

ALL THAT TIMBER CRUISING CULMINATES IN A CONTRACT 10/31/00

As I returned from an overnight trip from the upper reaches of the West Canada Creek last Sunday night I was warmed with the feeling of relief and satisfaction. It was the culmination of several days of arduous work cruising and marking timber for a timber harvest.

The actual marking of the individual trees to be selected began on August 18 of this year and was completed on September 27. The work was preceded by several days of inspections and planning. Following the marking of 2,818 trees of six different species, several days followed showing prospective buyers the sale area and pointed out conditions they will be charged with carrying out.

There are several standard operating procedures connected with any well-planned and carried out timber sale. They are documented and incorporated in a timber sale contract which the seller and purchaser mutually agree upon. Each have specific responsibilities spelled out in the document.

The owner guarantees the timber to be sold to be his or her property and free from any encumbrance that questions their rights to transfer ownership. The responsible owner also shows the buyer the boundaries of the property on which the timber is located. Finally, the seller gives the buyer the right to enter the property to complete the harvest.

The buyer agrees to all of the conditions spelled out by the contract that the forester feels are necessary to protect the landowner's interest. They are many and vary with each individual owner's wishes and concerns.

First and foremost is the amount and payment for the timber to the landowner, which is preferably arrived at by open competitive bidding. Normally, there is a lump sum payment tendered prior to starting the harvest. A performance bond should also be posted at the same time to ensure special conditions of the harvesting operation are complied with at the completion of the work.

Some of the conditions may be: how the log landing areas and yards are to be left free of debris and ruts; how high stump heights may be left; how high tops of felled trees shall be allowed to remain; in what area the operation is to be started; where log landings,

skid trails and access roads will be located; which trees shall be harvested; how slopes, watercourses and erosion control measures will be addressed.

Certificates of both liability and compensation in the landowner's name should be provided and kept in effect throughout the life of the agreement. They should be for specified amounts. A starting date and termination date should be included. Provisions should be made for either party to terminate the agreement should a reason arise that may call for the same. An arbitrator may be designed to act as a judge in case of any disagreement.

The contractor should agree to abide by all state and federal laws and to protect the property from fire. Provisions should include the right to temporarily limit operations when adverse weather conditions persist that, in the opinion of the forester, would unduly affect the property.

Both parties to the timber sale agreement have certain rights and obligations, both written and unwritten. Some are based solely on common respect for each other and what is "right" and may not necessarily dictated by law.

Contracts contain many legal terms and gobbledegook, such as "in a workman like manner." It all boils down to how honest and willing both parties are in working with each other. The forester's basic responsibility is to the landowner, but no one would indeed be remiss in not insuring that the timber harvester's rights as well are not abrogated.

Experience alone often times has taught the forester who those operators are that are best able to carry out their prescribed obligations. That, and price consideration as well, may call for a provision included in the timber sale Request for Bids that reads: "The timber will be sold to the highest bidder, but the land-owner reserves the right to refuse any and all bids."

The sale, like most I have been a party to over the past several years, has been a rewarding and learning experience. It has given me a sense of accomplishment knowing I am partly responsible to bring two parties together in what, I hope, will be a mutually rewarding business venture. One that ultimately will lead to the best use of a renewable resource in a manner that conserves both it and the environment.

Since this will be the only opportunity I will have before Election Day to say it, please get out and vote. Regardless of your political affiliation, I urge you to vote for freedom and character. As one write recently put it in the *Adirondack Home News*, “because when it comes right down to it, it really is all about character. Ours.”