

BEFORE THE OREGON BOARD OF FORESTRY

In the Matter of:)
)
)
Forest Patrol Assessment)
Owned by Steven & Diana Shefcheck Living Trust)
)
)
)

FINAL ORDER

Introduction

On February 22, 2018, Steven and Diana Shefcheck was sent a notice from the Department of Forestry as required by ORS 477.250(2), that property Mr. Shefcheck owns, Tax Lot Number 1625314300101 in Lane County, will be added to the forest patrol assessment roll beginning July 1, 2018. Along with that notice, Mr. Shefcheck was provided information regarding procedures for hearings and appeals prescribed in ORS 477.260(2). On March 20, 2018, Mr. Shefcheck timely requested a hearing by the Board of Forestry under ORS 477.260(2) and OAR 629-041-0035(4).

This is the Board of Forestry’s final order in this matter.

In his letter, Mr. Shefcheck asked for a hearing “...to appeal this reclassification...”. During a face-to-face meeting, Mr. Shefcheck expressed the following points, in summary:

- 1. His property is well maintained, and not a risk.
- 2. He was unaware that the forestland classification process would impact his property taxes.
- 3. After discussion, Mr. Steven and Ms. Diana Shefcheck agreed to not appear before the Board.

Background Information

In April, 2016, Lane County convened a forestland classification committee as described in ORS 526.310 to 526.320, and OAR 629-045-0020 to 0065 to investigate and determine which lands in the county should be classified as forestland as defined in ORS 526.005(5). Upon completion of their investigation, notice was published and public hearings were held as required by ORS 526.324 and 526.328. After considering the information received at the public hearings, the Lane County Forestland Classification Committee, in accordance with ORS 526.328(2) filed its formal written order, delineating which parcels of land in Lane County are forestlands, with the Lane County Clerk on November 19, 2016.

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 Lane 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 determination of forestland in Lane County, personnel of the Western Lane and South Cascades Districts compared the classified forestland against the existing forest patrol assessment roll and the district boundaries. Within the district boundaries, most forestlands in the county were affirmed as already been properly assessed. The committee determined that approximately 288 lots were no longer forestland and removed from the assessment roll. The committee also determined that an additional 5,631 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 and 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 judgement 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 they are 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 the 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 47.210, 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 nuisance of fire spreading to the neighbor's 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. Steven and Diana Shefcheck are the owners of Tax Lot #1625314300101 in Lane County as shown in the records of the Lane County Assessor.
2. The Lane County Forestland Classification Committee classified Tax Lot #1625314300101 as Class 1 Forestland in its final order, as filed with the County Clerk November 19, 2016.

3. The Department of Forestry is not aware of any appeals of the Lane County Forestland Classification Committee final order, timely or otherwise, that have been filed with the court.
4. The Department of Forestry believes that the Lane County Forestland Classification Committee classified Tax Lot #1625314300101 in a manner consistent with law, and therefore the State Forester does not have authority to override the Committee's determination that Tax Lot #1625314300101 is "forestland".
5. Once Tax Lot #1625314300101 was classified as forestland, the State Forester is obligated to ensure that the land has adequate protection from fire. Pursuant to ORS 477.210, Steven and Diana Shefcheck 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 the forest protective association.
6. Steven and Diana Shefcheck have not provided a bona fide forest protection plan approved by the Board.
7. Steven and Diana Shefcheck is not a member in good standing with a forest protective association. Tax Lot #1625314300101 in Lane County is within the boundary of the South Cascades 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 Eastern Lane Forest Protective Association. Mr. Steven and Ms. Diana Shefcheck are not members of that association.
8. Since Tax Lot #1625314300101 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.
9. Costs for fire protection of Tax Lot #1625314300101 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.
10. The State Forester notified Steven and Diana Shefcheck of the proposed addition of Tax Lot #1625314300101 to the forest protection assessment roll in Lane County, as required by ORS 477.250. The notice correctly referenced Mr. Steven and Ms. Shefcheck with correct acreage.
11. Steven and Diana Shefcheck 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.
12. The State Forester contacted Steven and Diana Shefcheck to address the concerns raised in the hearing request, and were able to reach a conclusion that 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 Steven and Diana Shefcheck in Lane 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 #1625314300101 in Lane County, owned by Steven and Diana Shefcheck shall be added to the Lane 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 interests, 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 24th day of July, 2018,

Thomas J. Imeson, Chair

Oregon Department of Forestry

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 determination of forestland in Lane County, personnel of the Western Lane and South Cascades Districts compared the classified forestland against the existing forest patrol assessment roll and the district boundaries. Within the district boundaries, most forestlands in the county were affirmed as already been properly assessed. The committee determined that approximately 288 lots were no longer forestland and removed from the assessment roll. The committee also determined that an additional 5,631 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 and 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 judgement 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 they are 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 the 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 47.210, 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 nuisance of fire spreading to the neighbor's 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. Jered Evans is the owner of Tax Lot #939445 in Lane County as shown in the records of the Lane County Assessor.
2. The Lane County Forestland Classification Committee classified Tax Lot #939445 as Class 1 Forestland in its final order, as filed with the County Clerk November 19, 2016.

