the timber on that property without the knowledge or consent of the other owners, and without sharing the proceeds of the sale with the other heirs. The other joint owners may not become aware of the sale for some time because heirs often do not live near the property. When the sale is discovered, as it will be eventually in every case, the legal and personal fireworks will begin.

If you are a joint owner of property along with siblings or other owners, you should never attempt to sell forest products from the property without the involvement and informed consent of all owners of the property. When co-owners of land discover that products from the land have been sold without their knowledge, they have a right to recover their portion of the proceeds. The seller of

the forest products can pay the other owners of the property voluntarily. More often, the co-owners hire attorneys and initiate civil lawsuits against the individual who sold the timber. The AFC is aware of cases where attorneys' fees and the other costs of litigation have actually exceeded the value of the forest products that were sold originally. Aside from the legal implications, the sale of forest products from land owned in common with other owners without their knowledge and consent can create resentment and bitterness that lasts for generations.

Another occasion where issues can arise during a timber sale even when you have clear title to the land itself is when there are one or more mortgages, liens, or other encumbrances on the property. In some cases, a bank or other lender who has loaned money against the value of the property has done so with the assumption that the forest products are included as part of the security for the mortgage. An individual, business, or government agency with a lien against the property may also have an interest in any forest products on the property. Responsible timber buyers will always check courthouse records to see if there are recorded mortgages, liens, or other encumbrances that must be addressed before any transaction involving forest products from the land takes place. However, you can save time and frustration by checking with any individual or entity that has a mortgage or lien against the property before planning a timber sale. Failing to resolve such issues could result in the holder of a mortgage or lien claiming all or part of the proceeds of the sale.

This chapter is only a brief look at some of the ownership issues that should be considered and resolved before undertaking a timber sale. The vast majority of timber sales in Alabama are completed to the satisfaction of both buyer and seller and without legal disputes arising. In most of the cases where legal disputes do occur, the issues could have been resolved before the transaction started by taking the steps described in this chapter. When there is any doubt as to ownership of property and forest products or the right of an owner to sell forest products, it's always wise to consult an attorney before signing any documents related to the transaction.

Timber Theft – Criminal or Civil?

By Craig Hill

Law Enforcement Chief

Alabama Forestry Commission

What if someone cuts timber on your property without your permission or the buyer of your timber fails to pay you? Are these situations criminal or civil? These are not new questions but have been debated for years. Most of the discussions stem from a belief by some attorneys, district attorneys, judges and others in our legal and forestry communities that **all transactions** involving the sale of timber are civil in nature and have no place in criminal courts. They point out that selling timber is a business deal. I have been told, "It's just a business deal gone bad." and we don't arrest people in this country for bad business deals or failing to pay a debt. They argue that a remedy is available to fix bad business deals – lawsuits. I don't believe all timber transactions are civil issues, especially if it involves a landowner not getting paid. Many things pertaining to timber sales are civil because of failure to perform as specified in a contract. Example: The buyer of your timber agreed to repair your roads after the harvest or agreed to replant the harvested area, etc. The real issue and what I believe defines whether a timber transaction is criminal or civil is money. Why does anyone buy, sell or harvest timber? MONEY. Timber theft is about money - not trees. The trees provide a road to get to the money. Those that view all timber transactions as purely civil are not hypocrites because they would say that if the buyer of your timber gets money from **your timber** but refuses to pay you – it's a civil issue! This mindset has allowed the bad actors of the forest community to use our court systems as a playground for years and they know how to work the system. Thankfully through educational efforts of the Alabama Forestry Commission and other forestry and landowner groups the way timber transactions are viewed and handled in our court systems is changing. Finally we can look beyond the trees and see what's really happening – the theft of money.

I want to tell you about the most frequent ways money and timber are stolen and give you some information that will help you avoid becoming a victim. Ben Franklin said, "An ounce of prevention is worth a pound of cure." Hopefully some of this information will help you make a better decision as you decide how and to whom you sell your timber. It is much easier to prevent a theft than to fix one.

This year over \$300,000.00 worth of timber was reported as stolen. I had a person make a comment to me several years ago that I couldn't believe. He stated that with millions of dollars worth of timber sold each year in Alabama if only a few hundred thousand dollars worth is stolen – we didn't have a timber theft problem. This statement really took me by surprise. I responded that it may not sound like much to him but if it was **his timber** we would have a big timber theft problem. Surely no one suggests that a certain amount of theft should be expected or tolerated. Where is the moral compass of someone that can justify in their minds that it's OK - if we only take a few loads of wood; or if we take from the wealthy; or if we work a scheme to take from a large corporation because they can afford to lose a few dollars. Stealing is stealing. Many of the thefts we have investigated are sad because the victims are disadvantaged. They are poor, elderly, and many times uneducated and will only sell timber once in their lifetime. They depend on this money to carry them through retirement, put children through college or for any number of reasons but the bottom line and regardless of the amount – *it's their money*.

Timber theft complaints can be separated into one of three categories - trespass, failure to pay or theft. The following guidelines are used for classifying these situations:

- Timber trespass (encroachment) - an individual **unintentionally** cuts and/or destroys your timber without your permission
- Failure to pay – buyer does not promptly pay the seller for the timber after the harvest

- Timber theft - an individual knowingly takes your timber without your permission or deceives the seller in one of several ways and does not pay or fully pay for what was harvested

Timber trespass (or encroachment) occurs when a person harvesting timber cuts across a property line and without permission cuts timber owned by an adjoining landowner. This happens due to one or both of the following reasons: The person harvesting the timber fails to ascertain the property boundary lines *before* cutting and/or the property boundary lines are not properly marked or maintained by a landowner. When the victim discovers the trees cut they usually call the AFC or another law enforcement agency wanting to prosecute this person. However, § 9-13-60, *Code of Alabama* requires that before a criminal charge of cutting timber without authorization can be made two things must be proved - that the person cutting the timber "**willfully and knowingly**" cut the timber without the authorization of the owner. For a successful prosecution we must prove that the person cutting the timber knew or should have known that they were on the lands of another and then *having this knowledge* cut the timber. Without this evidence the case must go to civil court. Of course the question asked by the victim landowners is, "Does the person that cut my timber have a legal responsibility to know where the landlines are located before they cut?" The answer is yes. They have an ethical responsibility but it is a civil liability and not criminal if they fail to do so. Many trespass situations could be avoided or a criminal case made if the victim landowner would adequately mark and maintain their property lines. Pictures in court of highly visible marked lines such as fences, trees with POSTED signs, paint on trees, etc. near the point of encroachment can turn this incident into a criminal matter.

There are times when an honest mistake is made.

- The buyer of the timber is erroneously told where the property line is located by the landowner; or
- A property landline dispute exists between adjoining landowners

The two situations described above are civil in nature. However, Section 9-13-62, *Code of Alabama* requires that when the timber of another is cut without permission that the victim is to be paid double the fair market value for the timber. The value of the timber would be determined by a registered forester. Needless to say the victim would have to pay for this service. If the person that cut the timber does not have insurance or refuses to pay or disputes the dollar value of the cut timber then the matter would have to go to civil court.

Timber trespass situations have been and will continue to be a problem until some things change. Persons cutting timber must determine landline locations before cutting and landowners must mark and maintain their property lines. Some states have addressed timber trespass issues by legislation requiring certain actions *before* cutting timber. § 15-32-101, *Code of Arkansas* requires the following actions *before* cutting timber: 1) Cause the land to be surveyed and the metes and bounds of the land marked and plainly established; 2) Rely in good faith on an existing marked line or established corners; or 3) Acquire a document signed by the landowner selling the timber and signed by the adjoining landowners, indicating that the landowners agree on the location of the boundary. Persons that cut timber in violation of this law face fines up to \$300.00. Before coming to the Forestry Commission I worked over 21 years as a Conservation Officer and was shocked to find that hunters in Alabama have a greater legal responsibility to know whose property they are on than people cutting timber. A hunter is required by law to know whose property they are on and have the landowner's permission before hunting. A person found hunting without permission faces a mandatory fine of \$1,000.00 and loss of hunting privileges. A hunter goes to great lengths to determine landline locations *before* hunting.

Failure to pay the seller of timber in a timely manner generates a lot of calls for the investigative unit. Of course a person failing to pay a debt is usually not a criminal offense unless a pattern of not paying sellers can be documented. Under current law most failure to pay situations are civil and the victim has to sue the buyer in court to recover their money. This is why you should take your time deciding to whom you will sell your timber **and** get the help of a professional consultant. The money

paid to a registered forester to oversee a timber sale is worth every penny. The forester will get the best price for your timber because most are paid on a percentage basis. The more money your timber makes the more money the forester makes. A consultant should be familiar with the people that work in the forest community and with this knowledge would not deal with timber brokers, dealers or harvesters that do not have good reputations. This translates into you getting your money at the end of the job!

