

ORS 526.332 provides for appeals of forestland classification to the circuit court within 30 days of filing of the written order discussed above. The Department of Forestry is not aware of any appeals of the Clatsop County Forestland Classification Committee order, timely or otherwise, that have been filed with the court. Neither the State Forester nor a county assessor is authorized to change the classification of forestland applied to a parcel of land, except under narrow circumstances found in OAR 629-045-0055(2).

The State Forester may classify forestlands under ORS 526.340 and OAR 629-045-0060 if a county fails to appoint a committee or the committee fails to act or act in accordance with applicable law, but there does not appear to be any authority granted to the State Forester or the Board by the Legislature to override the determinations of a forestland classification committee.

Following the forestland classification committee's final determinations of forestland in Clatsop County, personnel of the Astoria District compared the classified forestland against the existing forest patrol assessment roll and the district boundary. Within the district boundary, most forestlands in the county were affirmed as already being properly assessed. The committee determined that approximately 600 lots were no longer forestland and removed from the assessment roll. The committee also determined that an additional 4,750 lots are considered forestland and should be added to the assessment roll. These lots consist mostly of smaller parcels that had been subdivided from lots that had previously been assessed, but were not added to the roll at the time of subdivision.

The definition of "Forestland" is found in ORS 526.005(6)(a): "*Forestland*" means any woodland, brushland, timberland, grazing land or clearing that, during any time of the year, contains enough forest growth, slashing or vegetation to constitute, in the judgment of the forester, a fire hazard, regardless of how the land is zoned or taxed. This definition is very broad and is meant to be inclusive of lands regardless of how the zoned, taxed, or defined in a land use plan.

Addition of several or even hundreds of parcels to the assessment roll does not increase the overall amount of revenue collected for support of the forest protection district budget unless additional resources are required to provide an adequate level of protection. Annually, the local budget advisory committee recommends a budget that estimates the actual cost of protection for the upcoming fiscal year, and then calculates (taking into account the number of minimum lots) the rate per acre that will be assessed to recover those costs. For the same protection budget, the more acres that are properly assessed, the lower the rate, but the same amount of revenue is collected. If the actual costs for fire protection for a given year are less than budgeted, the surplus is carried forward as a credit, which usually lowers the rate the following year if projected costs otherwise remain the same.

Though the State Forester is clearly providing a service to assessment payers when protecting their forestlands from fire, that service is not solely intended to benefit the individual forestland owner's property. Under long established Oregon law, uncontrolled fire is "declared a public nuisance by reason of its menace to life, forest resources or property." (ORS 477.064) Accordingly, under ORS 477.066 and 477.210, each owner of forestland owes a duty to provide adequate protection against the starting or spread of fire on or from their property. Though a given individual may not mind if their property might burn, Oregon law requires that they protect their neighbors from the nuisance of fire spreading to the neighbors' property. If an owner does not provide protection by following a plan approved by the Board

of Forestry, or through membership in a forest protective association, pursuant to ORS 477.210(4), the State Forester must provide protection and the owner must be assessed their share of the actual costs of that protection under ORS 477.270.

Findings of Fact

The State Board of Forestry finds:

1. Dale Edwards is the owner of Tax Lot #71021A001900 in Clatsop County as shown in the records of the Clatsop County Assessor.
2. The Clatsop County Forestland Classification Committee classified Tax Lot Number #71021A001900 as Class 1 Forestland in its final order, as filed with the County Clerk on July 8, 2016.
3. The Department of Forestry is not aware of any appeals of the Clatsop County Forestland Classification Committee final order, timely or otherwise, that have been filed with the court.
4. The Department of Forestry believes that the Clatsop County Forestland Classification Committee classified Tax Lot #71021A001900 in a manner consistent with law, and therefore the State Forester does not have authority to override the Committee's determination that Tax Lot #71021A001900 is "forestland".
6. Once Tax Lot#71021A001900 was classified as forestland, the State Forester is obligated to ensure that the land has adequate protection from fire. Pursuant to ORS 477.210, Dale Edwards may provide adequate protection from fire by filing a bona fide forest protection plan with the Board or by becoming a member in good standing with a forest protective association.
7. Dale Edwards has not provided a bona fide forest protection plan approved by the Board.
8. Dale Edwards is not a member in good standing with a forest protective association. Tax Lot #71021A001900 in Clatsop County is within the boundary of the Northwest Oregon Forest Protection District. The only forest protective association operating in that District with an approved forest protection plan, through a cooperative agreement with the State Forester, is the Northwest Oregon Forest Protective Association. Mr. Dale Edwards is not a member of that association.
9. Since Tax Lot #71021A001900 is not adequately protected by a bona fide forest protection plan or membership with a forest protective association, the State Forester, under direction from the Board, is obligated to provide forest protection pursuant to ORS 477.205 to 477.281.
10. Costs for fire protection of Tax Lot #71021A001900 provided by the State Forester are apportioned among all forestland at a pro rata cost per acre, pursuant to ORS 477.230, or at a minimum assessment under ORS 477.295.
11. The State Forester notified Dale Edwards of the proposed addition of Tax Lot #71021A001900 to the forest protection assessment roll in Clatsop County, as required by ORS 477.250. The notice correctly referenced Mr. Dale Edwards with correct acreage.

12. Dale Edwards requested a hearing regarding the assessment, pursuant to OAR 629-041-0035. That rule allows for a hearing by the Board pursuant to ORS 477.260(2) “on any subject pertaining to the activities of the forester or board affecting the land.” Any dispute about the classification of forestland is beyond the scope of this hearing request.

13. The State Forester contacted Dale Edwards to address the concerns raised in the hearing request, but they were unable to reach an agreement. Dale Edwards does not believe that the land would be considered a threat to wildfire. Never-the-less, the the State Forester is obligated to protect forestland under ORS 477.210.

Conclusions of Law

ORS 477.210 requires the State Forester to provide fire protection to the forestland owned by Dale Edwards in Clatsop County and the County Assessor must collect the cost of that protection under ORS 477.270.

Ultimate Conclusion

The Board of Forestry affirms the determination of the State Forester that Tax Lot #71021A001900 in Clatsop County, owned by Dale Edwards shall be added to the Clatsop County forest patrol assessment roll and be assessed annually for the costs of forest fire protection under applicable laws.

Appeal Rights

You have the right to seek judicial review of this Order by filing a petition in Circuit Court pursuant to ORS 183.484. To seek judicial review, you must file a petition with the Marion County Circuit Court, or the circuit court for the county in which you reside or have a principal business office, within 60 days from the day this Order was served on you. If this Order was personally delivered to you, the date of service is the day you received the Order. If this Order was mailed to you, the date of service is the day it was *mailed*, not the day you received it. The petition shall state the nature of your interest, the facts showing how you are adversely affected or aggrieved by the agency order and the ground or grounds upon which you contend the order should be reversed or remanded. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

Dated this 7th day of June, 2017,

Thomas J. Imeson, Chair

Oregon Board of Forestry