

FIELD GUIDE TO

T I M B E R

T H E F T

Understanding Timber Sales, the Contract & the Law

Forest Program: Government Accountability Project



This field guide is made possible through the dedication of whistleblowers formerly with the Timber Theft Investigations Branch (TTIB) at the U.S. Department of Agriculture, Forest Service. The TTIB and its predecessor the Timber Theft Task Force were operational from 1991 to mid-1995. During that time hundreds of cases of alleged fraud of commercial timber sales on our nation's National Forests were investigated, prosecuted, and resulted in historic multimillion dollar recoveries. At the brink of even greater success, these dedicated members of the TTIB were relieved of their duties.

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Section

1

HOW TO USE THIS GUIDE

How To Use This Guide

This booklet has been designed to provide information and training on the basic elements of timber sales on National Forest lands. It is primarily for concerned citizens, actively involved in monitoring their local forest ecosystems. The information has been organized into the following sections: an introduction to the concept of “timber theft”; timber sale contracts and contract fraud; field guide to timber theft indicators; legal concerns; and case studies.

This Guide is an introduction to timber sales, their monitoring and accountability. Updates of this Guide will be posted at www.whistleblower.org. This is but a first step in understanding timber sales on public lands. Each alleged violation of the timber sale contract should be considered serious and care must be taken to carefully document the situation without disturbing the evidence. All suspected violations should be reported to the Forest Service’s Law Enforcement and Investigations Branch, preferably to a Special Agent assigned timber theft investigations.

The information contained in this guide has been developed from the expertise of former members of the Timber Theft Investigations Branch, Forest Service documents, forest activists’ concerns, and on-the-ground experience. Any mistakes or errors in interpretation are those of the Forest Program at the Government Accountability Project.

Government Accountability and the Forest Program

The Government Accountability Project (GAP) is a nonprofit public interest organization with offices in Washington, DC and Seattle, Washington. GAP provides legal and advocacy assistance to concerned citizens who witness dangerous, illegal, or environmentally unsound practices in their workplace and choose to “blow the whistle.”

Whistleblowing is defined under the law as disclosing information that an employee reasonably believes is evidence of illegality, gross waste, gross mismanagement, abuse of power, or substantial and specific danger to public health and safety. The actions of whistleblowers have saved lives and billions of dollars. They are a critical link in the effort to keep our government agencies and private corporations open, honest and accountable. But rather than receive praise for their integrity, whistleblowers are frequently targeted for retaliation. The Government Accountability Project was created to help these employees who, through their individual acts of conscience, serve the public interest. GAP has a three-part strategy to help whistleblowers expose and correct wrongdoing:

- ▶ Assist whistleblowers in determining the most effective strategy for blowing the whistle and help the whistleblower convey this information to an appropriate source
- ▶ Provide legal assistance to whistleblowers who face retaliation. This may mean helping employees keep their jobs, filing a retaliation claim, or representing whistleblowers in court.

- Act as a conduit linking whistleblowers and affected constituencies. GAP links whistleblowers with citizen-based organizations that share their commitment on the exposed issue.

Recently, GAP's primary environmental focus has been protecting our national forests. The newly created Forest Program will educate (and train) forest activists, the public and policymakers about the critical state of timber theft on public lands. Making connections between citizens and whistleblowers, both of whom are concerned for the state of America's public lands, is our goal.

Loss of More Than A Tree

The typical vision evoked by the term "timber theft" is one of an entire hillside of trees cut down and stolen when no one was watching. The real picture of timber theft is actually quite different. The majority of timber theft occurs under what has been deemed "a culture of theft". This is responsible for the belief that taking a few additional trees here or there, underreporting a tree's real value, or leaving behind low value wood, has no real "harm" but is necessary to allow the logger to "make a buck". These actions are associated with commercial timber sales, where a certain number of trees are sold under a contract by the landowner. This type of timber theft should not be confused with the theft of an individual tree or trees, more representative of the term "tree poaching".

GAP IS

The Government Accountability Project (GAP) is a nonprofit public interest organization with offices in Washington, DC, and Seattle, WA. GAP provides legal and advocacy assistance to concerned citizens who witness dangerous, illegal or unsound practices in their workplace and choose to "blow the whistle".

This guide focuses on commercial timber theft and is designed to provide information and training to concerned citizens who are monitoring the ecosystems within and adjacent to our nation's forests. The following pages focus on fraudulent activities that can take place during the course of a commercial timber sale on National Forest lands. Some of this information is also applicable to the determination of timber theft outside timber sale boundaries as well as that occurring on private lands.

Thousands of "timber theft", and other related fraudulent activities, occur each day across our nation. There exist specific federal and state laws against these acts yet the vast majority are routinely handled by assigning the logger fines or penalties under the terms of the contract. Why then are there no criminal prosecutions on our National Forests? Does this lack of prosecutions mean that the violations are only minor? Here at the Government Accountability Project, our Forest Program has been investigating these issues. Since the mid-1990s, GAP has represented whistleblowers from the Forest Service's own Timber Theft Investigation Branch. This multi-agency task force uncovered rampant timber theft on many of our nation's forests and recovered millions of dollars in stolen revenues. Unfortunately, since its dissolution in 1995 the Forest Service has not had a successful prosecution of any comparable value. Evidence of commercial timber sale theft has seemingly vanished, while the investigation of lesser, although important, individual tree thefts has taken precedence. Cases from the former Timber Theft Investigations Branch as well as more recent examples are included later in this guide.

The opportunities for theft and fraud in the timber industry are widespread, but they can be managed if the government is committed to protecting the taxpayer's timber assets. Some trees have very little economic value as timber, but others may be worth \$20,000 apiece. Yet, all the trees have a significant value in the environmental balance. As our Timber Theft On Public Lands brochure states, "(t)imber theft, as currently defined, sees only the dollar value lost to the government, disregarding the value in lost biological diversity or other environmental benefits... the theft of even one tree, i.e. a wildlife tree, can jeopardize the surrounding ecological integrity."

When is it theft?

The commonly used term “timber theft” refers to not only to the loss or theft of trees on a commercial timber sale, but also incorporates a variety of other intentional acts which violate the timber sale contract’s provisions. Over the years, the Forest Service has documented hundreds, if not thousands, of opportunities that exist to “cheat” or violate the law. These acts can be quite brazen, such as the removal of trees outside the boundary of a timber sale, to sophisticated, intelligent criminal acts, including the reprogramming of computer chips which are used to calculate the payment rate for logs harvested.

Investigations of timber theft are the responsibility of the Forest Service’s Law Enforcement and Investigations Branch (LE&I). Yet LE&I relies on those Forest Service employees administering timber sales to report suspicions of theft. LE&I has no direct involvement on timber sales. Historically, the Forest Service has simply issued notices of violations and/or charged the harvester for any additional trees removed or damaged.

In the late 1980s, in response to a growing awareness of significant violations of timber sale contracts occurring across the country, the Forest Service established a Timber Theft Task Force (TTTF) to investigate large-scale theft. In 1992, an expanded TTTF was renamed the Timber Theft Investigations Branch (TTIB); this interagency task force included local and state law enforcement, the Internal Revenue Service, and the Federal Bureau of Investigations. During its reign, the TTIB investigated hundreds of cases of suspected timber theft yielding multimillion dollar settlements and convictions. One of its highest profile cases resulted in a \$3.3 million settlement of a case believed to be in excess of \$120 million and covering 20-plus years.

Ecological Effects Unrecognized

To date the focus of timber theft investigations has been on the fiscal, or monetary, violations of the timber sale contract. If additional trees were removed in violation of the original terms of the timber sale contract, a dollar value is determined based on size and species; penalties or fines collected could be as high as three times the tree’s value as a sawlog. Unrecognized is the fact that timber stolen outright, cut beyond the amount offered in the timber sale bid, may be also be critical to the protection of salmon, ancient forests, watersheds, soils and at-risk species of wildlife. Rarely is this aspect of timber theft considered.

A recently released report, by the U.S. Department of Agriculture, Office of Inspector General (OIG) report (Jan. 1999), is a prime example. The *Forest Service Timber Sale Environmental Analysis Requirements* documents that the Forest Service’s “preparation of environmental documents and implementation of mitigation measures applicable to timber sales have not been effective.” The report exposes the Forest Service’s lax preparation and administration of environmental assessments (EA) as included in the terms of the timber sale’s contract. These EA’s were “deficient”, “inadequate” and resulted in environmental damage to our forest resource; it also pinpoints discrepancies between the EA, environmental mitigations included in the timber sale contract, and violations of these regulations on the ground. Surprisingly, the OIG fails to assign blame or to expose these actions as possibly intentional and criminal (fraud). The report does not cite these issues as legally actionable under environmental law. e.g. NEPA, ESA, Clean Water, nor does it recognize noncompliance as a violation of a contract with the federal government.