Timber theft - To understand timber theft you first must know how timber is sold. Most timber is sold one of two ways: 1) Lump sum or 2) Pay per unit.

- Lump sum - Timber is advertised for sale and bids taken for a specific time period. At the end of the bid period the timber is sold to the highest bidder. The seller gets the money for the timber up front and normally gives a timber deed to the buyer. The buyer has a specified period of time to harvest the timber. Buyer is at risk due to changing market prices.
- Pay per unit - Timber is sold by volume and type of timber product harvested from the property. An agreement is reached as to how much per ton or cord the buyer will pay the seller for each type harvested (pine pulp, hardwood pulp, poles, etc). The seller is at risk if dealing with a dishonest buyer.

There are still a few wood yards in Alabama that will purchase timber from an individual right off the truck. However, you and I would not be allowed to haul timber into one of the larger timber or paper mills. Only individuals or businesses that have contracts with the mills can haul and sell to them. Usually the people that have contracts with the mills are larger operations that can consistently supply large amounts of timber and are financially able to meet other mill requirements. If your timber buyer doesn't have a contract with the mill but is hauling your timber to them he/she is selling through a broker or dealer that does. As the timber is delivered to the mill the driver hauling your timber usually scans a card (provided by the broker/dealer) which identifies the broker and credits the load on his account. The mill remits payment to the broker for the timber. The broker then pays your timber buyer minus a fee for using the contract and other administrative costs. The smaller timber buyer then pays the landowner and the workers that actually harvested the timber. The person that buys your timber is required by § 9-13-63, *Code of Alabama* to keep records of all timber purchases for 3 years and allow investigators to examine these records. Each buyer of timber in this chain is required to keep these records. (Note: The timber/paper mills are under no legal requirement to disclose to a landowner any information about the amount the timber buyer was paid or copies of the scale tickets. This type information is confidential between the mills and the person with whom they have the contract.) This is basically how timber is sold but there can be many variations to this scenario.

Historically the problem with timber theft has been that it does not neatly fit into the general definition of theft. Why? Because the person that bought your timber has your permission to take and sell the timber. We have many textbook cases of timber theft each year that neatly fits the definition of theft. Someone enters the property of another and takes timber without permission. Usually this happens to landowners that do not live on the property. Most of what we investigate is theft by deception. Deception most often occurs during pay per unit purchases. Deception is defined in § 13-8-1, *Code of Alabama* and has many faces. Theft by deception occurs when the buyer fails to fully disclose the total amount or types of timber harvested; the buyer fails to pay the seller; someone sells timber they don't own; or an employee steals from his company. The following are examples of deceptions we have investigated:

Example 1: Buyer finishes a job and tells the landowner he harvested 20 loads of pine pulpwood and pays the landowner. In reality the buyer failed to disclose to the seller he harvested 30 loads and also cut higher valued trees such as saw timber or poles. The dishonest buyer pockets the money.

Example 2: Buyer signs a contract with a landowner to purchase timber on a pay per unit sale. Buyer completes harvest but never pays the landowner. Upon investigation we find that this

particular buyer has repeated this same process with several other people. The buyer gets his money but never pays the landowner.

Example 3: Buyer cuts timber and pays the seller. Buyer learns that the seller did not own the timber. Buyer never checked or verified ownership.

Example 4: Employee works as a driver hauling timber. The employee stays late or comes in early and takes a load of timber to an unauthorized location selling the timber and pocketing the money.

Example 5: Timber buyer hires a company to cut a tract of timber. The company was to transport the timber to a specific location to be sold. The dishonest company diverts several loads of timber to another location, sells the timber and pockets the money.

In reality we have two victims in timber related thefts - the landowner and the forest community. One dishonest person causes a negative ripple effect on the whole industry.

Here are some suggestions that will help you get the most for your timber and avoid being a victim:

- Always use a registered forester as a consultant to sell your timber and oversee the harvest.
- Never sell or let anyone start cutting your timber without a written contract
- Require a harvest record be maintained on any pay per unit sell and get copies of the record. Examples of harvest records can be found on the AFC website.
- Require in your contract that the person harvesting your timber be certified as a Professional Logging Manager – PLM certified loggers can be found/verified on the Alabama Forestry Associations website
- Don't be in a hurry to sell – talk with several buyers and check references
- Don't let a prospective buyer pressure you into selling your timber
- If a prospective buyer will not agree to your terms – don't sell

Please remember that the majority of people in the timber business are honest people and it only takes a few bad actors to cause a lot of problems. There are many people in the forest community that are helping us identify the dishonest people. We have people involved in every aspect of the timber business including timber buyers, truck drivers, equipment operators and those working at the mills that are dedicated and active in helping us to rid the timber industry of these thieves.

The Alabama Forestry Commission is committed to reducing the number of forestry-related crimes that occur each year across the state. These crimes generate annual losses of hundreds of thousands of dollars to landowners and the timber industry. Overcoming timber theft requires two things - **education and enforcement**. Working together we can conquer this problem.

Special thanks to The Alabama Forestry Association, Alabama Loggers Council, Alabama Forest Owners Association, Alabama Treasure Forest Association and other organizations that have been very helpful in educating landowners and forestry workers about timber thefts and the dangers associated with selling timber.

The AFC provides an Arson/Forest Crimes Hotline so that citizens can call and report theft of timber, theft or vandalism of harvesting equipment, and wildland arson. The toll-free number is 1-800-222-2927. Information provided is confidential and the caller remains anonymous.

Regulatory and Environmental Concerns

By Richard Hulcher

Field Operations Division

Alabama Department of Environmental Management

The Alabama Department of Environmental Management (ADEM) manages programs designed to ensure the protection of Alabama's environment. This responsibility includes the protection of water quality and is accomplished through applicable state and federal statutes, state regulations, and permitting programs. Timber harvesting and related activities are regulated by ADEM and this document is intended to give a brief overview of laws and programs that are administered by ADEM and directly or indirectly affect activities associated with the forestry industry.

ADEM and AFC Coordination

The Alabama Forestry Commission (AFC) and ADEM work cooperatively to address the prevention and abatement of nonpoint source impacts to water quality during forestry operations in Alabama and have entered into a Memorandum of Agreement in order to provide the maximum benefit to Alabama citizens.

ADEM has the authority and responsibility to be the lead agency in the state in regards to environmental matters pursuant to the Alabama Environmental Management Act and the Alabama Water Pollution Control Act. ADEM also has the responsibility and authority pursuant to these laws to establish and enforce water quality standards and any other necessary rules and regulations for the protection of waters of the state. This information can be viewed at <http://adem.alabama.gov/programs/water/guidance.cnt>.

AFC is a resource agency that provides the forestry industry technical assistance in the harvesting of timber and prevention of pollution from these activities (<http://www.forestry.alabama.gov>).

Best Management Practices for Forestry (Timber Harvesting)

For technical information related to pollution prevention in timber harvesting operations, please refer to *Alabama's Best Management Practices for Forestry*, as amended. This publication is available at <http://www.forestry.alabama.gov/BMPIndex.aspx?bv=2&s=1> or ADEM's website.

ADEM has a long-standing and continuing compliance program relative to the implementation of effective best management practices (BMPs) associated with timber harvesting forestry activities, including road construction and material borrow areas associated with harvesting operations.

ADEM's Field Operations Division staff and AFC staff work cooperatively to promote forestry BMP implementation, conduct compliance assistance for forestry operators, perform routine evaluations of forestry activities statewide, respond to citizen complaints in a timely manner, achieve voluntary implementation of BMPs where possible, and ADEM requires implementation of BMPs through compliance assurance activities, as necessary. In addition, ADEM staff will independently perform compliance inspections of forestry operations and initiate appropriate compliance activities as needed in order to ensure that effective forestry BMPs are implemented and maintained to ensure the protection of water quality.

Persons who have questions or wish to file a complaint related to BMP implementation or potential water quality impacts, or want to request additional information regarding water quality requirements relative to forestry timber harvesting operations, can contact the ADEM Field Operations Division.

