

Agenda Item No.:	6
Work Plan:	Fire Protection Work Plan
Topic:	Ongoing Topic; Forest Patrol Assessment Hearings
Presentation Title:	Requests for Hearings Before the Board and Proposed Final Orders
Date of Presentation:	June 7, 2017
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SUMMARY

The purpose of this agenda item is to address requests for a hearing under ORS 477.260(2) and OAR 629-041-0035(4) by landowners in Clatsop and Crook counties regarding the addition of certain properties to the forest patrol assessment roll. This staff report informs the Board of the process undertaken thus far, describes the issues raised by the forestland owners and proposes final resolutions of the matters. In addition, the Department requests that the Board hear briefly from the parties and then issue a final order that either revises or accepts the proposed final orders attached to this report.

CONTEXT

As required by ORS 477.250(2), written notices were sent by mail to specific landowners in Clatsop and Crook counties that they were going to be added to their respective county forest patrol assessment roll. The same law also requires that the notice inform the landowners of the procedures for appeals and hearings prescribed in ORS 477.205 to 477.281. Those procedures were included in the mailings.

The Department of Forestry (ODF) received objections to being added to the assessment roll from 32 landowners in Clatsop County and two landowners in Crook County. The Department, as required by OAR 629-041-0035, contacted the landowners and scheduled a time that the forester and landowner might further review the matter. The Department also participated in a Town Hall meeting in Clatsop County with Senator Betsy Johnson and Representative Deborah Boone. In addition, the Clatsop County Forestland Classification Committee met to review the parcels in question. The combinations of these discussions and efforts resulted in 20 tax lots removed from forestland classification in Clatsop County, and one landowner in each county deciding not to pursue the Hearing. The remaining 12 landowners' letters requesting the hearing are provided in Attachment 1.

BACKGROUND AND ANALYSIS

ORS 477.210(1) states that it is the responsibility of each owner of forestland to "provide adequate protection against the starting or spread of fire thereon or therefrom..." The same statute, in subsection (4), states that when a landowner fails to provide that protection, "...then the forester under the direction of the Board shall provide forest protection..."

The principal funding source provided by law for ODF's fire protection system is a pro rata acreage assessment against classified forestland within each forest protection district. The land

classifications are determined by a county forestland classification committee that examines and then classifies all forestland within a county and the forest protection district. The lands classified as “forestland,” if not otherwise protected by individual plan or membership in a forest protective association, are then included in the county forest patrol assessment roll and assessed their pro rata share of the district’s fire protection costs. The fire protection costs are collected by the county assessor in the same manner as ad valorem taxes.

Both of the County Forestland Classification Committees completed their work and filed their final order with their respective County Clerks. Any landowner who was aggrieved by the classification had the right to appeal the decision under ORS 526.332, by filing an appeal to circuit court within 30 days of the decision. There were no appeals of the forestland classification final orders.

As a result of the forestland classification final orders, properties that were newly classified as forestland and which were otherwise subject to the forest patrol assessment were added to the county forest patrol assessment roll in both counties. Written notices were mailed to each landowner notifying them of the addition and the process for appeals and hearings before the Board.

ODF received letters from the landowners stating concerns about being added to the forest patrol assessment roll. The landowners were first notified by letter that the Department received their objections. As required by OAR 629-041-0035, the Department contacted them to offer the opportunity to meet with Department personnel to “...further review the matter, if the owner so desires...” The Department was able to meet personally, or have discussions over the phone, and had contact by mail with the landowners.

During the discussions, most of the owners’ concerns were directed at the forestland classification process and not the assessment process. Many landowners expressed concern that they are already protected by a rural fire protection department and therefore did not need additional protection from the Department of Forestry. Other stated concerns were related to their property not being a threat from wildfire due to natural barriers to fire spread; low levels of burnable vegetation on their property; and others.

An explanation was provided by the Department, that the opportunity to appeal the Forestland Classification Committee’s determination of their land as “forestland” to the Circuit Court had already passed. Also, the County Forestland Classification Committee’s final orders could not be challenged under ORS 477.260 and OAR 629-041-0035. The other issues raised by the landowners concern disagreements with policy choices made by the legislature and are not appropriate bases for not including a property in the forest patrol assessment under current law.

Based on the language in ORS 477.260(2), landowners subject to ORS 477.205 to 477.281 may discuss at the hearing, “... any subject pertaining to the activities of the forester or board affecting the land.” In these specific hearings, the issue before the Board is the addition of tax lots to the forest patrol assessment roll, The Department outlined four issues of fact that went into the decision of whether to assess the properties in question. Those four items are:

1. Has the land been classified as forestland by a county classification committee?
2. Is the owner of the land correctly identified?

3. Are the acres and tax lot number correctly identified?
4. Has the owner provided protection through a plan approved by the Board on their own or through membership in a forest protective association?

The Department conducted the necessary research and review, and confirmed that the landowner's tax lots in question were properly assessed, they are the owners of the lots in question, the lands had been classified as "forestland" by the appropriate County Forestland Classification Committee, their names, tax lots and acreage were all correct as noted in the County Assessor's records, and none have a protection plan approved by the Board of Forestry, nor do they belong to a forest protective association.

As further described in the proposed orders (Attachments to this staff report), the Department has determined that the properties in question were properly assessed pursuant to the applicable law.

ALTERNATIVES CONSIDERED

Upon review of the letters from the landowners, additional testimony during the Board meeting, and the facts described above and presented in the proposed final orders (Attachment 2), the Board may:

1. Remand the matter to Department staff for further review on such issues as the Board specifies and to prepare revised proposed orders as appropriate;
2. Reject any or all of the proposed orders and direct the Department to prepare different final orders; or
3. Adopt one or more of the proposed orders as the Board's final orders.

RECOMMENDATION

The Department recommends that the Board adopt the proposed final orders as written for these landowners:

1. Mr. James Kordahl (Crook County)
2. Ms. Linntte Hellberg
3. Mr. Dale Edwards
4. Mr. Patrick Duhachek
5. Mr. James Hobby
6. Mr. Michael Gallegos
7. Lynn and Patti Knavel
8. Dale and Sheryl Barrett
9. Mr. Gary Phelan
10. Brian and Tressa Ratty
11. Mr. Michael Wammack
12. Mr. Nicholas Chavera

ATTACHMENTS

- (1) Letters Requesting Hearings From Landowners
- (2) Proposed Final Orders