For example, in one case on the Jefferson National Forest, Mahogany II Skyline timber sale, (USDA/OIG-A/08801-10-At, p. 10) a stream buffer boundary was supposed to be marked at 100 feet out from the stream banks, was in fact marked by the



FS timber sale administrator at the “standard” 50 feet, yet the logging contractor actually logged to within 13-85 feet. The only “illegal act” identified by the OIG was the excessive amount of sediment entering the stream, and they recommended that a large amount of “woody debris” be placed in the stream channel. No legal remedy was sought against the timber sale administrator or logging company. Yet, the logging contractor violated the rules of the sale—the timber sale contract ordered a 100 foot stream buffer. Even the misidentified stream buffer, at 50 feet, should have been noted by the timber sale administrator and reported to LE&I for contract fraud/theft investigation. As far as is known, no action was taken.

In this same case, other acts of possible “timber theft” can be noted. In violating the stream buffers, the harvester removed “extra” trees beyond those approved for removal under the contract; trees that were supposed to be left standing and therefore were not included in the original sale price. These acts may qualify as theft of government property; each tree felony (its value is greater than \$200.00). Again, none of these “other crimes” is mentioned by the OIG.

Of the twelve timber sales reviewed by OIG in preparing its report, it found that 83% of these timber sales had mitigation measures that “were not always implemented.” Over 30% of timber sales had environmental mitigation measures that were “omitted or incorrectly incorporated [in the timber sale contract].” Finally, 25% of the timber sales had “[timber sale] contracts [that] authorized the harvest of more acres or trees than specified [in the original EA].”

Our goal, here at GAP, is to assist citizen activists in determining what is happening on the ground at timber sales. This guide is meant to serve those needs.

Timber Theft Investigation Branch (TTIB)

The Forest Service has struggled to enforce the law on timber theft. In 1991 the Timber Theft Task Force was created in response to two alleged commercial timber theft cases with multimillion dollar losses - Northwest Log Scaling Bureau and Columbia River Scaling Bureau, both operating across the Pacific Northwest. The prosecutions required inter-regional cooperation and an investigative staff beyond what the regional forest service offices could supply. In late 1993, the Columbia River Bureau plead guilty and paid a \$50,000 penalty. Thomas Creek Lumber & Log Company paid \$1.5 million in fines and restitution. A civil settlement of \$1.7 million was later assessed on a Columbia River Scaling Bureau partner.

Additional changes were made to the law enforcement structure at the Forest Service in 1993. Congress ordered the agency to separate its law enforcement activities from its regional operations. This action cre-

GAP FACTS

- ▶ In 1996, GAP filed a whistleblower protection lawsuit on behalf of current or former members of the Timber Theft Investigations Branch.
- ▶ In March 1995, then Forest Service Chief Jack Ward Thomas announced the TTIB would be shut down but pledged that timber theft investigations would remain a “priority”.
- ▶ Shortly after, the Forest Service reassigned TTIB employees away from their timber theft investigation positions and imposed other work restrictions.
- ▶ None of the active TTIB cases since that time has been resolved.

ated the independent Law Enforcement and Investigations Branch (LE&I), reporting directly to the Chief's office. At this time the Task Force's name changed to the Timber Theft Investigation Branch (TTIB) and its scope included cases from across the country. Several more multimillion dollar cases came under investigation during the next two years.

Whistleblowers Step Forward

In March 1995, the TTIB office was unexpectedly abolished by Chief Jack Ward Thomas. This took place as three cases were being completed; these three were comparable in size to the Columbia River case. The TTIB employees were to be reassigned (or forced to resign/quit) and active timber theft investigations were to be incorporated into the existing LE&I branch framework. Chief Thomas pledged to expand the enforcement of timber theft and claimed it to be a "national priority" for all regions. To date, all three million dollar-plus timber theft cases (code named: Model T, Rodeo, Shuffle) are dormant.

In 1996, GAP, jointly with Public Employees for Environmental Responsibility, filed a whistleblower protection lawsuit on behalf of current or former USFS employees who had been part of the Timber Theft Investigative Branch. Since the announcement that the TTIB would be closed, the Forest Service reassigned the employees to non-timber theft positions. Our case asserts that they suffered retribution because of "a job well done".

As of this publication, the whistleblowers' case has opened a virtual Pandora's Box on timber theft. Exposed is the fact that the Forest Service is unable to prosecute the most egregious cases and is unwilling to include timber theft as a revenue "loss" in its accounting for the receipts from timber sales on national forests.

"It is clear that the government cannot control the motives for committing any crime, but it can control 100% of the opportunities"

—Former TTIB investigator

Section

2

TIMBER SALE

Timber Sale Contract

The Timber Sale Contract is the guide every forest activist needs to understand what is happening during and after a timber sale. If you consider the timber sale itself the “product”, then the Contract is the “recipe” for this product.

The Contract is the forest activist’s most important tool. Without a copy of the Contract, you cannot determine what was supposed to happen or not happen on the timber sale and within its boundaries. The Contract is supposed to be the one document which unites the amount of timber being offered for sale and how that timber can be cut and removed with the environmental safeguards or “mitigations” required to be followed.

The Contract is a legally-binding contract with the federal government . Violations of the terms of the Contract can result in criminal and/or civil charges of fraud. As a federal crime, fraud is punishable by not less than 10 years or a fine of \$10,000. There are seven commonly used federal laws governing timber sale contracts. Violations of the timber sale contract can also be punished under state criminal and civil laws. Violations of these laws are viewed as “intent to defraud the Government.” Loggers, industry personnel, and government employees have gone to jail and paid hefty fines for contract violations. If convicted these individuals are treated just like every “felon”, they lose their right to vote and to own a firearm.

Most violations of the Contract are never investigated as fraud. Under the current system, when the timber harvester commits a “violation” of the contract, the remedy is handled within the provisions of the contract itself. If a harvester cuts undesignated trees, by mistake, or causes damage to these trees, the Forest Service’s contracting officer can resolve the situation by requiring the harvester to pay for the trees at the contract rate (or up to two times the rate). This is referred to as a “civil remedy”, no criminal intent was found. If the government property is intentionally removed without authorization, or if the Forest Service’s employee give authorization to remove the trees without requiring they be paid for, it becomes a criminal act. Many times criminal acts are hidden under the cloak of civil remedy.

It is important to learn about the parts of the Contract in order to assure that the timber sale meets all environmental standards and safeguards. The Contract is somewhat self-contained. It’s development, implementation and monitoring are all done by the forest management branch of the Forest Service. In fact, it is not uncommon for the same Forest Service employee to prepare multiple components of a timber sale such as writing the Environmental Analysis, “cruising” the proposed sale area, “laying out” the sale (marking boundaries, designating trees), etc.

The Contract and the timber sale itself is managed by the Contract Administration Team (CAT). This group of FS employees includes the following:

- ▶ The Contracting Officer who awards the sale, signs the contract on behalf of the FS, and is responsible for performance of the contract itself;
- ▶ Forest Service Representative—available to resolve conflicts on site;
- ▶ The Timber Sale Administrator;
- ▶ The Harvest Inspector.

All changes or additions during the course of a timber sale are performed by this team. The Contract does not require that any other FS employees, or other agency employees with jurisdiction, be contacted even if such minor changes may effect environmental concerns. The definition of a “minor change” includes adjusting boundaries, relocating roads or access routes, etc. It also includes actions that might have detrimental effects or which are “changes” in the environmental mitigations. Examples of these minor changes would be the designation of a few trees for landing construction, a small change in the yarding requirements so that less environmental damage will occur and the minor adjustments in boundary locations so that the environment can be better protected. These changes should not be conducted solely for the benefit of the logger.

Due to the attention to timber theft in the past, a new Forest Service-wide directive requires the CAT to provide Law Enforcement, within 2 days, a copy of any timber sale inspection reports noting the removal of “undesigned” (not marked) trees. This also applies to other “unauthorized” actions such as moving boundaries. This is a good first step, but unfortunately still keeps the determination of “unauthorized actions” up to the people that are only trained in the civil aspects of contract administration.

Bidding

Once a proposed timber sale has been developed, a bid announcement is sent out to interested parties. Timber sales are sold in one of two ways, through a sealed bid or open bid process. With sealed bids, all bids are received and kept sealed. Bids are opened by the Forest Service at the assigned time and the highest bid received “wins” the timber sale. At an open bid, interested purchasers gather together and bid openly, in front of each other, in an auction-type manner. Again, the highest bid wins. At times, an advertised timber sale may not receive any bids, known as a “no bid” situation. If no bids are received, the Forest Service may decide to re-offer the sale after changing elements in the sale. All bids are available for review by the public. Bids must be recorded and verified by Forest Service staff.

Over the years, there have been occasions where the bidding process has been subject to fraud. If potential timber sale purchasers agree in advance not to bid, or agree to bid lower than the minimum bid required, then they may be guilty of collusion. This could force the timber sale’s minimum bid to be lowered and offered for sale again. In this case the winning bid gets the timber at a lower price than the Forest Service originally determined necessary.