Timber Harvesting in Wetlands and Sensitive Areas

Timber harvesting conducted in certain areas, including wetlands, may require permit coverage pursuant to §404 of the Clean Water Act (CWA) which requires the U.S. Army Corps of Engineers (COE) to regulate and permit dredge and fill activities in waters of the United States. The regulatory definition for waters of the United States is, "All waters covered by Section 10 of the Rivers and Harbors Act (RHA); all interstate waters and interstate wetlands; all other waters (of various types) which could be used in interstate commerce; all impoundments of waters of the United States; tributaries of the above waters; territorial seas of the United States; and wetlands adjacent to waters identified in this section".

If timber harvesting activities will result in fill or dredge activities in wetlands or other waters of the United States, the COE should be contacted prior to commencing operations in order to determine if permit coverage is required.

Timber Harvesting in the Alabama Coastal Zone

Permitting and regulatory requirements for activities in the Alabama coastal zone are contained in ADEM Admin. Code Div. 335-8 (Coastal Area Management Program). The program rules and other information can be viewed at <http://www.adem.alabama.gov/programs/coastal/default.cnt>.

Common Problems Observed At Forestry Sites

1. Spilled fuel, grease, and other chemicals resulting in soil contamination.
2. Trash, garbage, used fuel/chemical containers, etc.
3. Logging debris deposited or allowed to enter stream.
4. Lack of, or inadequate, streamside management zone.
5. Improperly constructed/maintained stream crossings.
6. Significant sediment loss from poor location and maintenance of skidding trails and roads.
7. Too much distance between drainage turnouts, or turnouts not installed
8. Lack of, or inadequate seeding, mulch, and long-term re-vegetation of bare areas after logging is complete.

Environmental Compliance Assurance Considerations

Below are items/issues to consider prior to commencing timber harvesting and reforestation activities (not in any priority order).

1. Visit/contact your local AFC office to obtain current information and requirements for timber harvesting activities.
2. Visit/contact a registered forester.
3. Arrange for a professional pre-inspection, a post-inspection, and as many inspections during the activity as needed to assure compliance.
4. Review *Alabama's Best Management Practices for Forestry*.
5. Review the permitting/regulatory requirements of ADEM Admin. Code Div. 335-8 (Coastal Area Management Program) if your site is located in the Alabama Coastal Zone.
6. Contact the COE if you are harvesting timber in a wetland or your activities could impact wetland areas.
7. Ensure any contracts or agreements require effective BMPs to be fully implemented and maintained at all times.
8. Ensure that any contracts or agreements provide for properly constructed/maintained stream crossings and appropriate streamside management zones.
9. Conduct regular, daily if needed, self-inspections.
10. PROMPTLY repair/correct any BMP deficiencies or non-compliance issues as work progresses.

11. Remember that the operator/logger who conducts the work is primarily responsible for compliance. However, the landowner, buyer/broker, or other person with decision-making authority or a financial interest is also responsible for compliance. All involved persons/entities may be subject to potential enforcement as appropriate.
12. Treat the property/streams as if it were your own back yard.
13. Private pond/lake construction including tree/stump removal may require National Pollutant Discharge Elimination System (NPDES) permit coverage.
14. Pre-construction logging and land clearing for subdivision or commercial development requires NPDES permit coverage prior to commencing logging.
15. Noncompliance is subject to ADEM enforcement, including administrative fines.
16. Be advised that the public can file a complaint electronically with ADEM at <http://app.adem.alabama.gov/complaints/>.

General Information and Current Discharge Permitting Requirements

Forest landowners, loggers, buyers, brokers, and other entities involved in timber harvesting are encouraged to stay informed regarding current and proposed regulatory requirements that may be applicable to their forestry activities.

It is recognized that the federal Clean Water Act (CWA) **currently** allows an exemption from federal NPDES stormwater permitting for construction activity intimately associated with certain silvicultural activities provided effective forestry BMPs are fully implemented and regularly maintained. Normal silvicultural harvesting and related silvicultural construction practices as described in 40 CFR Part 122 that are conducted consistent with ADEM accepted forestry BMPs as described in Alabama's Best Management Practices for Forestry, as amended, and ADEM guidelines, that are not performed in advance of or in support of a regulated construction activity or development, does not **currently** require permit coverage.

Currently, it is also recognized that certain material acquisition/borrow activity may be more reasonably defined as an extension of forest construction activity, thus making NPDES permit coverage unnecessary. Generally, small, temporary mining/borrow areas for silvicultural local road construction are considered part of the silvicultural construction activity and are **currently** exempt from permit requirements provided effective BMPs are fully implemented and regularly maintained. Generally, larger pits, pits open for a longer period, or pits used for purposes other than logging construction are considered surface mining and require a permit.

The installation and expansion of these temporary, small borrow areas should be planned to minimize and control the migration of sediment from the pits. Organic debris generated from these pits must be disposed of outside of streamside management zones. Upslope runoff should be diverted around pits and discharged in a diffuse pattern.

Appropriate techniques should be employed to control erosion and sediment migration from mining/borrow pits, with non-active portions of these pits immediately closed and reclaimed. Structures, like drainage swales, gradient terraces, earth dikes, sediment traps, properly installed and maintained silt fences or stake hay bale rows, and soil retaining measures, are examples of appropriate sediment control techniques. Temporary seeding, crimping, mulching, matting, hydro-seeding, permanent seeding and planting, are examples of appropriate erosion control techniques.

Reclamation is accomplished by sloping pit banks and re-vegetating to recreate the natural runoff pattern as much as possible. Established erosion control measures must be used for reclamation. Such measures could include seeding and/or tree planting to establish permanent vegetative cover.

Forestry operators should keep records, including photo-documentation as appropriate. The operator should maintain records regarding the location, size, begin and end dates, approximate amount of material excavated, personnel performing site inspections, and other relevant information.

ADEM Admin. Code r. 335-6-12-.11

- (1) Except as provided otherwise by this Chapter, after March 1, 2003 or the effective date of this Chapter, whichever date occurs later, new or continued operation of NPDES construction sites that have not submitted a complete and correct Notice of Registration (NOR) or application requesting coverage under a valid NPDES general permit, or individual permit, is prohibited. Except as provided otherwise by this Chapter, after March 1, 2003 or the effective date of this Chapter, whichever date occurs later, commencement of construction at proposed NPDES construction sites that have not submitted a complete and correct NOR acceptable to the Department, or have not been granted NPDES permit coverage under a valid NPDES general permit, or individual permit, is prohibited.
- (6) Unless required by applicable federal law or State law, and provided the activity is not being conducted in support of, in conjunction with, or to prepare for NPDES construction activity as defined by this Chapter, the following construction activities are not required to register under this Chapter:
 - (a) Normal silvicultural harvesting and associated silvicultural construction practices conducted in accordance with Rule 335-6-6-.03 and Rule 335-6-6-.10 that are not planned or performed in immediate advance of, in support of, or as part of, a regulated construction activity or development.
1. For the purposes of this Chapter, silvicultural construction includes certain temporary nonmetallic/noncoal material acquisition or borrow activity that is reasonably considered as an extension of forest road construction activity. Generally, small, temporary material borrow areas for silvicultural local road construction are considered part of the normal nonpoint source silvicultural activity, including but not limited to, timber harvesting, site preparation, tree planting, controlled burning, fertilization and are not required to register under this Chapter provided the duration of the disturbance is minimized to the extent possible, but in all cases is less than sixty (60) days, effective BMPs are fully implemented and regularly maintained to the maximum extent practicable prior to, during, and immediately after use of each completed increment of the borrow area until the site is reclaimed or effective stormwater quality remediation is achieved, and the total active, unreclaimed land disturbance is less than five (5) acres in size at all times;
2. In addition, in order for temporary material borrow areas for silvicultural local road construction to be considered part of the normal nonpoint source silvicultural activity not required to register under this Chapter, the disturbance shall be conducted to ensure that borrow material is exclusively obtained for construction and periodic maintenance of forest roads utilized in silvicultural activities. The temporary disturbed area shall be continually graded and reclaimed to within a safe operating distance from any high-wall or steep slope and the temporary borrow area is used exclusively by a single operator within the scope of the operator's own operations. Re-establishment of permanent vegetative cover shall be accomplished immediately after active disturbance is completed for each disturbed increment, and the active non-graded, non-reclaimed area adjacent to the active high-wall shall not exceed one-half acre. The borrow area shall be located outside of streamside management zones and outside the designated 50-year flood plain and the site is located as close as practicable near scheduled road construction and maintenance activities to the extent that appropriate road fill material is available. Fuel storage tanks/containers shall not remain onsite unattended, dry/wet crushing/screening or other processing shall not be conducted, the borrow activity shall not

result in a point source discharge to surface waters of the State, and the Department shall be notified immediately of any unpermitted discharges or non-compliant discharges in order to ensure the protection of water quality;

3. Road construction and maintenance shall be for support of normal nonpoint source silvicultural practices only. Material borrow activity for construction or maintenance of dual-use or multi-use roads used for silvicultural practices but which are also used incidentally for access to other types of activities or development is exempt. However, material borrow activity for construction or maintenance of dual-use or multi-use roads used primarily for access to other types of regulated non-silvicultural development, including but not limited to, marinas, barge/rail loading facilities, industrial/manufacturing facilities and subdivision developments, **is not exempt** and requires registration under this Chapter;

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Alabama Forestry Commission

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Plan and Prepare Timber Sale Contract

By Eddie Kirkland

State Lands Forester

Alabama Forestry Commission

Know your management objectives

Prior to initiating any timber sale the landowner should formulate his or her land management objectives. This will involve prioritizing his or her reasons for owning the land and then making them a part of a forest management plan. The plan will state the land owner's desire to maximize timber production, wildlife habitat, recreational opportunities, or forest aesthetics, or more likely, some combination thereof.

