

Policy and Procedure 7-3

Rural Forestry Laws

Issued By: Robert W. Farrell, State Forester

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Codes/Mandates: Code of Virginia: [§10.1-1162-1169](#) - Seed Tree Law

References: Virginia Tech Extension Publication "[Guide to Threatened and Endangered Species on Private Land in Virginia](#)
[DCR Division of Natural Heritage](#) – Data Explorer
[Department of Wildlife Resources](#) – Fish and Wildlife Information Service (FWIS)

Forms: Form 74A Alternate Management Plan (AMP)
Form 74B Alternate Management Plan Supplement Form (Transfer) (AMP)
Form 18.2 Harvest Inspection

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PURPOSE

To ensure adherence to and enforcement of the Seed Tree Law and the Endangered Species Act. Providing guidance to VDOF employees if summoned as forestry experts in court proceedings.

POLICY

It is the policy of Virginia Department of Forestry to enforce the Seed Tree Law and the Endangered Species Act.

DEFINITIONS

“Agency” and “VDOF” means the Virginia Department of Forestry.

“Commonwealth” means the Commonwealth of Virginia.

PROCEDURES

Endangered Species

- ◆ The Endangered Species Act, Section 7, “...prohibits a federal agency (Federal programs implied) from authorizing, funding or carrying out any action unless it can ensure that the action is not likely to jeopardize the continued existence of any listed species.”
- ◆ Threatened and endangered plants and insects are property of the landowner. The Virginia Department of Forestry shall cooperate with efforts aimed at protection, but the landowner makes the final decisions. Threatened and endangered animals belong to the state; the landowner is legally obligated to follow established guidelines regarding protection.
- ◆ If VDOF personnel anticipate involvement with threatened or endangered species, landowners requesting assistance will be notified of the Department's responsibility to cooperate with agencies involved.
- ◆ Foresters shall not approve any federal cost share if the action will jeopardize threatened or endangered species or historic sites. State cost-share projects should follow the same guidelines.
- ◆ Foresters' recommendations in any plan should not knowingly jeopardize any listed species or sites. Suspected endangered or threatened species should be verified before completion of management recommendations. VDOF will consider only those on “official lists” (i.e. those backed by law).
- ◆ See Policy and Procedure 7.1 Forest Management Planning for additional information.

Seed Tree Law

- ◆ VDOF field personnel will identify areas to be harvested, or which have been harvested that are subject to the Seed Tree Law through a field visit.
- ◆ The criteria are areas at least 10 acres or more where loblolly or white pine constitute 25% or more of the live trees.
- ◆ This will be documented by checking the box on Form 18.2 Harvest Inspection for active harvesting operations.
- ◆ Communication with the landowner, logger or timber buyer is very important and should be done early in the process. Through this communication, VDOF should inform them of the law, its requirements and options. This is an appropriate time to offer VDOF assistance in making an informed decision on management of the property to meet objectives and the law.
- ◆ VDOF can offer assistance with planning, reforestation and VDOF or contractor services.

Applies to:

- ◆ Any landowner who cuts, timber cutters or timber owners at time of cutting.
- ◆ Areas of at least 10 acres or more.
- ◆ Areas where loblolly or white pine constitute 25% or more of the live trees.
- ◆ Eight seed trees per acre must be left that are at least 14 inches in diameter or sixteen seed trees per acre must be left if there are no 14 inch trees present in the stand.

Exemptions if:

- ◆ There are 400 or more seedlings per acre four feet or taller at completion of the cutting
- ◆ The land is cleared for agriculture within one year of the cutting
- ◆ The land is subdivided for sale or building sites cleared within two years of the cutting
- ◆ The land has been zoned for a purpose other than agriculture or forest use
- ◆ The land has an approved planting plan, cutting plan or management plan for the conservation of natural resources.
- ◆ The landowner wishes to grow hardwoods; VDOF may place conditions on this exemption.

Seed Tree Removal within Three Years after Cutting

Where seed trees are left standing and when the natural regeneration on the area reaches the size and number that meets the requirements (400 or more pine seedlings, four feet or more in height [§10.1-1163](#)), the seed trees may be removed.