Bidders have been shown to have agreed in advance on a scheme of “you get this one, I’ll take the next” whereby one bidder will agree be the highest bidder on one timber sale then not to bid, or bid too low, on the next. This scenario prevents timber from being sold to the highest bidder in a fair, competitive manner. More on timber sale bids and the bidding process can be found in the Forest Service Handbook and Manual which are available at the Forest Service’s website.

Contracts and the A, B, C’s

In order to understand what is happening on the ground at a timber sale, you first must understand the timber sale contract itself. The contract is a public document and contains all the information related to the sale. It is divided into three sections, A, B and C. Activists looking for specific information must know which

section and which subsection to turn to. A copy of a timber sale contract and all its provisions can be quite lengthy, over 1000 pages. Yet, it is not necessary to read each page in order to find exactly what you need! It is also important to learn some of the basic terminology to assist in the interpretation of the contract's language. The Forest Service has an excellent glossary of "timber terms"; visit their website at www.fs.fed.us for the "People's Glossary of Ecosystem Management Terminology."

Contract Types

The Forest Service uses several different versions of timber sale contracts depending on the way in which timber is being paid for and on how much wood is being harvested (the volume). Most large-scale timber sales use one of two very similar contracts. On these sales, it is important to know if the timber sale is a "scaled" sale or "lump sum" (also called tree measurement sales). The first version, called Form FS-2400-6, is used exclusively with "scaled" or sales where the trees are measured and the value determined after the log has been cut and removed from the timber sale site. This contract is used mainly on timber sales in the Western U.S. and now is declining in use. Over the years, timber theft under this type of timber sale contract has been found repeatedly. Violations occurred when logs did not get counted and nothing was paid by the timber sale logger. In one case, the log trucks failed to stop and be "counted" as they drove out of the forest so in effect the logs were free. In another case, logs were counted but the real value was intentionally lowered to cheat the government.



The next type of contract is used on "tree measurement" or lump sum sales. Prior to the sale, each tree is measured as it stands in the forest and the total value of all the trees is determined (this portion is called "cruising"). These sales are called "lump sum" sales as the timber sale contract winner pays for the all the logs up front, in a "lump sum" prior to beginning the logging. This contract is Form FS-2400-6T. On these sales, trees may not be marked with tree paint but only "designated" within the contract by size, species, etc. For example, a lump sum timber sale may require that all pine species with a diameter between 10" and 14" dbh be removed. It is then up to the logger to remove only trees that meet this so-called "description". Problems can occur on these sales when trees not fitting the approved "description" are cut and taken. Other forms of cheating include cutting down trees, leaving them on the ground, and not hauling them away (saving money on transportation and labor). This is a concern on salvage sales where certain trees are to be removed for forest health reasons. As you walk through a tree measurement sale you must be able to recognize the different tree species and their approximate size. This is one reason it is important to carry a tape measure and other tools as you visit a timber sale site.

Other timber sale contracts are used for smaller sales or those sold under a permit. For example, Form FS-2400-3 is used for relatively small timber sales. Other contracts are used for small sales or those involving smaller amounts of board feet. Please consult your local forest office.

A B C 's of the Timber Sale Contract

All timber sale contracts have three separate sections, A, B & C. Within each of these three sections repeat the same headings, such as A1 SALE AREA, B1 SALE AREA and C1 SALE AREA. All include information on the sale's location. The A section contains a general description for that particular timber sale, the B section contains the standard definition for that term (or the contract's legal language/description), and the C sec-

tion is the most detailed and specific only to that timber sale. Activists will need to consult the C section to find specific answers to questions for that sale or any one of its sale units.

Each section contains the following subsections: 1.0 Sale Area; 2.0 Timber Specifications; 3.0 Rates Of Payment; 4.0 Payments; 5.0 Transportation Facilities; 6.0 Operations; 7.0 Fire Precautions And Control; 8.0 Other Conditions; 9.0 Performance And Settlement.

A B Cs

- ▶ **A1.0 SALE AREA** gives the name of the purchaser, the National Forest name, the Ranger District, the Contract Number, the Sale Name, the Award Date, and the Termination Date and is signed by the purchaser and the National Forest representative
- ▶ **B1.0** states “ B1.0 SALE AREA, B1.1 Sale Area Map. The boundaries of the “Sale Area” and any subdivision thereof, are shown on the attached “Sale Area Map”....
- ▶ **C1.1** is the Sale Area Map itself.

The A Section

The A section contains standard contract provisions which are then completed by the local Forest staff. The A provisions are filled in with who the sale purchaser is, the description of the type and size of timber sale, as well as the dates the contract is active. Other sections of the A provisions include items such as any time period during which fire precautions are applicable, the protection of historical sites, and details of the payment and bonds required of the timber sale purchaser.

- ▶ A1 acreage, the location
- ▶ A2 volume estimates (the amount of board feet in the sale)
- ▶ A3 timber designations such as acreage amounts for different activities, i.e. clearcutting units, individual trees, road clearing
- ▶ A5 timber payment rates, the dollar amount for each species included in the sale
- ▶ A9 road information, including length and class
- ▶ A19 contract termination date, the date the contract and harvesting must stop
- ▶ A20 normal operating season, the time during which harvesting can occur

The B Section

The B provisions are a set of contractual policies and procedures standards that do not change across the entire National Forest System. They are provided separately from the A & C provisions contained in the contract itself. These are the “rules”, as they apply to every timber sale the Forest Service carries out each year. For example, these include policies on road and road construction, timber sale units, and payments made by the purchaser (logger) to the Forest.

The B provisions contain important information that all forest activists should review, especially on the standard policy relating to the identification of the “timber” to be removed during the sale. This is true for those “lump sum” sales. The B2.0 section gives definitions for items such as “included” timber (timber which may be damaged by the logger during the course of the timber sale), “unintentionally” cut timber (live trees that may be cut by “mistake”), and the “marking” of individual trees to indicate that they are approved for removal during the sale.

The C Section

The C provisions apply to a specific timber sale. This C section is of the greatest importance to those attempting to understand what is happening on a timber sale. Without a copy of the C provisions in hand, you are unable to determine whether or not the rules governing the timber sale have been properly followed or not. Activists are encouraged to ask for copies of the entire C provisions, not just sale area maps.

Found in the C 2.301 section are the dollar amounts used as penalties for removing “reserve” trees such as a fine of \$500 for cutting or damaging genetic or seed source trees. Of special importance to “scaled sales” are the C provisions under C2.0 as they also indicate the paint colors used to mark trees for cutting or for protection. Also within this subsection are the details on how many trees are to be cut or left standing within each unit or subdivision and whether there are to be dead trees left standing.

Road maintenance requirements are also found in great detail in the C5 provisions. This includes the specifics on water bars, culverts, and snowplow schedules as well as the responsible party—either the Forest Service or the logger. Control of hazardous materials, such as oil and oil storage, is found in the C6.3 provisions. Standards for yarding and skidding methods in C6.4 indicate the width of all roads or trails, another item which has been subject to cheating in timber theft cases. The wider or bigger a road or log deck, the more trees removed. All of these provisions directly effect the stabilization of soils and clean water concerns for nearby or adjacent streams and other watercourses, as well as aquatic habitat concerns. Careful review can assist in evaluating the potential for violations of the Clean Water Act or other environmental laws. The Dogwood Alliance’s Tennessee Forestwatch has put together an excellent visual field guide to these issues appropriate for both public and private forestlands. They can be found online at www.dogwoodalliance.org.

At first glance, the timber sale contract may appear daunting to someone uneducated in forestry practices and terminology. Fortunately, there are others in the forest community who have come before you and have learned along the way. Many more resources exist on-line these days than ever before. More and more information is available to activists in an easy to understand format. See the Links section at the end of this document for more assistance.