The landowner should seek professional help with the management plan by way of a forestry consultant, state agency forester, or industry landowner assistance forester. A professional forester can also provide the landowner with the help he/she will need in the subsequent steps in selling timber, such as timber valuation, harvest planning, sale preparation, sale advertising, contract negotiations, and harvest monitoring.

Prepare the timber sale

The management plan will determine the type of harvest to be used; i.e., whether the sale will be a thinning or a clearcut. If a thinning is planned then the decision has to be made as to the method of selecting the trees to harvest. In a first thinning of pine plantations the more usual method is by operator selection; whereby the tree cutter will clearcut certain rows or paths throughout the tract for access and will selectively thin the remaining rows to the desired density. Operator selection is also often used for a first thinning in natural stands that are composed mainly of pulpwood-sized products. Diameter limit harvests have been much used in the past in determining which trees to harvest, such as all trees under or over a certain diameter. This method should be used with caution as it could result in degraded stand quality; however, there are still some cases where, under proper professional planning, it might be used. Species only sales may also be used whereby only pine or only hardwoods may be cut. In other cases it may more prudent for a trained timber marker to select the trees to harvest. In this method the marker will either mark the trees to harvest or the trees to remain with paint at eye and stump levels.

Whether the sale is a thinning or a clearcut, the remaining steps are much the same. The sale and/or property boundaries should be marked either with paint or flagging. Sensitive areas, such as Streamside Management Zones (SMZ's), stream crossings, new roads, logging decks, etc., should be designated and/or marked; although some of these may be left until the logger moves onto the site.

Know the value of the timber for sale

Several factors will determine the value of your timber: timber type, timber quantity, mill proximity, and site conditions. Timber type involves tree species, size, and quality of timber to be sold. Knowing how much timber will be sold at any one time (sale acreage, volume per acre, and whether the sale is a clearcut or thinning) will greatly determine the sale price. One large sale will probably bring more than several small sales over a period of years. Due to today's high transportation costs the proximity of the sale area to the various timber mills greatly impacts the value. Site conditions which could affect the value of one's timber include distance of the harvest area to a main highway, need to create or improve interior roads, slope, and soil wetness. If the tract is on ground that can be accessed and harvested during wet weather, it is likely that the sale will command a premium.

Other factors affecting the value of the landowner's timber include federal, state, or local regulations as pertains to wetlands, protected species, highway access, logging restrictions, etc. Any regulations which would increase a logger's operating costs will likely lower the landowner's revenue.

A professional forester will be able to analyze all of these factors and derive a good estimate of timber's potential value.

Determine a selling method

The method used to sell timber may be broken down two different ways: negotiated versus sealed bid and lump-sum versus per unit. The first refers to the way in which a buyer is selected and the latter refers to the way the buyer is to pay for the timber.

A negotiated sale is one where the landowner or his/her consultant bargains for the best price with one or more buyers. This is more common in sales of specialty products such as high-value hardwoods where there are relatively few buyers. Sales are also often negotiated for a first thinning where there may be few quality loggers or where you want to demand the best harvest outcome for future growth and earnings.

The other method of selecting a buyer is by way of a sealed bid. In this, a notice of sale is mailed to as many buyers as possible who operate in your area and who in turn provide you with the price he is willing to pay for your timber. The sealed bid method often brings the highest prices to the landowner. You should usually require potential buyers to be Professional Logging Manager (PLM) certified. These are loggers who have taken Alabama's PLM course given by the Alabama Forestry Association. Among other things, they are taught BMPs, which stresses efficient harvesting and merchandizing of timber products with an emphasis on protecting and enhancing water quality. Potential buyers may be obtained at the Alabama Forestry Commission webpage, <http://www.forestry.alabama.gov/ServiceProviders.aspx> under Timber Buyers/Loggers.

The next decision to be made is whether the sale will be paid on a lump-sum or a per unit basis. A lump-sum payment is usually paid at the time of contract closing or may be deferred to a date(s) of your choosing. In a lump-sum sale the price is not determined by the actual volume cut, but by the buyer's estimate of the timber's value, which may be either under or over the timber's actual value.

If the sale is on a per unit basis, each species/product should be specified as well as the unit of measurement and timing of payments. The most common measure is in tons and payments are usually made weekly. The logger should also be required to provide settlement statements and copies of all weight/scale tickets. This method is sometimes referred to as "pay-as-cut" and overall sale income is based solely on volume actually harvested.

Protect your interests

Always use a written contract to protect your land and resources and to insure that your sale objectives are met. The contract should contain a legal description of the sale area, method of selecting trees to harvest, provisions for payment, penalties for damages, logging specifications, time period for cutting timber, and provisions for making corrections during and after the logging period. The landowner and/or his agent should make frequent inspections of the harvest operation to insure that contract terms are being fulfilled. The landowner should always consult a professional forester and/or attorney when drafting a timber sale contract. Be sure to make a final inspection after the harvest is complete and address any issues of contract non-compliance.

Additional information on selling timber may be found in the Appendix as well as a sample timber sale contract.

Addendums

Updated Tax Tips for Forest Landowners
Sample Form T (Timber)
Timber Sale Contract Considerations



Tax Tips for Forest Landowners for the 2011 Tax Year

by Linda Wang, National Timber Tax Specialist
and John L. Greene, Research Forester, Southern Research Station

This bulletin summarizes Federal income tax provisions related to woodland property, for use by woodland owners in preparing their 2011 individual tax return. It is current as of Sept. 15, 2011, and supersedes Management Bulletin R8-MB 136. It is for educational use only. Consult your tax advisor for more information.

Personal Use, Investment or Business Property

The tax rules vary depending on whether your woodland is personal use, investment, or business property. You must make this determination each tax year. If you do not have a clear profit motive, your woodland may be personal use property, which provides limited opportunities for deductions. But profit motive includes the expectation of future profit from appreciation in value due to growth and enhanced quality, as with timber. If you have a profit motive, your woodland may be investment property, or it may be business property if your management activity is more regular and intensive than required for an investment. A written forest management plan is an excellent place to document a profit motive. You must determine whether you *materially participate* in the management of woodland held for business use, in order to establish whether you face restrictions (called the *passive loss rules*) on the deduction of business costs. Investment property is not subject to the passive loss rules.

Example 1: You grow timber for profit from appreciation in value but do not conduct it as a business. Your woodland is investment property.

Timber Basis and Depletion

Timber basis. Your basis in purchased property is the total amount you paid for it (purchase price, survey, legal fees, etc.). Your basis in inherited property generally is its fair market value (FMV) on the donor's date of death, but your basis in gifted property is the lower of its FMV or the donor's basis. Your basis in land and timber acquired together should be divided in proportion to their FMV and posted to separate accounts. If you didn't allocate basis when you acquired your woodland, a professional forester can determine it retroactively, but you should weigh the cost of establishing the basis against the potential tax savings.

Example 2: You bought forest property for a total cost of \$30,000. The FMV of the bare land is 64% of total FMV and the timber (300 thousand board feet (MBF)) 36%. Your basis in the timber is \$10,800 (36% x \$30,000).

Timber depletion. This is a deduction against timber sale proceeds (below). It is calculated by dividing your timber basis by the total volume of timber (the *depletion unit*), then multiplying by the units of timber sold.

