



JUSTICES BACK FORESTRY OFFICIALS IN TAX FIGHT WITH TIMBER COMPANY

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Weyerhaeuser lost a case before the Vermont Supreme Court that justices said could cost the company more than \$1 million because loggers cut more timber than allowed under the state's current use program.

The program grants tax breaks meant to discourage development of forests and farmland.

Plum Creek Maine Timberlands brought the case after it lost its eligibility under the program for 56,600 acres in Caledonia and Essex counties. Weyerhaeuser has since purchased Plum Creek Maine Timberlands.

In a split [decision](#) Sept. 16, the state Supreme Court overturned a 2014 Essex Superior Court ruling that left the land in the current use program against the recommendation of the Department of Forests, Parks and Recreation. Justices John Dooley and Marilyn Skoglund dissented.

"You cannot enroll for current use, pay less in taxes, and then disregard the harvest prescription approved in the plan," Attorney General William Sorrell said in a statement. "Plum Creek did not comply with its plan, and the Vermont Supreme Court was correct to reinstate the department's finding and uphold the department's standards."

To be eligible for the current use program, owners of timberlands must follow long-term management practices as described in a forest management plan. The justices agreed with the forests and parks department that Plum Creek failed to follow its plan.

State and county foresters found that loggers cut hundreds of acres to less than half the density allowed. Some described it as essentially a clear-cut.

State officials say the ruling didn't break new ground but upheld a precedent that gives substantial deference to state agencies' methods of carrying out legislative demands.



Michael Snyder is commissioner of the Department of Forests, Parks and Recreation. File photo by John Herrick/VTDigger

The department established a method of measuring the density of logged land, and the Supreme Court merely upheld that method since it hasn't been found improper, said Commissioner Michael Snyder.

The standard for density hinges on "residual basal area," a term denoting the area of the cross-section of remaining trees left on an acre of logged land.

The case turned on whether the amount of logging should be measured according to the density of trees averaged out over the entire parcel or only over the portion on which trees were felled.

The timber company argued that, when foresters considered not only the cut acreage but the uncut portion of affected stands as well, the resulting average complied with its management plan.

The department of forestry argued that its own standards call for residual basal area to be measured using only cut acreage. The rationale lies in the term's name, Snyder said.

The word "residual" refers to timber that remains after a logging operation, Snyder said. Timber can't be residual if no logging has taken place on a piece of land, he said.

"It can't be where they didn't cut, because that's what 'residual' means, so it has to be in the cut area, and they overcut," Snyder said.

He said the ruling affirms the fact that "lower courts need to listen to the agency" unless a state agency's standards prove obviously improper.

Weyerhaeuser attorneys sought to limit the penalty to the affected stands of trees, covering around 470 acres, but the high court has sent the penalty portion of the case back to Essex Superior Court.

The Department of Forests, Parks and Recreation had recommended, when the case first came before Essex Superior Court, that all 56,604 acres in the affected current use plot be removed from the program. That would mean all those acres would be taxed as any other property — a change that justices noted in their decision could represent "well in excess of \$1 million."

Foresters in the case identified a variety of other failures to adhere to proper forest management practices, including instances where loggers put machinery too close to water sources and created improper stream crossings, and where erosion resulted from other impermissible stream crossings.

A Weyerhaeuser representative said the company isn't pleased with the ruling and is considering what options remain.

"While we respect the court's decision, we are disappointed in the ruling," said Mark Doty, Weyerhaeuser's Northeast government relations manager, in a statement. "Certainly, this is a complicated matter with far-reaching impacts, and we now need to carefully review the decision and consider options and next steps."