SAMPLE LISTING OF B PROVISIONS

B1.0 SALE AREA, Maps

B2.0 TIMBER SPECIFICATIONS

B2.1 Included Timber

B2.11 Standard Timber

B2.12 Substandard Timber

B2.13 Damaged Timber

B2.131 Damaged by Purchaser

B2.132 Negligent or Willful Damage

B2.133 Damaged by Catastrophe

B2.134 Minor Damage by Natural Causes

B2.14 Unintentionally Cut Timber

B2.15 Construction Timber

B2.16 Other material

B2.2 Utilization and Removal of Timber

B2.3 Timber Designations

B2.31 Clearcutting Units

B2.32 Construction Clearing

B2.33 Overstory-Removal Units

B2.34 Understory-Removal Units

B2.35 Individual Trees

B2.36 Incompletely-Marked Timber

B2.37 Minor Changes

B2.4 Volume Estimate

B2.41 Adjustment for Volume Deficit

B2.42 Adjustment for Excess Volume

B3.0 RATES OF PAYMENT

B3.1 Current Contract Rates

B3.2 Escalation Procedure

B3.32 Rate Redetermination after
Catastrophic Damage

B3.4 Other Payment Rates

B3.41 Material Not in A2

B3.42 Timber Cut Through Mistake

B3.43 Designated Timber Cut But Not Removed

B3.44 Undesignated Timber Damaged
Without Negligence

B3.45 Undesignated Timber Unnecessarily
Damaged or Negligently or Willfully Cut

B4.0 PAYMENTS

B4.1 Amount Payable for Timber

B4.2 Timber Sale Account

B4.21 Purchaser Credit

B4.22 Cash Deposits

B4.221 Advance Deposits

B4.222 Purchaser Credit as Deposits

B4.4 Payments Not Received

B5.0 TRANSPORTATION FACILITIES

B7.0 FIRE PRECAUTIONS AND CONTROL

B7.1 Plans

B7.2 Fire Precautions

B7.2.1 Substitute Precautions

B7.2.2 Emergency Precautions

B8.0 OTHER CONDITIONS

SAMPLE LISTING OF C PROVISIONS

C2.2	Utilization and Removal of Included Timber	C3.47	Abnormal Delay
C2.3	Timber Designations—including which paint colors mean what, or which trees are approved for logging	C4.0	Payments
C2.301	Reserve Trees—including penalties for cutting or damaging a Reserve Tree) <ul style="list-style-type: none"> ▶ Type of reserve tree (wildlife, genetic, other), ▶ Number of trees and distribution (#/acre), minimum/max. size (dbh and height), ▶ Description (largest dead tree), species. 	C5.0	Transportation Facilities
C2.32	Construction Clearing—The type, size, etc. trees which are approved for removal in the harvesting process (land construction, roads, etc.)	C6.0	Operations
C2.33		C.6.01	Interruption or Delay of Operations
C2.34		C6.1	Representatives
C2.35	Individual Tree Designation—Description of trees for cutting and removal which meet the standards in set forth in other sections of the Contract. Includes cutting schedule for each subdivision of the timber sale.	C6.11	Notices
C2.36		C6.2	Improvements
C2.37	Minor Change for Danger Trees Description of trees which may be felled due to their potential hazard to harvesting, after marking by the Forest Service. Includes whether such trees become Included Timber under the Contract.	C6.221	Protection of Property
C23.0 RATES OF PAYMENT		C6.24	Protection of Cultural Resources
C3.1	Current Contract Rates	C6.25	Protection of Habitat of Endangered, Threatened, and Sensitive Species
C3.312	Rate Redetermination for Environmental Modification	C6.3	Plan of Operation
C3.41 OTHER PRODUCTS		C6.315	Sale Operation Schedule
		C6.331	Traffic Control Plan and Specifications
		C6.4	Hazardous Materials
		C6.404	Conduct of Logging
		C6.42	Pieces (of Logs) To Be Left
		C6.42	Special Yarding/Skidding Methods
		C6.7	Slash Disposal
		C6.74	Slash Treatment Requirements
		C6.81	Scaling Services

Section

3

INDICATORS OF FRAUD

Timber Sale Boundary: Indicators of Fraudulent Boundary Movement

A timber sale's boundary is the first thing you should notice when visiting a timber sale site. The boundary around the timber sale site may be marked with different methods or a combination of methods. Units within a timber sale may be marked differently as well. These four items are the primary methods of marking boundaries.

- ▶ Forest Service Timber Sale official boundary signs—paper signs that include a sale number, etc;
- ▶ Flagger ribbon—colored plastic “ribbon” in several colors and patterns;
- ▶ Trees painted with numbers and/or letters identifying the timber sale's boundary;
- ▶ Flashers—shiny, metal (usually aluminum) strips which are tacked to trees and reflect light, seen from a distance.

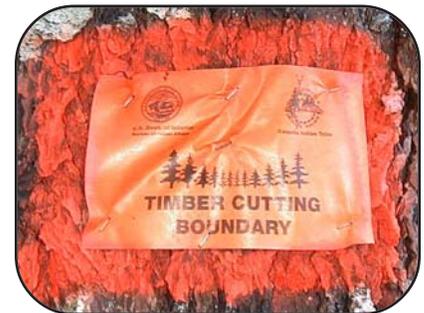
The timber sale contract describes exactly how the boundaries are to be marked. Without a copy of the timber sale contract in hand, care should be taken to note, to observe and take photos of boundary evidence or lack thereof. The boundary must be visible at all times. You are supposed to be able to see from one tree to another where the boundary is located as you stand in one spot. If you can't find the boundary clearly marked then it may have been eliminated altogether during logging.

One way to cheat on a timber sale is to move the boundaries. This movement has been an easy way to steal additional trees. Many acres, and thousands of dollars worth of trees, can be stolen with a simple (yet fraudulent) small boundary expansion, e.g. a few feet, around one or all of the timber sale units. Notice in the diagram how this action can effect the size of the timber sale area. There are other ways to “move” a boundary without destroying the signs and markers.

Forest Service Timber Sale Official Boundary Signs

Torn, crumpled or soiled boundary/timber sale signs could indicate fraudulent movement. Case history has revealed that it is very hard to remove a legitimate boundary marker and move it to a new location without causing some type of damage to the sign itself.

Often fraudulently moved signs would have “extra” staple holes (with no staple in the holes). Often the fraudulently applied “new” staples will not match up with the legal (original) staple holes; the original holes are very obvious.



Forest Service Timber Sale official boundary signs—These signs are paper and include a sale number, etc...

Flagging Ribbon

Flagging, narrow strips of colored plastic ribbon, usually accompanies paper or cardboard signs as a means of delineating the sale boundaries. Flagging is an item used by all woods workers, not just the Forest Service, and can be purchased at any local logger's supply shop, hardware store, or lumber shop.

Check the timber sale contract to determine what type of marking was to be used and whether ribbon flagging was included, and if so, which colors/styles of ribbon. This ribbon can be solid colors, striped, or even have printed information such as "timber sale boundary" or "stream watercourse protection boundary".

What To Look For

- ▶ Is the color faded from the sun, or is it bright and shiny?
- ▶ When was the timber sale boundary marked originally, recently or over six months ago?
- ▶ Since the flagging is plastic, it is very susceptible to weathering. The vintage of the flagging on the timber sale is very important. Often newer flagging will be placed next to the paper or cardboard signs that have been fraudulently moved. The newer flagging is very easy to identify by color and weatherization characteristics.

Flashers

Aluminum heavy foil "flashers" are often also used to mark corners or significant changes in the sale area boundaries. These flashers are very hard to move without crumpling them and distorting the clean and bright appearance. A crumpled and dirty flasher could mean a fraudulently moved boundary and consequently the theft of trees.

Paint

Tree marking paint is also used to mark the boundary surrounding a timber sale. Boundary trees are marked so that a continuing boundary "line" is visible from one tree to another. Again, consult the timber sale contract to determine exactly which paint color, or other methods, were to be used. Timber sale boundaries are usually marked with paint, signs and ribbon. If boundary markers are missing, or appear to be few and far between, this may indicate fraudulent activity. Carefully inspect boundary trees to determine whether or not missing trees were originally intended for removal.

What do you know about this timber sale? Was the timber sale site "painted" within a few months of the date the timber harvesting began? Paint on trees will age due to weather and sunlight just like flagging ribbon.



The two photos above are examples of Flagging ribbon—colored plastic "ribbon" in several colors and patterns.



Flashers—shiny, metal (usually aluminum) strips which are tacked to trees and reflect light, as seen from a distance.



Is this timber sale site an old one, but there are signs of fresh paint and recent cutting? Check the timber sale contract to see if the final harvest date has expired. Harvesting on a sale may be authorized to occur over several years and may vary between units. Some units on a timber sale may be scheduled for harvesting before others.

What to look for:

- ▶ Used paint cans—Look for spray cans found near or inside the sale boundary. All Forest Service paint cans must be removed from the timber sale by the government employees that marked those trees. If you find a spray-paint can buried or on the ground within the timber sale unit, it is a good indication that another person was fraudulently designating trees. These cans should be documented, collected and turned in to law enforcement officers, not forest management staff. While at the timber sale site, check the paint color against the colors used elsewhere on that site. Does it match the exact color/shade of paint used on the sale? Further document the incident by taking samples of all paint, noting each tree/stump location.
- ▶ Paint splatters—It is impossible to use tree-marking paint without getting some splatter on gloves, boots, hands and clothing. Look around the site for discarded gloves or towels with paint on them. This is a good indicator of ongoing fraudulent activity. Discretely collect evidence.

Designating Trees: Which Trees to Cut? Which to Leave Standing?

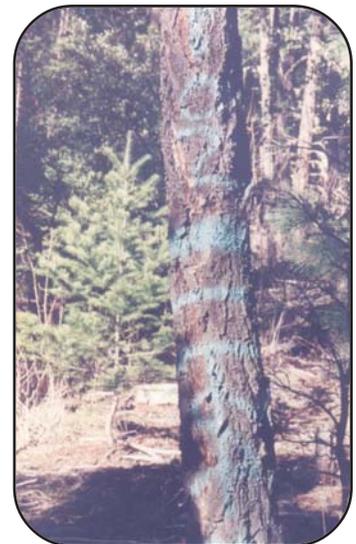
It is standard practice to mark, or designate, trees to be cut or left standing by applying a “ring” of paint around the tree and another dot or ring of paint around its base at ground level. On most timber sales, different colors of tree marking paint are used to designate trees for harvesting from those to be left standing, such as important wildlife trees. This practice may vary from timber sale to timber sale, or even within a timber sale’s own separate units. Some Forest Service regions are requiring paint colors to be standardized across all forests.