Example 3: Continuing with example 2, say you sold 200 MBF of the timber. Your depletion unit is \$36/MBF ($\$10,800 \div 300$ MBF) and your depletion deduction is \$7,200 ($\$36/\text{MBF} \times 200$ MBF).

Timber Sales

Sale of standing timber. Only the net sale amount, after deducting timber depletion and expenses of the sale, is taxed. You may need to report the sale of timber held as an investment (sec. 1221) on the new Form 8949 as well as Schedule D (final versions and instructions for these forms were not available as of this writing). Use Part II of each form to report a long-term capital gain from timber held over 1 year. Report the sale of timber held for business use (sec. 631(b)) on Form 4797 and Schedule D, whether you sold it outright (lump-sum) or pay-as-cut. Use Part I of Form 4797 to report a long-term capital gain. If you sell timber outright under sec. 631(b) you also must file Form T, Part II.

Example 4: You sold standing timber held as investment for over 1 year for \$8,000, incurring \$800 in sale expenses. Assuming your basis in the timber is zero, your net long-term capital gain is \$7,200 ($\$8,000 - \800). You may need to report the sale on Form 8949 and Schedule D. Use Part II of each form.

Sale of cut timber. If you cut your own timber or have it cut by a contractor working at your direction, either for sale or for use in your business (sec. 631(a)), the income is taxed in two parts. If you make an election on Form T, Part II, the difference between the FMV of the standing timber on the first day of your tax year and its basis is taxed as a capital gain. The difference between the proceeds from sale of the wood products and the sum of the FMV of the standing timber and the costs of converting it into products for sale (cutting, hauling, etc.) is ordinary income.

Example 5: You paid a contractor \$2,000 to cut standing timber held for business use for over 1 year into logs and sold the cut logs to a mill for \$30,000. The FMV of the standing timber was \$23,000 on Jan. 1 and your basis in it was \$1,000. If you make the sec. 631(a) election on Form T, Part II, you may report a long-term capital gain of \$22,000 ($\$23,000 - \$1,000$) on Form 4797 and Schedule D, and \$5,000 ($\$30,000 - \$23,000 - \$2,000$) in ordinary income on Schedule C. If you fail to make the sec. 631(a)

election, all \$27,000 is ordinary income.

For 2011, the maximum rate for long-term capital gains is 15% (0% for amounts which, if added to your ordinary income, fit under the ceiling for the 15% tax bracket: \$34,500 for single taxpayers, \$69,000 for married taxpayers filing jointly).

Installment Sales

An installment sale involves receiving one or more payments after the year of sale. Interest is charged on deferred payments. The advantage of an installment sale is that it allows you to defer tax by spreading your gain over 2 or more years.

Example 6: You sold timber for \$10,000 (\$8,000 after deducting timber depletion and sale expenses) in 2011. The buyer paid you \$5,000 in 2011 and \$5,000 plus interest in 2012. Your gross profit percentage is 80% ($\$8,000 \div \$10,000$). Report a \$4,000 gain for 2011 ($\$5,000 \times 80\%$), using Form 6252.

Timber Management Expenses

If you hold your woodland for profit you can deduct ordinary and necessary timber management expenses, such as the cost to protect the woodland from insects, disease or fire, control brush, do a precommercial thinning or mid-rotation fertilization, maintain firebreaks, etc. Expenses for woodland held as an investment are subject to a 2% of adjusted gross income reduction on Schedule A, but in years the property produces no income, you may elect to add expenses subject to the 2% reduction to your timber basis and recover them when you sell timber. Deduct expenses for woodland held for business use on Schedule C.

Reforestation Costs

You may take a tax deduction for reforesting after a harvest or afforesting open land (sec. 194). Costs for both artificial and natural regeneration qualify. You may deduct the first \$10,000 (\$5,000 for married couples filing separately) per year of such expenses per qualified timber property. Any additional amount may be deducted over 84 months (*amortized*).

Example 7: You spent \$17,000 to reforest after a harvest. Deduct \$10,000, plus 1/14th of the remaining \$7,000 (\$500) on your 2011 tax return. Deduct 1/7th of the \$7,000 (\$1,000) on your returns for 2012–2017 and the last 1/14th (\$500) on your 2018 return. Elect to amortize on Form 4562, Part VI. If you hold your woodland as an investment, take the deduction as an adjustment to gross income on the front of Form 1040; if you hold your woodland as a business, take it on Form 1040, Schedule C (or F if you qualify as a farmer).

Depreciation, Bonus Depreciation, and Sec. 179 Expensing

Capital expenditures, such as for logging equipment, bridges, culverts, fences, temporary roads, or the surfaces of permanent roads, may be deducted (*depreciated*) over a set number of years. For example light-duty trucks and logging equipment are depreciated over 5 years. You also may take bonus depreciation equal to 100% of the cost of qualified property placed in service in 2011. If you hold your woodland for business use, you can expense up to \$500,000 in qualifying property (generally tangible personal property, but not improvements to land, buildings, or components of buildings) placed in service in 2011, subject to a \$2 million phase-out and business taxable income limitations (*sec. 179 expensing*).

Cost-share Payments

If you receive a cost-share payment from an approved program, you may exclude all or part of the payment from your income (sec. 126). Approved federal programs include the Forest Health Protection Program (for southern pine beetle and mountain pine beetle), the Conservation Reserve Program, Environmental Quality Incentives Program, Wildlife Habitat Incentives Program, and Wetlands Reserve Program. Several state programs also are approved. The excludable amount is the present value of the greater of \$2.50 per acre or 10% of the average annual income from the affected acres over the last 3 years. You generally may not exclude a payment if the cost can be expensed. Neither can you claim a deduction for an expense reimbursed with a cost-share payment and also exclude the payment from your income.

Example 8: You received a \$4,000 cost-share payment from the Conservation Reserve Program for your 100-acre woodland. If you had no income from the property in the last 3 years, you could exclude \$3,275 ($(\$2.50 \times 100 \text{ acres}) \div 7.63\%$). The interest rate is from the Farm Credit System Bank. If you had \$9,600 in income, you could exclude the entire payment: $(10\% \times (\$9,600 \div 3)) \div 7.63\% = \$4,194 > \$4,000$. Attach a statement to your tax return describing the cost-share program and your calculations.

Casualty and Theft Losses

Loss of timber from a casualty—a sudden, unexpected, and unusual event such as a fire or severe storm—may result in a tax deduction. The deduction is limited to the lesser of the decrease in FMV caused by the casualty or your basis in the timber block (the area or unit you use to keep track of your basis in the damaged timber). Similarly, a theft loss deduction is limited to the lesser of the decrease in FMV or your basis in the stolen timber. A competent appraisal usually is required.

Example 9: A fire caused \$5,000 in damage to your timber (\$9,000 before-fire FMV – \$4,000 after-fire FMV). Your basis in the affected block is \$2,000. Your loss deduction is the lesser amount, or \$2,000. Report the loss on Form 4684, Section B, and adjust your timber basis (reduce it to zero) on Form T, Part II.

Example 10: Continuing with example 9, you sell the damaged timber for \$2,000 in a salvage sale. You have a taxable gain of \$2,000 ($\$2,000 - \0 basis), but you can defer tax on the gain by using it to acquire qualified replacement property (e.g., reforestation) within the allowable replacement period (generally 2 years).

Filing Form T

You must file Form T, Forest Activities Schedule, if you claim a timber depletion deduction, sell cut products under sec. 631(a), or sell timber held for business use lump-sum (sec. 631(b)).

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

Forest Activities Schedule

▶ **Attach to your tax return.** ▶ **See separate instructions.**

For tax year ending, 20

Identifying number

Part I Acquisitions

1 Name of block and title of account

2 Location of property (by legal subdivisions or map surveys)

3a Name and address of seller or person from whom property was acquired

b Date acquired

4 Amount paid: **a** In cash

b In interest-bearing notes

c In non-interest-bearing notes

5a Amount of other consideration

b Explain the nature of other consideration and how you determined the amount shown on line 5a.