3. The Department of Forestry is not aware of any appeals of the Lane County Forestland Classification Committee final order, timely or otherwise, that have been filed with the court.
4. The Department of Forestry believes that the Lane County Forestland Classification Committee classified Tax Lot #939445 in a manner consistent with law, and therefore the State Forester does not have authority to override the Committee's determination that Tax Lot #939445 is "forestland".
5. Once Tax Lot #939445 was classified as forestland, the State Forester is obligated to ensure that the land has adequate protection from fire. Pursuant to ORS 477.210, Jered Evans 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 the forest protective association.
6. Jered Evans has not provided a bona fide forest protection plan approved by the Board.
7. Jered Evans is not a member in good standing with a forest protective association. Tax Lot #939445 in Lane County is within the boundary of the Western Lane 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 Western Lane Forest Protective Association. Jered Evans is not members of that association.
8. Since Tax Lot #939445 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.
9. Costs for fire protection of Tax Lot #939445 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.
10. The State Forester notified Jered Evans of the proposed addition of Tax Lot #939445 to the forest protection assessment roll in Lane County, as required by ORS 477.250. The notice correctly referenced Mr. Evans with correct acreage.
11. Jered Evans 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.
12. The State Forester contacted Jered Evans to address the concerns raised in the hearing request, but they were unable to reach an agreement. Never-the-less, 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 Jered Evans in Lane 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 #939445 in Lane County, owned by Jered Evans shall be added to the Lane 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 interests, 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 24th day of July, 2018,

Thomas J. Imeson, Chair

Oregon Department of Forestry

Following the forestland classification committee's final determination of forestland in Lane County, personnel of the Western Lane and South Cascades Districts compared the classified forestland against the existing forest patrol assessment roll and the district boundaries. Within the district boundaries, most forestlands in the county were affirmed as already been properly assessed. The committee determined that approximately 288 lots were no longer forestland and removed from the assessment roll. The committee also determined that an additional 5,631 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 and 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 judgement 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 they are 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 the 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 47.210, 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 nuisance of fire spreading to the neighbor's 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. Randy Rasmussen is the owner of Tax Lot #907723 in Lane County as shown in the records of the Lane County Assessor.
2. The Lane County Forestland Classification Committee classified Tax Lot #907723 as Class 1 Forestland in its final order, as filed with the County Clerk November 19, 2016.
3. The Department of Forestry is not aware of any appeals of the Lane County Forestland Classification Committee final order, timely or otherwise, that have been filed with the court.

4. The Department of Forestry believes that the Lane County Forestland Classification Committee classified Tax Lot #907723 in a manner consistent with law, and therefore the State Forester does not have authority to override the Committee's determination that Tax Lot #907723 is "forestland".
5. Once Tax Lot #907723 was classified as forestland, the State Forester is obligated to ensure that the land has adequate protection from fire. Pursuant to ORS 477.210, Randy Rasmussen 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 the forest protective association.
6. Randy Rasmussen has not provided a bona fide forest protection plan approved by the Board.
7. Randy Rasmussen is not a member in good standing with a forest protective association. Tax Lot #907723 in Lane County is within the boundary of the Western Lane 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 Western Lane Forest Protective Association. Randy Rasmussen is not members of that association.
8. Since Tax Lot #907723 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.
9. Costs for fire protection of Tax Lot #907723 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.
10. The State Forester notified Randy Rasmussen of the proposed addition of Tax Lot #907723 to the forest protection assessment roll in Lane County, as required by ORS 477.250. The notice correctly referenced Mr. Rasmussen with correct acreage.
11. Randy Rasmussen 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.
12. The State Forester contacted Randy Rasmussen to address the concerns raised in the hearing request, but they were unable to reach an agreement. Never-the-less, 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 Randy Rasmussen in Lane 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 #907723 in Lane County, owned by Randy Rasmussen shall be added to the Lane 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 interests, 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 24th day of July, 2018,

Thomas J. Imeson, Chair

Oregon Department of Forestry

Following the forestland classification committee's final determination of forestland in Lane County, personnel of the Western Lane and South Cascades Districts compared the classified forestland against the existing forest patrol assessment roll and the district boundaries. Within the district boundaries, most forestlands in the county were affirmed as already been properly assessed. The committee determined that approximately 288 lots were no longer forestland and removed from the assessment roll. The committee also determined that an additional 5,631 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 and 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 judgement 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 they are 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 the 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 47.210, 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 nuisance of fire spreading to the neighbor's 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. Greg Reid is the owner of Tax Lot #552984 in Lane County as shown in the records of the Lane County Assessor.
2. The Lane County Forestland Classification Committee classified Tax Lot #552984 as Class 1 Forestland in its final order, as filed with the County Clerk November 19, 2016.