First, a ring of paint is applied at the standard point for measuring a tree’s diameter, dbh (diameter at breast height), approximate four 4 feet off the ground. At the base of the tree, at or slightly below ground level, a “stump dot” is marked. This stump dot is very important to look for on cut trees. It is the only evidence left behind that this particular tree was officially designated to be harvested.

Generally, blue paint is used to designate trees to remain uncut and orange paint is used on trees which have been approved for harvest. Check the timber sale contract to determine what each paint color is to be used to designate. Other colors, such as white or black, may also be used to identify trees which follow along the timber sale’s boundary or temporary road, to designate a tree approved for removal after logging begins, etc.

What to look for:

- ▶ Do all of the cut trees have a stump dot visible? Do all the stump dot colors match, e.g. are they all blue? Check to see if all the “blue” dots



match in color as this may indicate trees marked by someone other than the Forest Service.

- Do you find tree stumps without stump dots? Pull back the soil and debris around the base of the stump to assure no stump dot exists. If none is found, make note of where these stumps are located and photograph them from all sides.

Other concerns with tree marking paint:

- Paint on cut surfaces**—Paint should not be visible on any “cut” surface, such as on the cut portion of a tree stump or sprayed on the ground. The original paint color indicating a tree was to be left standing may be painted over with another color, usually once the tree was cut down. Document all paint on tree limbs, “saw dust” or kerf, soil, etc.
- Paint salting**—This is a common illegal activity. This is done by taking paint chips/bark from a designated tree and placing these pieces at the base of a tree that was not intended to be removed, whether inside or outside the timber sale boundary. The hope is that the casual observer would see the paint chips and not look closely for a matching stump dot.
- Used paint cans**—Look for spray cans found near or inside the sale boundary. All Forest Service paint cans must be removed from the timber sale by the government employees that marking those trees. If you find a spray-paint can buried or on the ground within the timber sale unit, it is a good indication that another person was fraudulently designating trees. These cans should be documented, collected and turned in to law enforcement officers, not forest management staff.

Other Indicators: Outside & Beyond the Timber Sale

In the previous pages, this Guide has reviewed some of the mechanisms used to cheat and defraud the government on timber sale contracts. While those focused primarily on the cutting of trees within a timber sale’s boundary, there are other opportunities to abuse the system. It is believed that most timber sales do not suffer abuse but sophisticated, fraudulent schemes have been documented to occur. These schemes are similar to any other employed in a business situation. They all are part of an intentional plan to maximize profits while minimizing costs. In other business settings, we would recognize these schemes as tax evasion, bribery, falsifying records, antitrust violations, etc. All of these activities are potential acts of fraud and constitute felonies. Mistakes can happen in any business setting, but intentional acts are criminal.



Orange Stump dot visible on stump.



Evidence of trees marked with blue paint after cut, note paint appears on cut surfaces.



Tree stump fraudulently marked after cutting, paint appears on cut surfaces.

TREE PAINT

The “tree marking paint” used by the USDA Forest Service contains a special, exclusive “tracer” element. This tracer is registered for use in other publicly available tree marking paint. The residual paint found on trees suspiciously marked can be tested in the laboratory to determine whether or not it contains this Forest Service tracer element.

The following are other “signs” of possible timber sale-related crime. Again, the observer must become familiar with the routine actions on site or related to a timber sale. Then, it is possible to recognize signs of cheating or theft.

Size and Species

When observing a timber sale site it is important to remember to step back and look at the “bigger picture”. This is true as well for locations away from the timber harvesting, such as an area nearby where logs are stacked together (log decks) then loaded onto trucks. Look at the individual logs in the deck. Are there logs that are different from the others? Are they bigger? Are they of a different species? Are they dripping sap, indicating a live tree was cut, when the sale is for dead or burned trees? These signs can then be traced back to the timber sale site itself, e.g. look for the stumps from these large logs and determine if they were to be cut or not (stump dot?). Remember to take pictures and record other features, if at all possible. Be discreet and stay safely away from any active logging or logging equipment.

Expansions

As mentioned previously, additional trees are removed during the course of normal logging operations. These trees may be where a road is being located, along a yarding or skid trail (paths where trees are moved to a central loading area), or in the creation of a log loading area. Consider these like our automobile road or highway systems. Depending on the need, a single-lane road, double-lane road, or 4 lane divided highway might be appropriate. But sometimes a “highway” is built where a single lane road is all that is needed. Each time a path or trail is widened, more trees are removed. A certain amount of trees are planned for removal under the terms of the contract. A timber harvester might try to take advantage of this by “widening” or expanding on those existing plans. This means not only more trees are removed, but also fewer standing trees are going to be left at the close of the contract. Be sure to consult the timber sale contract for the required dimensions for all roads and trails and to determine the plan for tree cover minimums.

Along with expansions come other problems, such as too many trails or roads. In one case, where certain buffers were to be left between clearcuts, the harvester had made extra “incursions” in the form of skid trails, removing large, old-growth trees within these buffers. In effect, the buffers became little more than mini-clearcuts themselves.

Another location subject to expansion is the log loading area. This is where the logs are collected then loaded onto the beds of trucks. Normally, the loading area needs only to be large enough to accommodate a truck and the decked logs. Again, you need to get out in the field and compare timber sales in order to get to know what is standard. If a huge area has been cleared, it may be a sign that more trees were removed than necessary, but this is probably not enough to violate the contract. It is more of an indicator of how loosely the contract or best management practices are being implemented.

Beyond the Timber Sale

The transportation of logs is another opportunity for fraud. This applies especially to scaled timber sales when logs are transported to another location to be measured and then charged to the sale’s purchaser. These trucks must carry receipts for their log loads. The logs are transported from the timber sale site directly to the scaling location. Log truck drivers have been found to “forget” to stop at the scaling station, driving directly to the mill. The scaling process relies heavily on the honesty and full participation of the logger and log truck driver and impartial third-party scalers. There is no direct daily supervision by Forest Service staff.

In one timber theft investigation it was revealed, by use of a hidden camera, that upon arrival at the scaling yard certain logs were not getting counted. Instead, they were taken from the log trucks and immediately placed in log decks with logs that had already been scaled. These logs were then “free” to the logger and the government did not get paid. This method is not very sophisticated and took advantage of the lack of

oversight during the scaling process. Activists should be aware of these opportunities for cheating. If you are monitoring a scaled sale, it is important to understand the rules governing that type of sale.

At the Closure of a Timber Sale

When all trees have been cut and removed, the timber sale contract is closed. Usually there are many required actions which the timber sale contract purchaser must perform prior to contract's official closure. Many of these relate to the ecological restoration of the logging site and are required to meet certain environmental regulations. Commonly, logging roads must be "closed" by removing culverts, planting of trees or grass seed along the way, building dirt mounds across the openings, etc. At the site, the debris remaining on the ground may be required to be piled up, to be burned or to be placed in waterways. Stabilization of soils and slopes may also be required. These actions are just as important as the harvesting of the trees. They are also labor intensive and at times costly. In order to save time and costs, these required actions may be skipped or not adequately performed. It is up to the timber sale administrator to verify that they have been performed before signing off on the contract. Failure to perform any required actions can constitute fraud. Yet, the contract administrator does have some discretion in modifying these terms. Visiting a timber sale site at the end of the contract, or after closure, is just as important as monitoring the logging process. More information regarding closing a timber sale can be found in the Forest Service Handbook and Manual.

Section

4

LEGAL CONCERNS

When Bad Things Happen on a Timber Sale Monitoring the Sale—Overtly or Covertly?

Forest activists who frequently monitor timber sales know that it's hard to follow what is happening if logging is active. Safety concerns should be first and foremost in everyone's mind, especially around equipment and tree felling. But you can also monitor what's happening when things are quiet. This Guide has shown you how to monitor boundaries, which trees are cut and removed, and the basics of contract requirements. Now it's time to apply those ideas and learn how to go about it in the field. Just remember that sometimes it might be smart to stay out of the way, or view, in order to monitor what is going on.

Document, document, document

The most important thing you need to do in order to effectively monitor a timber sale is to remember to document what you see. Many times we have heard from a forest activist who says "I came across this timber sale and you won't believe what I saw!" Once they tell their story to us, we ask them if they took any pictures or made any measurements or if they made a map of where they were. Most respond, "oh, no, I didn't have my camera/pen/paper with me." Then they want to know what to do and who to report the suspected problem to within the Forest Service. Without the proper documentation, it is much harder to "prove" that something took place. Consider what you witness to be evidence. If you've watched television cop shows, then you know that evidence collection is critical to proving a "crime" has taken place. It is also key to holding the responsible party accountable. What you see is evidence. What you hear someone tell you is evidence. Where it took place is evidence. When it happened is also key. Without the evidence to present when making a complaint it's impossible to prove what happened.