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6 Legal expenses

7 Cruising, surveying, and other acquisition expenses

8 Total cost or other basis of property. Add lines 4a through 7

9 Allocation of total cost or other basis on books:	Unit	Number of units	Cost or other basis per unit	Total cost or other basis
a Forested land	Acre			
b Other unimproved land	Acre			
c Improved land (describe) ▶	Acre			
d Merchantable timber. Estimate the quantity of merchantable timber present on the acquisition date (see Regulations section 1.611-3(e)). Details of the timber estimate, made for purposes of the acquisition, should be available if your return is examined.				
e Premerchantable timber. Make an allocation here only if it is a factor in the total cost or value of the land.				
f Improvements (list separately)				
g Mineral rights				
h Total cost or other basis (same amount as line 8). Add lines 9a through 9g				

Part II Timber Depletion (see instructions)

1 Name of block and title of account ▶

If you express timber quantity in thousand board feet (MBF), log scale, name the log rule used. If another unit of measure is used, provide details ▶		
	(a) Quantity	(b) Cost or other basis

2 Estimated quantity of timber and cost or other basis returnable through depletion at end of the preceding tax year

3 Increase or decrease of quantity of timber required by way of correction

4a Addition for growth (number of years covered ▶)

b Transfers from premerchutable timber account

c Transfers from deferred reforestation account

5 Timber acquired during tax year

6 Addition to capital during tax year

7 Total at end of tax year, before depletion. Add lines 2 through 6

8 Unit rate returnable through depletion, or basis of sales or losses. Divide line 7, column (b), by line 7, column (a)

9 Quantity of timber cut during tax year

10 Depletion for the current tax year. Multiply line 8 by line 9

11 Quantity of standing timber sold or otherwise disposed of during tax year.

12 Allowable as basis of sale. Multiply line 8 by line 11

13 Quantity of standing timber lost by fire or other cause during tax year

14 Allowable basis of loss plus any excess amount where decrease in FMV (before and after the casualty) exceeds the standard depletion amount, but not the block basis (see instructions)

15 Total reductions during tax year:
a In column (a), add lines 9, 11, and 13

b In column (b), add lines 10, 12, and 14

16 Net quantity and value at end of tax year. In column (a), subtract line 15a from line 7. In column (b), subtract line 15b from line 7

17 Quantity of cut timber that was sold as logs or other rough products

18 Section 631(a):

a Are you electing, or have you made an election in a prior tax year that is in effect, to report gains or losses from the cutting of timber under section 631(a)? (see instructions) Yes No

b Are you revoking your section 631(a) election (see instructions)? Yes No

Effective date ▶

Part III Profit or Loss From Land and Timber Sales (see instructions)

1 Name of block and title of account

2 Location of property (by legal subdivisions or map surveys)

3a Purchaser's name and address **b** Date of sale

4 Amount received: **a** In cash
b In interest-bearing notes
c In non-interest-bearing notes.

5a Amount of other consideration
b Explain the nature of other consideration and how you determined the amount shown on line 5a:

6 Total amount received for property. Add lines 4a, 4b, 4c, and 5a.

7 Cost or other basis of property:	Unit	Number of units	Cost or other basis per unit	Total cost or other basis
a Forested land	Acre			
b Nonforested land	Acre			
c Improved land (describe) ▶	Acre			
d Merchantable timber. Estimate in detail the quantity of merchantable timber on the date of sale or exchange. Include the quantity of timber in each species of timber by diameter at breast height (DBH) classes. State the log rule used if the unit of measure is thousand board feet (MBF), log scale. If another unit of measure is used, provide details. ▶				
e Premerchantable timber.				
f Improvements (list separately)				
g Mineral rights				
h Total cost or other basis. Add lines 7a through 7g				
i Direct sale expenses (cruising, marking, selling).				

8 Profit or loss. Subtract the sum of lines 7h and 7i from line 6

Part IV Reforestation and Timber Stand Activities (see instructions)

Account, block, tract, area, or stand ID for each Qualified Timber Property (QTP)	Kind of activity (burning, chopping, spraying, planting, seeding, thinning, pruning, fertilizing, etc.)	Number of acres treated	Total expenditures
1			
2 Total			
3 Total reforestation expenses			
4a Amount to be expensed under section 194(b). (See instructions for limitations)			
b Amount to be amortized under IRC 194(a), including remaining reforestation expenditures not expensed under section 194(b)			

Part V Land Ownership

Show all changes in land accounts. Attach as many additional sheets as needed, following the format of lines 1 through 6.

1 Name of block and title of account ▶	Acres	Total cost or other basis. Give amount of March 1, 1913 appreciation, if included	Average rate per acre
2 Balance at beginning of year			
3 Acquisitions during year.			
4 Sales during year			
5 Other changes.			
6 Balance at end of year. Add lines 2 and 3, subtract line 4 and add or subtract line 5			

Additional Information.

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Timber Sale Contract Considerations

Selling timber is a major financial and legal venture for both buyer and seller, and often is only done once or twice in a forest owner's lifetime. Therefore, it is strongly encouraged to execute a written contract for the sale of timber. Consulting foresters can estimate your timber's value and handle your timber sale, harvest and reforestation. The contract should be prepared or have been approved by an attorney. Doing so will protect the seller and the buyer.

Consider these provisions for a timber sale contract:

Start Date and Termination Date of Agreement.

Include provisions for time extensions, if desired.

Names and Addresses of Seller(s) and Buyer(s).

Include anyone who has your expressed authority to speak on your behalf, if you are not available.

Declaration of Seller's Ownership and Right to Convey.

Seller should declare ownership of timber; and the right to convey ownership of the timber; and guarantee the title to the timber; and guarantee to defend all claims against ownership of the timber.

Assignment of Contract.

Establish whether or not the seller or buyer has the right to assign the contract to another and if so, specify those terms.

Arbitration of Disputes.

Generally, the buyer and the seller each identifies one person to arbitrate on their behalf, and these two designated individuals then agree upon a third-party to settle the dispute.

Timber/Tract Location.

Include a legal description of the area to be harvested, including acres of harvest and boundary description of the harvest area and property tract. Provide a map showing the harvest area, including important features such as streams, roads or fields.

Right and Location of Ingress and Egress.

Seller should guarantee the buyer the right to ingress (enter) and egress (exit) the property for the purposes of harvesting and removing the timber. There should also be an understanding of where this access will be provided on the property and who is responsible for improvements or repairs. Identify any gates that must be kept closed during transport of the timber and share lock/key information.

Type of Harvesting.

Explain the method of harvesting to be implemented, such as clearcut; row-thinning; select harvest; individual tree removal; seed-tree or shelterwood methods. If trees are marked, state how trees are marked for the timber harvest.

Volume to be Harvested.

State the expected volume of timber to be harvested. This could include an expected minimum and/or maximum volume. Designate the unit of volume by species and/or product class to be harvested and how the actual volume harvested will be reconciled between buyer and seller, if applicable.

Utilization Requirements.

Include specifications of products to be harvested. Describe acceptable stump heights if appropriate.

Ownership of Residues.

Establish the ownership of tree tops, limbs, chips, bark, sawdust, board slabs, cones and other tree residues.

Carbon Credits

A market is emerging for the sale and/or purchase of carbon credits to offset greenhouse gas emissions. All forests have a determined amount of carbon stored in the trees, limbs and roots, depending on the site, species, age and health of the stand. The buyer and seller of standing timber should have a written agreement stating who owns those credits, how credits may be transferred to a buyer from the owner, and any other information pertinent to the timber sale where carbon credits may be an issue.

Purchase Price, Method of Payment and Payment Terms.

State the agreed-upon purchase price(s). Explain whether payment is lump-sum or paid on a per-unit basis. State when payments are to be made to the seller. For per-unit payments: (1) clearly define the prices for all species and/or product classes of timber; (2) describe what reconciliation documentation is expected to accompany per-unit payments, such as mill scale tickets; (3) explain if or how log/tree defect or cull deductions will be paid.

Conditions of Timber Harvest and Removal.

Designate any specific areas that are prohibited from use during harvesting such as roads, trails, fields, pastures or other areas. Designate acceptable hours of operation for the harvesting and if prior contact is needed to access the property. Explain if specific equipment is needed to harvest the site. Determine when harvesting or transport will cease as a result of weather or inoperable site and soil conditions, and define what those site/soil condition thresholds are. Specify how limbs, tops, and other un-useable tree material will be disposed of on the site and where that material should be left.

Care of Other Property.

Describe how to reconcile damage or cutting of trees that are outside the harvest area. Explain what the expectations are for the use, improvement, maintenance and repair of roads, bridges, culverts, gates, fences, ditches, buildings, utility lines or other infrastructure on the property.

Measures to Protect Water Quality.