3. The Department of Forestry is not aware of any appeals of the Lane County Forestland Classification Committee final order, timely or otherwise, that have been filed with the court.
4. The Department of Forestry believes that the Lane County Forestland Classification Committee classified Tax Lot #552984 in a manner consistent with law, and therefore the State Forester does not have authority to override the Committee's determination that Tax Lot #552984 is "forestland".
5. Once Tax Lot #552984 was classified as forestland, the State Forester is obligated to ensure that the land has adequate protection from fire. Pursuant to ORS 477.210, Greg Reid 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 the forest protective association.
6. Greg Reid has not provided a bona fide forest protection plan approved by the Board.
7. Greg Reid is not a member in good standing with a forest protective association. Tax Lot #552984 in Lane County is within the boundary of the Western Lane 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 Western Lane Forest Protective Association. Greg Reid is not members of that association.
8. Since Tax Lot #552984 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.
9. Costs for fire protection of Tax Lot #552984 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.
10. The State Forester notified Greg Reid of the proposed addition of Tax Lot #552984 to the forest protection assessment roll in Lane County, as required by ORS 477.250. The notice correctly referenced Mr. Reid with correct acreage.
11. Greg Reid 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.
12. The State Forester contacted Greg Reid to address the concerns raised in the hearing request, but they were unable to reach an agreement. Never-the-less, 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 Greg Reid in Lane 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 #552984 in Lane County, owned by Greg Reid shall be added to the Lane 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 interests, 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 24th day of July, 2018,

Thomas J. Imeson, Chair

Oregon Department of Forestry

Following the forestland classification committee's final determination of forestland in Yamhill County, personnel of the Western Oregon and Forest Grove Districts compared the classified forestland against the existing forest patrol assessment roll and the district boundaries. Within the district boundaries, most forestlands in the county were affirmed as already been properly assessed. Lots that were added to the assessment roll primarily consisted 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 and 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 judgement 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 they are 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 the 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 47.210, 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 nuisance of fire spreading to the neighbor's 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. Rocky and Dorothy Losli are the owner of Tax Lots #242100100 and 242201700 in Yamhill County as shown in the records of the Yamhill County Assessor.
2. The Yamhill County Forestland Classification Committee classified Tax Lots #242100100 and 242201700 as Class 1 Forestland in its final order, as filed with the County Clerk January 11, 2018.
3. The Department of Forestry is not aware of any appeals of the Yamhill County Forestland Classification Committee final order, timely or otherwise, that have been filed with the court.

4. The Department of Forestry believes that the Yamhill County Forestland Classification Committee classified Tax Lots #242100100 and 242201700 in a manner consistent with law, and therefore the State Forester does not have authority to override the Committee's determination that Tax Lots #242100100 and 242201700 are "forestland".
5. Once Tax Lots #242100100 and 242201700 were classified as forestland, the State Forester is obligated to ensure that the land has adequate protection from fire. Pursuant to ORS 477.210, Rocky and Dorothy Losli 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 the forest protective association.
6. Rocky and Dorothy Losli have not provided a bona fide forest protection plan approved by the Board.
7. Rocky and Dorothy Losli are not a member in good standing with a forest protective association. Tax Lots #242100100 and 242201700 in Yamhill County 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. and Ms. Losli are not members of that association.
8. Since Tax Lots #242100100 and 242201700 are 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.
9. Costs for fire protection of Tax Lots #242100100 and 242201700 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.
10. The State Forester notified Rocky and Dorothy Losli of the proposed addition of Tax Lots #242100100 and 242201700 to the forest protection assessment roll in Yamhill County, as required by ORS 477.250. The notice correctly referenced Mr. and Ms. Losli with correct acreage.
11. Rocky and Dorothy Losli 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.
12. The State Forester contacted Rocky and Dorothy Losli to address the concerns raised in the hearing request, but they were unable to reach an agreement. Never-the-less, 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 Rocky and Dorothy Losli in Yamhill 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 Lots #242100100 and 242201700 in Yamhill County, owned by Rocky and Dorothy Losli shall be added to the Yamhill 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 interests, 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 24th day of July, 2018,

Thomas J. Imeson, Chair

Oregon Department of Forestry