Never ever leave your home without the following items. This is true even if you don't expect or plan to visit a timber sale that day. We have heard activists bemoan the fact that they were "going for a hike" in the

INVESTIGATOR'S KIT

- ▶ **Camera:** this includes a standard photo camera as well as a video camera. Take at least one of them and extra rolls of film.
- ▶ **Notebook/Paper:** to record observations and to sketch maps, road location, etc.
- ▶ **Pencils, pens, permanent markers:** use these to record to location of "designated" trees or "painted" stumps, trees, boundaries, etc, on your map of the site.
- ▶ **Measuring tape:** for measuring log diameter, stumps, width of roads, etc.
- ▶ **Plastic bags:** for evidence collection. You may also want to include a few small jars/bottles to use for collecting water samples, hazardous materials spills, etc.

forest only to discover that a timber sale was underway. By the time you leave the scene and return to take pictures later, things will have changed at the site, maybe even been covered up or evidence destroyed.

The best way to remember to have these items available is to keep a Kit in your car at all times. Or, put these items in your backpack and leave them there. These same items are also important to record other information such as names, license numbers, etc. Safety is also a concern for many activists, so a camera can be helpful if a situation feels threatening.

Recognition

A copy of the timber sale contract is your key to understanding what's happening on the ground! There are simple things to look for when visiting each and every timber sale, whether old or still active. It's all right before your eyes. You are encouraged to take the timber sale contract and this Guide along with you.

What to Do Next?

Let's say that you have been in the forest recently and have some questions about what you have witnessed. What do you do next? Who should you call? The Forest program at GAP is available to assist forest activists in understanding these concepts and identifying the appropriate next steps. Contact us by phone or by email. If you should witness any serious crime, you should immediately report it to the Forest Service's Law Enforcement & Investigation branch employees. You can contact a local Law Enforcement Officer (LEO) or Special Agent (SA) right in your forest, or you can contact the regional office for LE&I. The LEO is the "forest cop" recognizable in their Forest Service uniform. Special Agents are like "detectives" and do not usually operate in uniform and should have had special training in timber theft cases. Remember that LE&I is a separate division from the National Forest staff, but you are able to get their contact information from any Forest Service employee. You should get to know your forest's LEO's and SA's; they are charged with enforcing all laws on the national forest. Many times activists report their concerns at first to the forest management staff, the District Rangers, Forest Supervisors, etc. Yet, these employees do not have the ability to pursue criminal investigations. If you suspect a pattern of violations at the timber sale, it may be preferable to wait and collect as much evidence as possible before turning it over to LE&I. While one alleged incident may be of concern, it's a pattern of intentional acts that makes the strongest case. Contact the Forest Program at GAP for assistance.

Making a Report

When you do make a report, you will need to include the following basic information: the National Forest name & Ranger District the incident(s) took place; name of timber sale and the name of the purchaser (logging contractor); the year, month, day of the alleged incident; a description of allegation(s), please be specific and as detailed as possible; and to whom a report of possible violations was made, inc. name, title, and the date the report was made; and what documentation is available, inc. photos, video, evidence (empty paint cans, descriptions of perpetrators).

If you have already been involved in making a report to the Forest Service, it is important to follow-up regularly. Keep in touch with the LE&I staff or other Forest Service employee. Many times an investigation may take several months and need to be kept quiet in order to fully evaluate the charges. If you feel there has not been an adequate response, again, please contact the Forest Program. Your next step may be to take the collected evidence to the local prosecutor or U.S. Department of Justice, US Attorney's office. Often, it may be most strategic to involve the media. Each case requires careful consideration.

FEDERAL TIMBER THEFT STATUTES

FEDERAL CRIMINAL CODES: Commonly used laws and regulations with timber theft violations

16USC620	Forest Resources Conservation and Shortage Relief Act of 1990—The Secretary of Agriculture has issued regulations under 36CFR 261.6 to enforce the intent of this law; prohibiting the export of federal timber in certain areas and under specific conditions.
18USC371	Conspiracy to commit offense or to defraud United States—This conspiracy statute is used when two or more individuals have conspired in some manner to steal timber or commit some other illegal act. This is very difficult to prove.
18USC641	Public money, property, or records—this statute is typically used to charge a felony level theft of government property case. This is used often when timber is stolen.
18USC1001	Statements or entries generally—This statute is actually fairly commonly used. Any time someone appears to have submitted documents with false information to the government, this is charged. In timber theft cases we see it in scale tickets and 2400-59 Certification for Export, for example.
18USC1361	Government property or contracts—this is commonly used to charge additional resource damage, other than the actual theft of timber. Examples are road damage, watershed damage loss of wildlife trees, and damage to archaeological sites.
18USC1852	Timber removed or transported—This is charged when timber is stolen (actually removed) at the misdemeanor level. Some timber charges will be reduced from a 641 felony theft charge to a 1852 misdemeanor theft charge.
18USC1853	Trees cut or injured—This statute is a misdemeanor and used when trees are damaged or cut and not removed from the site. Often times, this charge is used when trees are unnecessarily or excessively damaged or before the timber could actually be removed from the site.

USC = United States Code

FEDERAL REGULATIONS

7CFR3017.305	
7CFR3017.405	
36CFR223.48	Restrictions on export and substitution of unprocessed timber
36CFR261.6	General Prohibitions—Timber and other forest products—These are the regulations promulgated by the Secretary of Agriculture to enforce laws set forth by Congress (see above)

CFR = Code of Federal Regulations

STATE TIMBER THEFT STATUTES

OREGON REVISED STATUTE (ORS) CRIMINAL CODES

FOIA response to GAP's Forest Program, 1999

164.813	Unlawful Cutting & Transport - Special Forest Products. Statute of Limitations: 6 years
164.825	Cutting & Transport - Coniferous Trees w/o permit or bill of sale
164.855	Seizure of Trees or Special Forest Products
164.877	Tree Spiking
165.109	Cedar Purchase Records (general)
164.015	Theft
164.043	3rd degree
164.045	2nd degree
164.055	1st degree
164.057	aggravated
164.085	deception
164.095	receiving

Source: Forest Service Handbook 6509.11h. Service-wide Claims Management Handbook, Region 6 Supplement No. 650911h-93-2, effective Nov. 29, 1993

ORS CIVIL CODES

105.815	Timber Trespass
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Source: Forest Service Handbook 6509.11h. Service-wide Claims Management Handbook, Region 6 Supplement No. 650911h-93-2, effective Nov. 29, 1993

REVISED CODE OF WASHINGTON (RCW) CRIMINAL CODES

9A.56.030	Theft in the First Degree (Dollar amount over \$1000)
9A.56.040	Theft in the Second Degree (over \$500)
9A.56.050	Theft in the Third Degree (over \$250)
9A.56.150	Receiving Stolen Property (over \$1000)
9A.56.160	Receiving Stolen Property (over \$500)
9A.56.170	Receiving Stolen Property (over \$250)

RCW CIVIL CODES

64.12.0404	Timber Trespass
64.12.030	Timber Trespass

Section

5

REFERENCE MATERIAL AND CASE STUDIES

Links

Organizations

<http://www.whistleblower.org>

The website of the Government Accountability Project and its Forest Program. Also contains information and articles on timber theft on National Forests. The .pdf version of the Field Guide to Timber Theft is also available here.

<http://www.whistleblower.org/www/Pendleton.htm>

Taking the Forest: The Shared Meaning of Tree Theft, Dr. Michael R. Pendleton, an excellent academic article on timber theft and the Forest Service. Originally published in *Society & natural Resources*, 11:39-50, 1998. Dr. Pendleton testified before the House Committee on Resources, Subcommittee on Forests and Forest Health, Ecoterrorism & Lawlessness on National Forests hearing, February 12, 2002.

<http://www.afsee.org>

The website of the Forest Service Employees for Environmental Ethics, their "mission is to forge a socially responsible value system for the U.S. Forest Service based on a land ethic that ensures ecologically and economically sustainable resource management."

<http://www.peer.org>

Public Employees for Environmental Responsibility, PEER published a series of white papers, jointly with GAP, on timber theft and Alaskan timber theft investigation. See publications for Unindicted Co-conspirator and Stealing the Tongass.

Government & Other Resources

<http://www.usda.gov/oig/auditrpt/088011.pdf>

The website for the U.S Department of Agriculture, Office of Inspector General's audit report, "Forest Service Timber Sale Environmental Analysis Requirements", January 1999. This report reviews a dozen timber sales' compliance with environmental mitigations, all sales fail in some form or another.

<http://www.fs.fed.us>

The website of the U.S. Department of Agriculture, Forest Service

<http://www.fs.fed.us/links/nfs.html>

Links to each of the Forest Service's Regional office web sites.