The State Forester will approve cutting seed trees, before the expiration of the three-year period, when the area from which they will be cut conforms to the provisions of [§10.1-1163](#), provided the landowner makes a request to the VDOF to cut these trees. The request can be granted only after a representative of the VDOF inspects the tract and finds that the specifications set forth in the [§10.1-1163](#) exist (i.e. 400 or more pine seedlings, four feet or more in height).

Clarification of "subdivisions" and "building sites"

Section [10.1-1163B](#) of the Virginia Code states "This Article shall not apply to any person who clears. . . his land for . . . the purpose of subdividing such land for sale for buildings sites." It also states that: "In the case of clearing for building sites, evidence of intent shall be the construction of dwellings or other bona fide structure in progress or completed within two years from the date of completion of commercial cutting."

Subdivisions

- ◆ Properties to be subdivided for the purpose of creating residential dwelling lots are subject to the subdivision ordinance of the county or municipality wherein the land is located. Accordingly, a subdivision is legally established only after it has been submitted to and approved by the local governing body and the approved plat of the subdivision has been recorded by the Clerk of the Court. The recordation signifies that the subdivision meets all county requirements concerning zoning, percolation tests, flood plain setback, county engineering department and/or VDOT requirements for roads and any other subdivision ordinance requirements. ([Article 6, Section 15.2-2240](#)). Only when this process is complete is a subdivision legally established.
- ◆ Evidence of intent to convert land subject to the seed tree law to a subdivision will be a recorded plat signifying completion of the subdivision process defined above.

Building Sites

- ◆ An area up to five (5) acres of unimproved land will be allowed as a building site for each lot in a subdivision. The area required for house, yard, garden and for public or private road(s) needed to access the lots will also be defined as a building site. However, enforcement will extend only to lots with more than ten (10) acres of residual area after the allowance for a building site is subtracted. (A total of up to 15 acres; 5 acres for the house site and 10 acres cutover but not cleared or reforested could potentially be exempted on a given lot). This exemption only applies in a legal subdivision. Single lots which are not part of a subdivision remain subject to the Seed Tree Law, unless the land is zoned to a use more intensive than agriculture or forestry.

Plan in lieu of leaving seed trees

[§10.1-1163D](#). "The provisions of this article shall not apply to any acre or acres of forest land for which a planting, cutting or management plan has been prepared, designed to provide conservation of natural resources, and which plan has been submitted to and approved by the State Forester previous to the cutting of any trees..."

This plan can be an Alternate Management Plan, as described in Policy and Procedures 7.1 Forest Management Planning, a VDOF-approved practice plan associated with a federal, state or private supported regeneration project or other types of written regeneration plans.

A blanket Alternate Management Plan (AMP) may be approved for forest industries or large private holdings by applying to the State Forester through the Forest Resource Management Branch. The holder of a blanket AMP shall inform the regional forester concerned and provide a sketch map and management practices planned for those tracts before harvesting. (See Policy and Procedures 7.1 Forest Management Planning)

Regeneration Success Metric

The minimum stocking requirement to comply with the law are 200 +- 50 white pine or 250 +-50 loblolly pine well-distributed, free-to-grow seedlings per acre following planting, direct seeding and/or natural seeding. Where minimum requirements are not met, the owner will be advised in writing of additional practices needed to fulfill the obligations of the law.

Species Other Than Pine

There are cases where landowner objectives or sound silvicultural practices dictate species other than pine. In those cases, where the soil and site can support commercial growth of a designated species and that species has a reasonable chance of success in reaching a commercial product, then substituting that species(s) for pine will be considered under an Alternate Management Plan or approved regeneration plan. The forester must obtain approval from the deputy regional forester for this option.

Salvage of Pine Timber Damaged by Insects or Disease

The Code of Virginia does not permit the State Forester to exempt anyone from the provisions of the Seed Tree Law. It is, however, recognized that prompt salvage operations will sometimes offer protection to surrounding forest stands. Salvage or control harvesting will be allowed on areas up to ten (10) acres in size without leaving seed trees if it is deemed that such prompt action will offer a reasonable chance of preventing further spread of the forest pest. This latitude is not to be used in multiple 10-acre blocks within the same forest stand. In such cases, the Seed Tree Act provisions apply.

On areas where the trees are less than six (6) inches in stump diameter and areas where all the commercial pine trees are infested or have been killed by the southern pine beetle, would not come under the Seed Tree Law. The law does not apply to areas with immature trees without cones.

