

RON'S TOP 10 "MUSTS" FOR A SUCCESSFUL TIMBER SALE, by Ron Munro.

Must No. 1: You must be sure that you have the right to sell the timber, and be sure you have legal access to the timber. Joint ownership with others requires written approval by all owners, or partial owners. Access across adjacent lands should be clearly defined, and approved in writing.

Must No.2: You must know your property lines, and have them accurately and adequately marked in the field. Do not leave it up to the harvester to define the property lines.

Must No. 3: You must have an approved harvest permit in hand prior to any harvest activity being started. State law says that if you harvest more than 5,000 board feet of timber for anything other than personal use (like firewood) you are required to have a permit. Forest Practice Approvals (FPA's) are issued by the Washington State Department of Natural Resources (DNR), or in some instances by the County.

Must No. 4: You must have a reasonable idea of the volume and value of the timber you are selling. Do not leave it up to the harvester to tell you the volume and value of your timber. Spend a few dollars and obtain an independent appraisal.

Must No. 5: You must have a written agreement with the harvester or timber buyer. A handshake is not good enough. Verbal contracts are not enforceable in Washington State courts. The Timber Sale Agreement should address where roads will be built, where landings will be created, slash disposal and cleanup, and who pays for these activities. The Agreement must state when work will be finished, how and when you will be paid your share of the timber money, and where legal action would take place if needed. The Agreement might also address a wide variety of other issues depending on the particular harvest project, and under some circumstances it might call for a bond.

Must No. 6: You must have evidence that the timber harvester is properly insured, and you are named as an additional insured on his policies. It is not difficult to have the harvester's insurance company provide you with a rider that spells out that you are named as an additional insured. Be doubtful of any harvester who cannot comply with this provision. Do not start any activity on the property until you have the insurance rider in hand.

Must No. 7: You must define who is responsible for paying the timber excise tax. The Forest Practice Approval may state that the excise is your responsibility, but there is a standard form available to transfer the excise tax liability to the harvester.

Must No. 8: You must define who is responsible for reforestation of the property after the harvest has been completed. The Forest Practice Application addresses the question of reforestation and offers several alternate options to satisfy this obligation. One option is to replant the harvest area with a minimum of 190 seedlings per acre. Another option is to leave 100 vigorous, undamaged, and well-distributed trees per acre. You do not want to assume that the harvester is taking on the reforestation expense and obligation, and just who is responsible, and when it will be done, should be clearly defined in writing before a harvest is started.

Must No. 9: You must have a clear Harvester's Indemnification Clause in the timber sale agreement that makes all the harvester actions his sole responsibility and liability.

Must No. 10: You must have a clause in the timber Sale Agreement that states that the harvester is responsible for complying with all Federal, State and County Regulations. The Agreement should also state that the harvester is assuming the obligations and conditions imposed upon the Operator and Harvester under the approved Forest Practice Permit. Also, if the harvester is going to be responsible for paying the forest excise tax the agreement should clearly state that.

Ron Munro owns and operates Land Service, Inc., a Washington State Corporation designed to assist private landowners with the management and sale of their timber. Ron is a 1961 graduate of the University of Washington, College of Forest Resources, with a degree in Forest Management. Ron is a lifelong resident of western Washington and was selected as **Washington State Tree Farmer of the Year** in 2001. He can be reached by telephone at 425-483-0553 or by email at rtmunro@hotmail.com

Example of suggested contract inclusion for Harvester's Insurance

By Ron Munro, Land Service, Inc.

INSURANCE:

Harvester agrees to carry and maintain in full force and effect at all times during the period of this Agreement liability insurance policies, including automobile liability insurance, Logger's Broad Form insurance, and private industrial accident insurance on all employees engaged in operations hereunder not covered by worker's compensation insurance under the State of Washington, all in form satisfactory to Sellers. Such insurance shall pay on behalf of Harvester all sums which Harvester shall become legally obligated to pay as damages because of injury to, or destruction of, property of others, including the loss of use thereof arising out of an occurrence directly connected with the harvesting operations.

The minimum limits for general liability (comprehensive form/ logger's broad form, combined limits) shall be bodily injury \$1,000,000.00 and property damage \$1,000,000.00, and for automobile liability (comprehensive form, combined limits) the minimum limits shall be bodily injury \$1,000,000.00 and property damage \$1,000,000.00.

During the term of this Agreement Seller herein shall be named as an additional insured requiring thirty (30) days written notice to Seller prior to cancellation on Harvester's insurance policy, or policies, and Harvester shall provide written notice and evidence of this requirement prior to commencing road building or harvesting operations.

None of the insurance requirements stated herein shall serve to limit the amount or scope of Harvester's liability in the event of a loss as provided under the Indemnification clause or other terms of this Agreement.

Example of suggested contract inclusion for Harvester's Indemnification

By Ron Munro, Forester, Land Service, Inc.

HARVESTER'S INDEMNIFICATION:

- a. Harvester assumes all risk of personal injury and of loss of, or destruction of property in connection with the exercise of its rights under this agreement.
- b. Harvester shall pay for all damage to Seller's property, resulting directly or indirectly from acts or omissions by Harvester or Harvester's agents.
- c. To the extent permitted by law, Harvest agrees to indemnify and hold harmless Seller against any expenses incurred or liability for claims of third parties (including without limitation court costs, expenses and attorney fees) for damages or injury (including death) to persons or property, including timber trespass, arising out of, or in any way related to operations authorized hereunder as conducted by Harvester's employees, agents, contractors, and subcontractors, or out of Harvester's obligations in connection with this Agreement.