<http://www.svinet2.fs.fed.us:80/land/emterms.html>

Called the "People's Glossary of Ecosystem Management Terminology."

<http://www.fs.fed.us/r6/nr/fp/project.htm>

Forest Service Region 6 (Pacific Northwest) website listing approved Washington Office (WO) and Region 6 timber sale forms currently available for use in forest health/restoration projects.

<http://www.fs.fed.us/im/directives/fsh/2409.15/2409.15.10.txt>

The on-line Forest Service Handbook instructions on timber sale management. FSH 2400

<http://www.forestry.about.com/library/weekly/aa040200a.htm>

"How To Fell A Tree" for those who don't know and want to learn. Excellent visuals.

http://www.osha-slc.gov/SLTC/logging_advisor/mainpage.html

The U.S. Department of Labor, Occupational Health & Safety Administration's web site, Logging Advisor, with information on logging safety practices and new national protection provisions. Good for assistance in understanding what goes on at a timber sale site. Also important for those who work with loggers, OSHA has recently begun tough enforcement of logging safety.

<http://www.metla.fi/info/vlib/Forestry/Topic>

Virtual Library: Forestry Topics

Selected forest watch organizations:**<http://www.bark-out.org/index.html>**

BARK, Washington

<http://www.dogwoodalliance.org>

Dogwood Alliance, Southeastern US—focusing on private forestlands monitoring as well.

<http://www.heartwood.org/home.htm>

Heartwood, Mid-western US

<http://www.sisqtel.net/~klamath/>

Klamath Forest Alliance, California

<http://www.leavenworth-leaf.com>

Leavenworth Audubon/Adopt-A-Forest, Washington

<http://www.umpqua-watersheds.org>

Umpqua Watersheds, Inc., Oregon—works on both Forest Service and Bureau of Land Management forestlands

<http://www.virginiaforestwatch.org/home.html>

Virginia Forest Watch

State timber theft and private forest land management websites:**ALABAMA****<http://www.legislature.state.al.us/codeofalabama/1975/9-13-60.htm>**

AL state Code, Section 9-13-60, Unauthorized cutting, removal, transportation, etc., of timber or other forest products.

ARKANSAS**<http://www.forestry.state.ar.us/protect/firelaws.html>**

"Protect Your Forest", Arkansas Forestry Commission

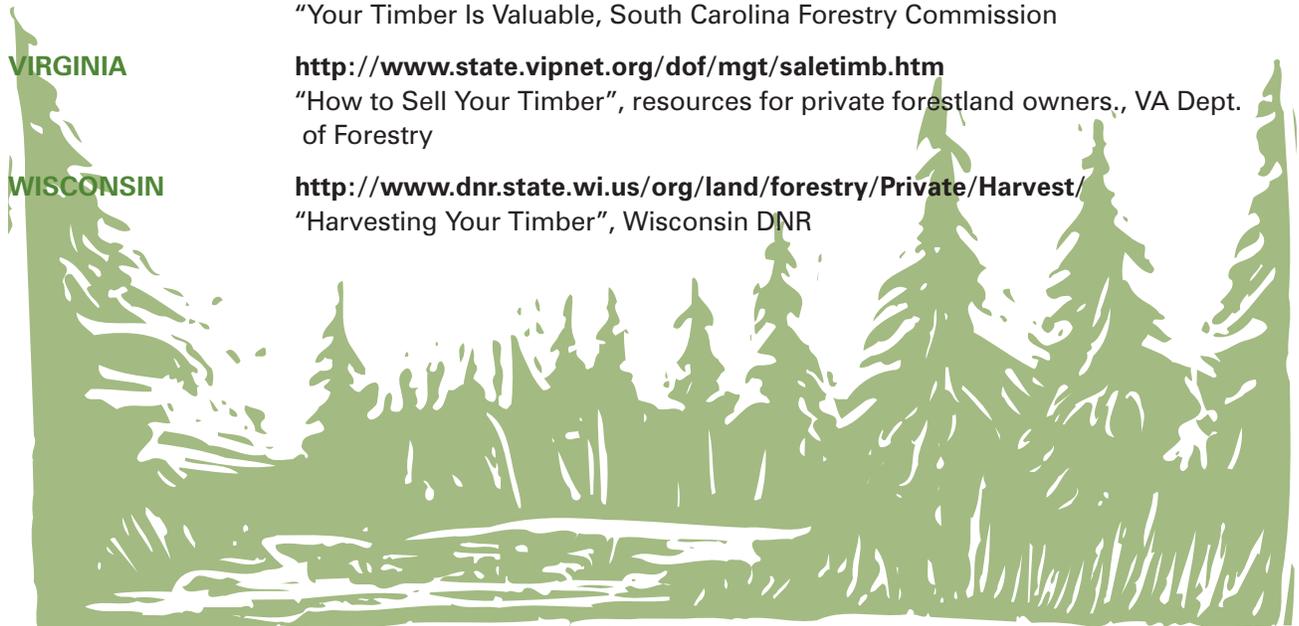
INDIANA**<http://www.state.in.us/dnr/forestry/lfb/lfb.htm>**

"Indiana Licensed Forest Buyers Program", DNR Division of Forestry

<http://www.fnr.purdue.edu/inwood/past%20issues/timberth.htm>

"Timber Theft: A Solvable Crime", DNR Division of Law Enforcement

MAINE	http://www.ume.maine.edu/~woodlot/theft.htm#timber "theft and Damage", University of Maine
MASSACHUSETTES	http://www.daviesand.com/Services/Timber_Sales/Timber_Scams/index.html Timber Scams
MINNESOTA	http://www.revisor.leg.state.mn.us/stats/90/301.html MN Statutes on Timber Trespass
MISSISSIPPI	http://www.mdac.state.ms.us/Library/BBC/AgTheft/Duties.html Agricultural Theft Bureau, "Duties"
NEW HAMPSHIRE	http://www.nhdfi.com/protection_bureau/fp_timber_harvest_laws.htm "Timber Harvesting Laws", New Hampshire Division of Forests and Lands
NEW YORK	http://www.state.sc.us/forest/timberval.htm Timber theft issues from the New York State Division of Environmental Conservation http://www.dnr.cornell.edu/ext/forestrypage/publications%20&%20articles/proceedings/timber_theft_bobseine.htm Law Enforcement of Timber Theft
NORTH CAROLINA	http://www.ces.ncsu.edu/nreos/forest/woodland/won-19.html North Carolina State's Woodland Owner article, "Before You Sell Your Timber"
TENNESSEE	http://www.state.tn.us/agriculture/forestry/lit/30.pdf "Security" issues for private forestlands, Tennessee Dept of Agriculture, Division of Forestry
TEXAS	http://txforestservation.tamu.edu/landowner%5Fassistance/timber%5Ftheft.html Texas Forest Service
UTAH	http://extension.usu/publica/news/aska/jul2400.htm "How Can I Prevent Timber Theft On My Forest Property?", Utah State University Extension
SOUTH CAROLINA	http://www.state.sc.us/forest/timberval.htm "Your Timber Is Valuable, South Carolina Forestry Commission
VIRGINIA	http://www.state.vipnet.org/dof/mgt/saletimb.htm "How to Sell Your Timber", resources for private forestland owners., VA Dept. of Forestry
WISCONSIN	http://www.dnr.state.wi.us/org/land/forestry/Private/Harvest/ "Harvesting Your Timber", Wisconsin DNR



Keeping It Confidential: Protecting the “Source” & Using the Information

Whistleblowers as Sources of Information

We here at GAP are repeatedly asked by Forest Activists across the U.S. one question - “How can I use information given to me by that someone who works for the Forest Service, without revealing them or exposing my source?” This question arises when a government employee witnesses “wrongdoing” on the job and/or shares information with someone on the outside. For Forest Service employees, or BLM, U.S. Fish & Wildlife, or any other federal agency employee, this very act of confiding in someone outside of government qualifies them as a “whistleblower”. The only qualification is that the employee must reasonably believe that it is evidence of illegality, gross waste, gross mismanagement, abuse of power, or substantial and specific danger to public health or safety.

Whether the employee shares documents, a concern, or tells of finding a certain species of plant/animal within a proposed timber sale area, this act is “whistleblowing.” Like it or not, they have intentionally or unintentionally gained “whistleblower” status. Being a whistleblower doesn’t always mean that their face is going to be on the evening news. What it does mean is that once they have expressed their concerns (made a “disclosure”) with someone on the outside, the whistleblower has likely triggered legal status under the Whistleblower Protection Act (WPA). The WPA provides them protection from reprisals, if their disclosures become known to their colleagues and supervisors. Reprisals can include retaliatory investigations, harassment, demotion, or intimidation. The best prevention against reprisal is to protect the “source” of the disclosure as best as possible. The following are a few points which may assist in achieving that goal.