Seed Tree Law Enforcement

Communication with the landowner, logger or timber buyer is essential to determine their intentions and inform them of the law, exceptions and alternatives. If a responsible party chose not to follow the law, the VDOF may initiate law enforcement action.

- ◆ Written communication is necessary prior to beginning legal action.
- ◆ Only clear violations will be brought before the local court.
- ◆ In examining tracts, a conscientious effort must be made to base the inspection on the evidence as a whole and on the average acre. Single acres will not deliberately be selected as a violation where the adjoining acres conform to the Act, nor will a certain single favorable acre be selected as a basis for tract conformity, where the adjoining acres do not conform.
- ◆ Judgment, based on each individual case, will be exercised and the advice of the local Commonwealth's Attorney is a necessary starting place.
- ◆ Area personnel will record field inspection on the Form 18.2 Harvest Inspection.

Field Data Collection

Inspect the tract completely and select the area that will be considered for prosecution. After the area has been selected, carefully map the area. Mapping should be done with a GPS unit. Be sure the map is tied to a known, fixed reference point that can be located on the ground. The entire area in violation will be prosecuted.

Take a minimum of 5 random 1/50 acre plots (16 feet 7.2 inches radius) and record the following data:

- ◆ Establish by actual count the number of (1) loblolly and white pine; and (2) other commercial tree species in the stand before cutting. A "tree" is a stem of commercial species 6" or more in diameter outside bark at a point 10" above general ground level. Compute the percentage of pine on that plot.
- ◆ Establish by actual count the number of pine seedlings 4 feet and over in height.
- ◆ Tally the number of pine stumps 14 inches or more in diameter 10" above the ground in order to establish that trees of this diameter were (or were not) present.
- ◆ If none are found, measure and record the diameter at 10" above the ground of the sixteen largest pine trees or stumps found.
- ◆ Mark on the map to show if the sample plot is legal or illegal according to the data.
- ◆ From the center of each of the sample plots, determine the bearing and distance to any and all standing, live, legal seed trees, 14" plus on the tract. Show the location of each of these trees on the map. Make notes as to the cone bearing qualities of these trees. Seed trees under 14 inches are not legal unless they were "of the largest diameter present less than 14" in diameter.
- ◆ If the Commonwealth Attorney feels it is desirable to do a complete tally on one full acre, select this at random.
- ◆ Be sure all maps, tally sheets, etc. are accurate, complete and neat. **DO NOT COPY THESE OVER BEFORE GOING TO COURT--ALWAYS TAKE YOUR ORIGINAL WORK TO COURT AS EVIDENCE.**

Photos

Photographs may be helpful in court, but to be of greatest use be sure they are identified properly and show camera stations and compass directions of shot for each picture. Identification can be strengthened if the picture includes some person who will also be a witness or some known landmark to tie down the location from which it was taken. Keep full notes on photographs taken.

Evidence Preparation

In the collection of evidence, the regional forester or other investigating officer will have a helper along to record data and serve as an additional corroborative witness in court. Try to anticipate contentions that may be brought up by the defendant and look for evidence with which to refute them.

Preparation for Court

- ◆ Be sure the harvest inspection forms have been completed for each time the tract was visited and especially have an inspection form for a visit after cutting was completed noting the date.
- ◆ At some point, after discussion with the owner or timber cutter, when it is obvious the case will go to court, a letter documenting visits and conversations with the responsible party, along with the VDOF's intentions, will be mailed to that person by CERTIFIED Mail.
- ◆ VDOF personnel will review a copy of the timber sale contract to make sure of dates, restrictions, etc. if available.
- ◆ A complete set of notes and records of all attempts to resolve the case, tract checking, field data samplings, etc. will be documented in chronological order.
- ◆ Discuss the case with the Commonwealth's Attorney for his support and advice. His support is needed but we can present the case in court without him. Avoid being prosecutor and witness at the same time, if at all possible.
- ◆ Use photos to show general appearances of the tract at the time of field data collection. **SHOW LOCATION OF PHOTOS** on the field map.
- ◆ It will be necessary to prove that:
 - The defendant did "cut, permit to cut, or is responsible for cutting, actually cut, or procured another to cut," for commercial purposes, "the timber in question."
 - Who actually did the cutting.
 - When the cutting was completed and/or when the timber sales contract expired. (Often, outside witnesses can be helpful with this item.)