Identify streams, wetlands or other bodies of water in the harvest area and how those water areas are recognized on the ground. Cite requirements to comply with all applicable state and federal water quality regulations, including the establishment of Streamside Management Zones (SMZs) if needed, and compliance with the other standards defined by Alabama's Best Management Practices for Forestry (BMPs) and compliance with other applicable water quality rules or laws. Designate if stream or ditch crossings will be needed to harvest the timber, including the location and number of crossings. Specify who is responsible for erosion control stabilization and rehabilitation during the harvest and at what point the buyer is free and clear from further stabilization responsibilities.

Measures to Protect Wildlife Habitat and Recreational, Cultural or other Resources.

If desired, specify what actions are to be taken to protect identified wildlife habitat, recreational resources or cultural resources. Wildlife habitat measures may include retention of dead standing trees (“snags”); retaining certain nut or berry-producing trees in the harvest area; and/or revegetation of bare soil areas with ground cover that is favored by wildlife.

Fire Protection.

Buyer should be required to comply with all fire laws and immediately suppress any fire that is a result from the timber harvest activity. Specify liability of damaging property, trees and crops that may result from the fire.

Natural Disaster.

Include terms to specify how the purchase may be affected by a natural disaster that damages the timber during the time the sale contract is in effect. Situations may include wind, ice, wildfire, or insect/disease outbreaks.

Performance Bond and Financial Responsibility of the Buyer.

The seller may choose to require the buyer to post a bond prior to beginning harvest. Specify if the bond is refundable, and if so, whether any interest will be paid. The buyer should be compelled to carry liability insurance, workers compensation insurance, and property/casualty insurance. The seller may wish to require that the buyer produce proof of valid insurance coverage prior to allowing harvest to occur.

Signatures and Notarizations.

Includes buyer and seller. If land or timber is co-owned, then all seller parties may be required to sign a contract.

Recording of Contract/Deed.

Timber is considered real property and a contract conveys ownership of that real property. Timber sale contracts should be recorded at the county courthouse. Specify who pays the costs associated with recording of the timber deed(s).

Use Professionals.

Forest landowners should always consider seeking professional assistance when preparing to harvest timber. A consultant forester can determine the amount and actual value of the timber. Planning and supervising any logging operation requires experience and expertise of a consultant forester or a very knowledgeable landowner. A tax accountant familiar with forestry taxes can direct timber sale income and reforestation expenditures to reduce the tax burden. An attorney experienced in timber sale contracts can ensure that the best interest of both parties is represented. Additional income or reduced costs usually outweigh the cost of these professional services.

For more detailed information visit the Alabama Cooperative Extension System web site at

["Selling Timber Successfully" Circular ANR-626](#) and ["Timber Sale and Harvesting Contracts" Circular ANR-560.](#)

ALABAMA FORESTRY COMMISSION, 513 Madison Avenue, Montgomery, AL 36130
(334) 240-9300 www.forestry.alabama.gov

This sample contract is intended only as a guide for the forest landowner to insure that pertinent provisions are addressed in their contracts. We strongly encourage landowners to obtain the legal advice of an attorney when preparing all legal contracts.

SAMPLE TIMBER SALE CONTRACT

STATE OF ALABAMA

COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS, that this contract, this day made and entered into, by and between (legal name of both buyer and seller), (legal name of seller) hereinafter called the **Seller**, and (legal name of buyer) hereinafter called the **Buyer**, witnesseth that

WHEREAS, the **Seller** owns the following (select one: timber or land and timber) located in (name of county) County, Alabama:

(legal description of sale area)

(For lump sum Sale)

NOW THEREFORE, in consideration of the sum of \$(enter purchase amount) paid by the **Buyer** to the Seller, receipt whereof is hereby acknowledged, (for Cut and Pay) The total consideration and purchase price of timber cut hereunder shall be based upon the weight of timber cut and delivered on the following schedule:

Pine pulpwood	=	\$_____ per ton
Hardwood pulpwood	=	\$_____ per ton
Pine skag wood	=	\$_____ per ton
Pine chip-n-saw	=	\$_____ per ton
Pine sawtimber	=	\$_____ per ton
Hardwood sawtimber	=	\$_____ per ton

(Prices for PST-HST will vary by species and grade.)

the **Seller** hereby grants, bargains, sells and conveys all (merchantable, marked, unmarked – enter the description of the timber sold) on the above said land to the buyer together with the right and privilege of ingress and egress on said land for the purpose of cutting and removing said timber subject to the following terms, conditions and provisions:

The **Buyer** (and all its agents, contractors, producers, employees, assignees or subcontractors approved under stipulations of this contract) agrees to cut and remove said timber in strict accordance with the following terms:

- (a) The timber purchase contract shall begin on the _____ day of (month) in the year of _____ and end on the _____ day of the (month) in the year _____, inclusive. (Most contracts are for 12 or 18 months.) Unless written extension of time is granted, all title to said timber shall revert to the Seller and all rights and privileges herein granted to the Buyer shall terminate.
(Can add extension statement – costs and length of time.)
- (b) The **Buyer** shall not assign this contract in whole or in part without the written consent of the Seller.
- (c) Payment shall be made weekly to the **Seller** for timber cut and hauled the preceding week. (use this statement if it is a pay as you cut sale)
- (d) **Buyer** shall furnish seller weekly settlement records and scale tickets.
- (e) All designated timber shall be cut to a stump height of no more than 12 inches from ground level. Trees cut or damaged that were not sold in this contract will be assessed at a rate of (enter a \$ amount) per tree.
- (f) **Buyer** shall hold Seller harmless from any damage caused by him or his employees, agents, contractors or producers to persons or property arising from his operations on the said lands.
- (g) **Buyer** and all agents will have liability insurance in force and will present Seller a copy of Certificate of Insurance upon start date. (\$1 million umbrella coverage is recommended.)
- (h) **Buyer** shall take all reasonable and necessary precautions to protect against wildfires on the land described above, as well as adjoining land, whether belonging to the Seller or others.
- (i) **Buyer** agrees to try to suppress any fire originating from the acts of negligence of its agents or employees.
- (j) **Buyer** will adhere to Alabama's Best Management Practices for Forestry. The specific BMPs to apply on this contract are: (List, if necessary, things like the marking of streamside management zones, stream crossings, road construction, logging in wet weather, excessive rutting, trash, everything that will apply. Consult Alabama's BMP Manual for Forestry. Obtain a copy at your local AFC office or visit BMP section @ www.forestry.alabama.gov)
- (k) A performance bond will be held in escrow in the amount of \$ _____ by the **Seller** to insure compliance of said contract. (Usually \$500 to \$1,000.)
- (l) Statement of damages to roads, fields, fences or other sensitive areas.
(Describe in detail.)
- (m) The **Seller** retains all rights to inspect said timber sale at periodic intervals and will discuss any conflicts with the Buyer only. No employees of the Buyer are to be construed as an employee of the Seller.

(n) The **Buyer** shall report to the Seller no less than three (3) days before the completion of the contract. If the close-out inspection shows the contract has been satisfactorily completed, the Seller will give to the contractor a release from further obligation under this contract.

STATE OF ALABAMA

_____ COUNTY

IN WITNESS WHEREOF, the parties hereto have executed this contract on the (date) day of (month), (year).

Seller

Witness

Witness

Buyer

Witness

Witness

**SAMPLE FOREST PRODUCTS SALE AGREEMENT
FOR
PRIVATE LANDOWNERS**

STATE OF GEORGIA
COUNTY OF _____

This **AGREEMENT** is made and entered into by and between _____ of (address) _____ hereinafter referred to as the **SELLER** and _____ of _____ (address) hereinafter referred to as the **BUYER**.

WITNESSETH:

ARTICLE 1. THE SELLER:

1. Agrees to sell and the **BUYER** agrees to buy all forest products of all character, living or dead, designated for harvesting by the **SELLER** or his/her **AGENT** located and in the manner as described as follows:
 - A. Location and description of sale area. (Tract boundary and/or treatment area has been marked.)

 - B. Estimated volumes and products to be harvest and removed. _____

 - C. Method of marking or designating forest products to be harvested and removed. _____

2. Guarantees that he/she has full right and authority to sell the forest products described in Par. 1 above and that such forest products are free from all liens and otherwise unencumbered.
3. Grants to the **BUYER** and his/her **CONTRACT LOGGER(s) or OPERATOR(s)** the right of ingress and egress across and upon the sale area and existing roads within the sale area. The **SELLER** or his/her **AGENT** also reserves the right to regulate ingress and egress.
4. Shall in no way assume any responsibility for damage to equipment belonging to the **BUYER, CONTRACT LOGGER(s), or OPERATOR(s)** or injury to persons employed by the **BUYER, CONTRACT LOGGER(s), or OPERATOR(s)**; said responsibility being totally assumed by the **BUYER, CONTRACT LOGGER(s) or OPERATOR(s)**.
5. Has set forth that the following conditions listed in **ARTICLE II** and known as **BEST MANAGEMENT PRACTICES (BMPs)** and referenced in the Georgia Forestry Commission publication "Georgia's Best Management Practices For Forestry "apply to the sale of said forest products and will be adhered to by the **SELLER** or his/her **AGENT** and the **BUYER** and his/her **CONTRACT LOGGER(s) or OPERATOR(s)** insofar as practical and possible.

