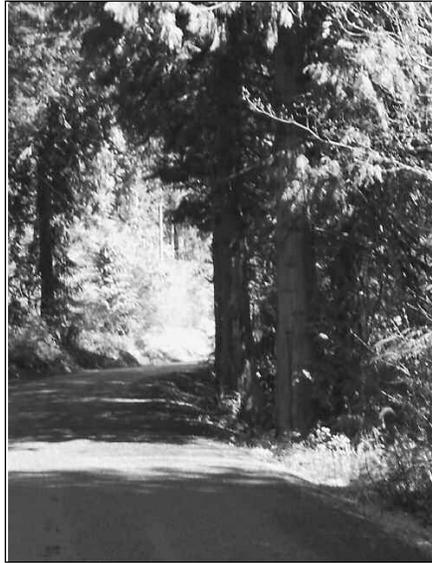


## *When the Road Department is Your Neighbor*

**DAN GREEN, COUNTY FORESTER**

It is very common that one or more of the sides of a forest property might be a public road. And it is very common to be confused about the ownership of the trees next to that road. The answer is pretty simple. If the road is a county road or a city street, the neighboring landowner owns the trees. He or she can cut them, plant them, prune them or do any other thing to them so long as it does not interfere with the road. Further, if the tree is hazardous, the landowner has the full liability for it.

The public agency has the right to have a road in the right-of-way and to do anything necessary to maintain that road. They can prune the trees, cut up trees that fall across the road or even cut down trees if necessary to maintain the road. But the wood from the cut or fallen tree is yours. Normally the road department will ask the land owner if they want the trees that have been cut and will set them off the roadway for the landowner. Or, if the landowner does not want the trees, the road department will take them. If the logs are big enough for sawlogs, the road department may cut them to log lengths. But in a busy time, like after a storm, they may just get cut into sizes the road department can move. If they are interfering with the road, the road department has no



*Whose tree is this?*

obligation to buck them into sawlog lengths.

Utility companies operate under much the same rules as county roads. They can prune your trees in the right-of-way if needed to maintain the lines but they don't own the trees.

State and federal highways are often different. In most of those cases, the government actually owns the land under the road. They have all of the rights of a landowner, including the ownership of what grows on the land. You have no more rights to those trees than you have to any other neighbor's trees—essentially zero.

If a tree from your property falls onto a road or, for that matter, on to

any neighboring property, it is still yours. You have the right to remove it, maybe even the obligation. If it falls on to a neighbor's property, you do not have the right to trespass on the neighbor in order to remove the tree. If the neighbor does not give you permission to enter his property, you must stay on your property and drag the tree back on your land.

And while we are on the subject of trees falling on to the neighbor's land, let's look at the law surrounding that. Unless a tree has been recognized as hazardous, it is considered to be an act of God if it blows over or falls due to a natural cause. So if my perfectly healthy tree falls over on my neighbor's house, he or his insurance company has to pay the bill. But if he came to me sometime before it fell and said, "I think that tree is hazardous", then it may very well be my liability if I ignored his concern. I am no lawyer but the phrase I have heard says if you "knew or should have known" that the tree was hazardous, you have full liability if the tree fails because of the hazardous condition.

An example would be that the tree on my property line is rotten and my neighbor and I have discussed it. If it breaks off where it is rotten and falls on the neighbor's house, probably I will have to pay the bill. But if a landslide comes down the hill and knocks over the tree into my neighbor's house, the damage is not a result of the tree being rotten so that hazard does not play into liability for damage to the house.

And to get us back where we started, if that landslide and your tree wound up on a public road, it is still your tree. The road department can cut it up into small chunks to get it out of the way but the chunks are yours. And if you get there in time, you can probably get it cut into logs and set by the side of the road for you to pick up. ■