Tip #1—“No Comment”

Forest Activists can use any information given to them without having to reveal the source’s identity. You may be concerned that someone at the Forest Service, or another agency, may ask you, “Where did you get this information?” You are not legally required to answer this question unless you are asked it while under oath. Until such time, you may respond that you are not willing to share that information. It is best not to invoke this type of question in the first place. Consider using some of the tactics described below to deflect suspicion.

Tip #2—Keep Quiet!

The nature of the type of information or disclosure should be closely held. You should not tell others in your organization all the details!! The fewer the people who know, the less likely it is your whistleblower will be revealed. Yet, It is possible to “use” the information without revealing the extent of your knowledge (or suspicions) immediately. See the other tips below. If your source is suspected to be a whistleblower by his/her colleagues, they will be cut out of the internal information flow at their office. If they are exposed, your source of information dries up! Insure your access to continuing information - keep quiet and find other ways to substantiate your whistleblower’s claims.

Tip #3—Get the Information Yourself

If time allows, ask for documents or a confirmation (independent corroboration) from others in the same office. If possible, write a FOIA request for information that would generally fall under the issue. Create a smoke screen that effectively disguises what you are really searching for—ask more than the question relating to your whistleblower’s disclosure, the more questions on more issues, the more difficult it will be to identify exactly what you are searching for in the first place (and who might have talked to you about it). For example, if you suspect that certain species survey information was not being done appropriately, FOIA the survey records and try to develop your own evidence from them. The better you can do at deflecting the attention from the whistleblower, the better off they will be in the short term.

Tip #4—Smoke screens and Other Alternatives

Ask lots of questions, get independent corroboration of evidence (ask yourself who else works on the same issue and could be questioned about this new information). Don’t be ask questions that may give away what

you suspect to be true. Take your time, question other issues along with the one you are after. Request, or FOIA, for additional records beyond those that are your primary target.

Tip #5—A Confidential Source

A whistleblower can protect their “confidentiality” by sharing their concerns with an attorney first. At GAP, we speak daily with whistleblowers from throughout government and industry. Frequently, they share with us information and documents. This material, as well as all conversations, are covered under what is commonly known as “attorney/client privilege”. That means that GAP can not legally be required to “reveal” our source. As a nonprofit, public interest law firm, GAP’s conversations with whistleblowers, and others, can be viewed as confidential. If a whistleblower gives their permission, we can share the information or documents with others, without having to jeopardize the whistleblower’s identity. Other attorneys can also provide this service if they counsel a whistleblower. Be sure to use an attorney experienced with whistleblower law. See Tip #7, too.

Tip #6—Document, Document, Document!

If you are working on an issue of concern, you MUST keep a daily journal. In this journal, you should make note of who provides you with information, what the information consists of, and the date and time of the conversation. In GAP’s book *The Whistleblower’s Survival Guide* we strongly recommend that this be done by each person considering becoming a whistleblower. It may seem like a burden, but it is an invaluable investment in your success and in your whistleblower’s professional survival. This journal becomes legal evidence of the time line and record of disclosures. You, as well as your whistleblower source, should also write a “Memorandum for the Record” with the date, time, names, and content of each significant conversation or event. For example, if you have a meeting to share some of the information you have been given, you should make note of who attends, what was discussed, and the conclusions or actions taken. Once this has been done, make a copy, seal it in an envelope and mail it to yourself. Once it is sent through the mail and postmarked, store it in your files. It can later be used as evidence of the event.

Tip #7—Get Your Whistleblower Legal Representation!

All too frequently, whistleblowers contact GAP when they are at the point of losing their job or their sanity. As described above, one becomes a “whistleblower” when the first disclosure is made. Usually this is well in advance of any negative personnel action, retaliation, or threat to their job security. The earlier the whistleblower, and their friends, understand their rights under the law, the easier it will be to protect those who speak out! Visit our website, www.whistleblower.org, for more information, to order a copy of *Survival Tips for Whistleblowers*, or our book *The Whistleblower’s Survival Guide*. Until then, call the Forest Program or the Whistleblower Hotline, 202-408-0034.

RECOGNIZING RETALIATION

From *“Recognizing Retaliation”*, from *Survival Tips for Whistleblowers*, published by GAP. The following are reprisal techniques used most often against whistleblowers.

- ▶ Spotlight the Whistleblowers—make them the issue, not their message
- ▶ Manufacture a Poor Record—brand them as a chronic problem
- ▶ Threaten Them into Silence—or forbid them from speaking out, gag them
- ▶ Isolate or Humiliate Them—separate them from their colleagues
- ▶ Set Them Up for Failure—strip them of their duties or give them duties they can not fulfill
- ▶ Prosecute Them—accuse them of “stealing” the evidence
- ▶ Eliminate Their Jobs or Paralyze Their Careers—lay them off, “reorganize” their job away, blacklist them

If you recognize a whistleblower undergoing any of these acts of retaliation, make sure they know they are not alone. Get them the legal assistance that they need and deserve.

Case Studies

Here are some highlights from selected timber theft investigations by the Forest Service, the Timber Theft Investigations Branch and its predecessor, the Timber Theft Task Force.

- ▶ In 1984, on the Payette National Forest in Idaho, a logger marked additional trees with paint, the loss was valued at \$35,000. On the Lassen National Forest, in California, trees were marked with illegal paint and logged after the timber sale was closed. Value over \$100,000. In the Olympic National Forest, in Washington, log load tickets were reused and trees were marked as originating from a lower cost timber sale. Value over \$200,000.
- ▶ In 1985, on the Daniel Boone National Forest, undesignated trees were cut and not paid. These trees were not authorized for cutting on this sale. Value \$80,000.
- ▶ In 1986, The Rogue River National Forest, in southern Oregon, had timber sales where the boundaries were removed, the loss of trees was valued at \$250,000. Also in 1986, on the Winema & Fremont National Forests there were cases of log scale manipulation, reused scale tickets, and brand swapping, valued at \$183,000.
- ▶ In 1987, on Pennsylvania's Allegheny National Forest additional trees were marked by the logger and boundaries were moved. Value \$16,000.
- ▶ In 1988, the Wenatchee National Forest in Washington had a similar problem of trees being marked and cut illegally. Value \$30,000. Also that year, in the forests of the Idaho Panhandle over 5000 trees were stolen, valued at \$127,000.
- ▶ In 1989, on the Santa Fe National Forest there was another case of scaling fraud resulting in \$30,000 in losses. On the Rogue River National Forest of Oregon, again a logger moved boundaries and marked trees illegally. Value \$500,000.
- ▶ In 1990, on Wisconsin's Nicolet National Forest, illegally harvested trees were cut and the perpetrators extradited from Canada. Value \$ 76,000.

These early timber theft cases are documented in the Forest Service video, "Timber Theft" produced in the early 1990s.

- ▶ In 1990, over \$2million in theft was documented from 10 government timber sales. The Layton and Bartlett Logging Co., Inc. was found guilty of this theft from the Deschutes NF near Bend, Oregon.
- ▶ In 1993, the largest timber theft prosecution in US history took place. Bugaboo Timber Co in Mill City, OR, and its affiliates, Northwest Wood Products, Inc., and Young and Morgan Inc., agreed to pay a \$1.7 million fine in a case of alleged scaling fraud. The Government agreed not to continue to pursue any further criminal charges. Also involved was Paul Knapp, a Columbia River Scaling Bureau Co. employee. Knapp was convicted of scaling fraud and received an 18 month sentence. It was revealed that the company's employees decided to value high-quality logs as worthless. The total amount of fines and penalties collected in this case was \$3.2 million.

Since this time, cases of timber theft pursued by the Forest Service have been very different. Since 1995, no criminal case over \$50,000 has been reported. The closest one is size is a \$590,000 case on the Beaverhead National Forest where over 29,000 additional trees were reportedly cut by the now-bankrupt Darby Lumber Company. This case is different in that the \$590,000 has only been billed to the company, there are no accompanying criminal charges of theft or fraud. As one of Darby Lumber's many creditors, the Forest Service has little chance of collection.

The Government Accountability Project has requested reports of all criminal timber theft investigations by the Forest Service, dating back to 1995. Predominantly are cases of individual tree theft, "tree poaching", or

intrusion onto National Forest lands by timber sales on private property. Several of these cases have been significant and individuals have received the most lengthy jail sentences to date.

- ▶ For example, in 1998, Jimmie Ray Derington was sentenced to pay \$309,140 in restitution and serve 33 months in prison. He was convicted of stealing from the Sequoia National Forest. Derington took 180 trees over the course of two years. Another accused tree poacher was acquitted after the witness committed perjury on the stand. This logger's defense - "too stupid to know better."
- ▶ In 2000, an Talladega National Forest (Alabama) timber sale administrator had the timber theft case against him thrown out for failure to prove "criminal intent." He had been indicted on six felony counts, including the unlawful removal of trees and failure to enforce the timber sale contract. The initial charges included the unauthorized removal of over 16,000 trees valued at \$285,000. The loggers have since paid the government over \$97,000. The defense argued the sale administrator was ignorant of some of the contract provisions.

For a regional summary of timber theft cases contact the Forest Program at the Government Accountability Project.