ARTICLE II. BEST MANAGEMENT PRACTICES: THE SELLER or his/her AGENT and the BUYER and his/her CONTRACT LOGGER(s) or OPERATOR(s) AGREE:

1. Roads
 - A. All pre-existing roads will be evaluated by the **SELLER** or his/her **Agent** for compliance with the BMPs. Where roads are not in compliance or new ones are needed, the costs and responsibility of installing improvements will be predetermined and agreed upon by all **Parties**.
 - B. The **SELLER** or his/her **AGENT** reserves the right to designate and approve the location of any new roads across and upon the sale area prior to construction of said road(s) to ensure that total road length and potential erosion and sedimentation is minimized.
 - C. All new roads constructed for the extraction and transportation of forest products shall follow the contour with grades of 10 percent slope or less. Where terrain or the use of existing roads requires short, steep grades, water diversion measures (broad based or rolling dips, turnouts, cross-drain culverts, etc.) shall be installed at the proper intervals. (See pages 14-18 of the BMP manual.)
 - D. New roads will be constructed on the sides of ridges to allow for proper drainage. New roads will not be located on ridge tops.
 - E. Except at planned stream crossings, new roads will not be constructed within the corresponding Streamside Management Zone (SMZ) of any stream, pond, or lake on the property. (See Table 2-A, page 9 of BMP manual.)
 - F. All existing and newly constructed roads on and adjacent to the sale area shall be maintained in accordance with the BMPs and left in a passable condition during and at time of completion of the logging operation.
2. Stream Crossings
 - A. All pre-existing stream crossings will be evaluated by the **SELLER** or his/her **Agent** for compliance with the BMPs. Where roads or crossings are not in compliance or new ones are needed, the costs and responsibility of installing improvements will be predetermined and agreed upon by all **Parties**.
 - B. Where necessary, all new road stream crossings will require the use of the recommended diameter culvert size for that particular watershed unless the **SELLER** or his/her **AGENT** approves a bridge or ford in the creek. (See Table 3-C, page 22 of the BMP manual for correct sizes.)
 - C. All exposed soil at existing or new crossings will be stabilized with any one or combination of the measures recommended on page 17 of the BMP manual.
 - D. Under no circumstances will stream crossings for roads, fellers, or skidders be made with logs and brush piled in the stream and covered with soil.

- E. Streams are not to be randomly crossed by fellers or skidders. Where necessary, crossings will be by temporary culvert of appropriate diameter for the watershed, portable timber bridge, or other structure and approved by the **SELLER** or his/her **AGENT**.
3. Harvesting
- A. No forest products, except those designated by the **SELLER** or his/her **AGENT**, shall be harvested.
 - B. All applicable Streamside Management Zones (SMZs) have been identified on the ground and any harvestable timber has been identified for removal such that the recommended basal area or canopy cover is left.
 - C. All trees cut shall be utilized within the stump height and merchantable top diameter consistent with sound forest harvesting practices.
 - D. Any and all timber not designated for removal as per **ARTICLE 1, Par. 1**, and not included in this sale but due to being unavoidably damaged or to facilitate the removal of said timber shall be paid for at the same stumpage price as the initial sale as determined by the **SELLER** or his/her **AGENT**.
 - E. All logging debris (trees, tops, and limbs) if felled into perennial or intermittent streams, rivers, or lakes will be removed immediately.
 - F. All log decks, portable sawmills, or chippers will not be allowed within the corresponding SMZ of any stream, pond, or lake on the property.
 - G. Skid trails will minimize soil compaction and rutting. Skidding will be conducted on gradual grades instead of straight up and down slopes as much as possible. Water bars will be constructed at the proper intervals listed for percent slope (Figure 3-1 and Table 3-D, page 25 in the BMP manual) when skid trails are retired at completion of logging.
 - H. All human garbage, tires, cables, used lubricants, fuels, fluids and their containers will be removed from sale area and disposed of properly.

ARTICLE III. THE BUYER AGREES:

1. That prior to execution of this agreement, to provide to the **SELLER** proof of Worker's Compensation coverage for all his/her **CONTRACT LOGGER(s) or OPERATOR(s)** who will be performing the work on this forest products sale; such coverage to be maintained throughout the period of forest products harvest operations.
2. To protect unmarked and undesigned trees and areas from damage during wood operations.
3. To repair to original conditions or pay for at replacement costs any damage to fences or other improvements of the **SELLER**.
4. To reimburse the **SELLER** from the escrow account or otherwise for all costs borne by the **SELLER** in suppressing any and all fires caused by the **BUYER** or his/her **AGENT** upon lands subject to this **AGREEMENT**.
5. To indemnify, release, and hold harmless the **SELLER** and his/her **AGENT** from and against all liabilities, damages, costs, and expenses arising from, by reason of, or in connection with the **BUYER'S** operations hereunder.

ARTICLE IV. BOTH PARTIES MUTUAL AGREE:

1. The **BUYER** agrees to pay to the **SELLER** the sum of \$ _____ for all forest products designated for harvesting in **ARTICLE 1, Par. 1** of this **AGREEMENT**.
2. Payment for the forest products shall be made to the **SELLER** in the following manner: _____
3. In lieu of a performance bond, \$ _____ submitted with the bid on the forest products shall be held in an escrow account with the **SELLER** pending satisfactory completion of performance by the **BUYER** of all terms, provisions, conditions, and obligations on the part of the **BUYER** to be performed or observed in this **AGREEMENT**. The amounts so deposited shall be held to cover (a) any amounts which have become due the **SELLER** hereunder and that remain unpaid by **BUYER**; (b) the amount of any damage to forest products or property caused by failure of **BUYER** or his/her **CONTRACT LOGGER(s) or OPERATOR(s)** to fully observe and perform all conditions herein with respect to **BUYER'S** operation under this agreement; and (c) any costs, damages, or expenses to which the **SELLER** may be put by reason of default or breach of any terms, provisions, conditions, or obligations on the part of the **BUYER** to be performed or observed in this **AGREEMENT**. Upon written notification to the **SELLER** or his/her **AGENT** that forest products harvest has been completed, there shall be repaid to the **BUYER** any balance of said deposit remaining after **BUYER'S** obligations and performance in this **AGREEMENT** have been fulfilled.
4. The **SELLER** or his/her **AGENT** reserves the right to inspect all operations covered by this **AGREEMENT** on a periodic basis to determine whether or not the terms of this **AGREEMENT** are being carried out.
5. The **SELLER** or his/her **AGENT** reserves the right to adjust or suspend harvesting and/or hauling operations in their sole discretion when it is determined that ground conditions or harvesting practices would result in excessive damage to the road systems or forest resources. In the event of a suspension, the total term will not be shortened but rather the suspension time will be added to the **AGREEMENT** term.
6. Title to and responsibility for trees included in this **AGREEMENT** shall pass to the **BUYER** as they are severed from the stump and their removal from the property shall be the responsibility of the **BUYER**.
7. Any designated forest products, harvested or un-harvested, which remain on the sale area at the date this terminates, remain the property of the **SELLER**.
8. No oral statement by any person shall be allowed to modify or change any written portion of this **AGREEMENT**.
9. This **AGREEMENT** shall not be assigned in whole or in part without the written consent of the other **PARTY**.
10. Any breach of the terms of this **AGREEMENT** shall be cause for termination.
11. This **AGREEMENT** shall terminate on the _____ day of _____, 20__
12. In case of dispute over the terms of this **AGREEMENT** that cannot be satisfactorily agreed upon between the **PARTIES**, final decision shall rest with an arbitration board of three persons - one to be selected by each **PARTY** to this **AGREEMENT** and a third agreed upon by both **PARTIES**. Should the arbitration board determine a breach of the terms of this has occurred, said breach shall be cause for termination of **AGREEMENT**.

IN WITNESS WHEREOF, the **PARTIES** hereto have set their hand and seals this _____ day of _____, 20__.

WITNESS : _____ **BUYER:** _____

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