- The general location within the county where the cutting took place. (Show on a map)
- The area of alleged violation exceeds 10 acres.
- More than 25% of the living trees, 6" or more in diameter, 10" above the ground, were loblolly or white pine.
- There were less than 400 pine seedlings, four feet or more in height, on each acre of alleged violation.
- At least 8 pines, 14" or more in diameter, 10" above the ground, were present before cutting on each acre of the alleged violation; or lacking these, submit proof of the number and diameter of lesser trees which could have been left.

In Court

- ◆ BE NEAT AND WELL DRESSED - either in uniform or business clothes.
- ◆ Be guided by the advice of the Commonwealth's Attorney on the type and manner of your presentation.
- ◆ Stay with the facts as you know them. DO NOT OFFER AN OPINION and say "I don't know" rather than offering testimony that could be discredited.
- ◆ Don't go beyond what is necessary to respond to a question, especially from the defense attorney. If "yes" or "no" will answer the question, stop there.
- ◆ KNOW THE SEED TREE LAW WELL! Nothing will discredit VDOF personnel any quicker than failure to know a law they are charged to enforce.
- ◆ Commit your testimony to paper. Interruptions will often break your train of thought or prevent making a significant point. If the statement is written, these things can be avoided.
- ◆ Don't refer to the tract as a "violation" - that is for the court to decide. Until a decision is made, it is an alleged violation.
- ◆ Stay calm. Look at the judge/jury when talking and state facts clearly and loud enough to be heard.

After Court

If a bond is required, the defendant's check will be obtained from the Clerk of the Court and forwarded to, Finance Office at VDOF Headquarters. If the owner plants the tract, the bond will be released after the project is completed and Headquarters Office is notified by the Regional Office. If VDOF reforests the tract, accurate cost data must be kept and forwarded to Headquarters Office. Any unexpended portion of the bond will be returned to the defendant.

Forward copies of all field data, photos to the Forest Resource Management Branch.

Testimony as Forestry Experts

Department of Forestry personnel often are looked upon as authorities or experts in all matters about the forests and asked to serve as a witness in lawsuits involving forest fire damage to timber, timber trespass, right of way valuation, real estate valuation or state-owned timberland. As employees of the Commonwealth, VDOF is obligated to represent all citizens and not appear in court as a voluntary witness for any one person or group against another. If served a legal subpoena and ordered by a Judge of Court of competent jurisdiction to give testimony in court proceedings, the employee will comply.

Testifying as Forestry Experts in Lawsuits

- ◆ No individual, with or without forestry training, can accurately assess fire damage or place values on timber without an extensive, detailed survey or investigation to determine the physical facts. Only licensed realtors legally may set land values. Virginia Department of Forestry employees cannot appear in such cases as a private individual, without such appearance being construed to be official with consequent misunderstanding.
- ◆ Virginia Department of Forestry personnel will not voluntarily appear in court to act as an expert witness in matters involving forest fire damage, timber trespass, right of way valuation or real estate appraisal of timber or timberland. If summoned, the employee shall state the facts as known, emphasize that many factors enter into timber damage assessment or valuation and that any estimate would be purely a matter of opinion and subject

to wide error unless based on adequate investigation and analysis. A consulting forester or licensed real estate broker can best handle these matters.

Condemnation Proceedings

- ◆ Virginia Department of Forestry employees will not voluntarily give testimony in condemnation and similar court proceedings or make appraisals. If subpoenaed, the employee shall testify concerning such cases as noted:
- ◆ Condemnation of land or property, except in a case where the employee is the bona fide property owner in part or in whole.
- ◆ Proceedings to decide damage of any type, except when damage concerns personal property of the employee.

AUTHORITY

This policy and procedure is issued by the Virginia state forester.

INTERPRETATION

The director of forest resource management and the deputy state forester are responsible for the interpretation of this policy and procedure.

APPROVAL

I certify that this policy and procedure is approved and ready for publication.

Dean Cumbia

Director of Forest Resource Management Name (Print)

Director of Forest Resource Management Signature

Ed Zimmer

Deputy State Forester Name (Print)

Deputy State Forester Signature