

## **STAFF REPORT**

Agenda Item No.:	7
Work Plan:	Fire Protection
Topic:	Ongoing Topic; Forest Patrol Assessment
Presentation Title:	Requests for Hearings Before the Board and Proposed Final Orders
Date of Presentation:	June 6, 2024
Contact Information:	Tim Holschbach, Deputy Chief of Policy & Planning – Fire Protection 503-480-9756 <a href="mailto:Tim.J.Holschbach@odf.oregon.gov">Tim.J.Holschbach@odf.oregon.gov</a> Levi Hopkins, Wildfire Prevention & Policy Manager 503-949-3572, <a href="mailto:Levi.A.Hopkins@odf.oregon.gov">Levi.A.Hopkins@odf.oregon.gov</a>

### **SUMMARY**

The purpose of this agenda item is to address a request for a hearing under ORS 477.260(2) and OAR 629-041-0035(4) by landowners in Jefferson County 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 owner 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 Jefferson County that they were going to be added to their 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 1 landowner in Jefferson County.

### **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.

The Jefferson County Forestland Classification Committee completed their work and filed their final order with the Jefferson County Clerk on January 24, 2024. 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 filed with the Jefferson County Circuit Court.

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. Written notices were mailed to each landowner notifying them of the addition and the process for appeals and hearings before the Board.

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 lot in question was properly assessed, they are the owners of the lot in question, the lands had been classified as forestland by the appropriate County Forestland Classification Committee, their names, tax lot and acreage were all correct as noted in the County Assessor's records, and this tax lot is not protected under a protection plan approved by the Board of Forestry, nor does the owner belong to a forest protective association.

As further described in the proposed order (Attachment 2), the Department has determined that the properties in question were properly assessed pursuant to the applicable law.

### **ALTERNATIVES CONSIDERED**

Upon review of the letter from the landowner, additional testimony during the Board meeting, and the facts described above and presented in the proposed final order (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 a revised proposed order as appropriate;
2. Reject the proposed order and direct the Department to prepare a different final order;  
or
3. Adopt the proposed order as the Board's final order.

## **RECOMMENDATION**

The Department recommends that the Board adopt the proposed final order as written for Bruce L. Byerly.

## **ATTACHMENTS**

- (1) Letter Requesting a hearing before the Board of Forestry
- (2) Proposed Final Order

BRUCE BYERLY  
[byerly6317@msn.com](mailto:byerly6317@msn.com)  
503 522 5421;  
PO Box 434  
Camp Sherman, Oregon

March 25, 2024.

To: Department of Forestry  
3501 N.E. Third Street  
Prineville, OR 97754

**Re: Notice of Appeal contesting the Department of Forestry letter of February 27, 2024. Copy attached.**

**Certified Mail:**

The February 27, 2024 letter does not constitute an enforceable order. It is an information letter, anticipating future action, not an order. There are no detailed findings of fact. It does not provide an adequate explanation of appeal rights and jurisdiction. I request a hearing to set aside the findings and conclusions expressed in the letter.

I request discovery of all information relied on to support the assertions in the February 27, 2024 notice.

Bruce L. Byerly



# Oregon

Tina Kotek, Governor

## Department of Forestry

Prineville Unit  
3501 NE 3rd Street  
Prineville, OR 97754  
541-447-5658  
Fax: 541-447-1469  
www.ODFcentraloregon.com

February 27, 2024

**BYERLY, BRUCE**  
26479 SW TAMARACK LN  
CAMP SHERMAN, OR 97730-9707



"STEWARDSHIP IN FORESTRY"

Re: Forest Patrol Assessment

The Oregon Department of Forestry (ODF) provides fire protection on privately owned forestland within the Central Oregon Forest Protection District in Jefferson County. Forestland owners contribute to the cost of this service by paying a Forest Patrol Assessment with their property taxes each fall. This Forest Patrol Assessment is based on a Forestland Classification process that evaluates all the land within the county and identifies that land which meets the definition of forestland by state law. By definition in part, "forestland" includes "woodland, brushland, timberland, grazing land, or clearing, that during any time of 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." Oregon Revised Statutes (ORS) 477.001(9).

This letter is to inform you that a review of the Jefferson County classification maps and Forest Patrol Assessment records has been conducted in an effort to uniformly and equitably apply Forest Patrol Assessments for wildfire protection to all owners of forestland within the Central Oregon Forest Protection District. In accordance with Oregon Revised Statutes (ORS) 477.210(4) and 477.250(2), the State Forester has determined that the tax lot(s) located on the second page of this letter will be added to the Forest Patrol Assessment Roll beginning July 1, 2024.

The Central Oregon District has two "classes" of forestland within Jefferson County. Forestland suitable for joint use of timber production and grazing of livestock is classified as Class 2. Forestland suitable for grazing or other agricultural use is classified as Class 3. Due to changes in vegetative cover and use over time, land may be reclassified based on current vegetation type. Each of these class types may include lands on which structures are present.

### **THIS IS NOT A BILL**

ORS 477.270 requires that owners of forestland pay an annual Forest Patrol Assessment. Forest Patrol Assessments are used in conjunction with State of Oregon General Fund appropriations to maintain and operate the Department of Forestry's forest fire prevention and suppression system. Last year, the assessment rate for the Central Oregon District was \$3.0951 per acre for Class 1 and 2 forestland (timber or timber and grazing) and \$1.4465 per acre for Class 3 forestland (agricultural). These per acre assessments will vary from year to year based on many factors. ORS 477.295 requires a minimum annual assessment of not less than \$18.75 per lot or parcel.

If the lot or parcel has an improvement as defined by the County Assessor's Office, an additional \$47.50 surcharge will be levied. ORS 477.277. The surcharge is one of the funding sources to support the Oregon Forest Land Protection Fund and is used for equalizing emergency fire suppression costs on large fires under Oregon Department of Forestry jurisdiction. The forest patrol assessment will appear on your 2024/2025 property tax statement and is paid to Jefferson County in the same manner as any other property tax or assessment.

If you have questions, or if you want to have a review of this proposed assessment, please contact your local ODF representative, Gordon Foster, Unit Forester, at the following address and telephone number as soon as possible:  
P.O. Box 670, Prineville OR, 97754 phone: 541-447-5658

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Please be aware that any owner of grazing land or timberland within the boundary of the forest protection district who is adversely affected by a proposed district budget may file an appeal within 30 days after the date of the public budget meeting. ORS 477.260(1). Also, any owner of grazing land or timberland subject to ORS 477.205 to 477.281 (the series of statutes that govern establishment of forest protection districts, requirement for protection, costs, and assessment) shall, upon request, be granted a hearing by the State Board of Forestry on any subject pertaining to the activities of the forester or board affecting the land. ORS 477.260(2). This could include the assessment of forest lands. The Board of Forestry has adopted rules governing the conduct of such appeals and hearings. See Oregon Administrative Rule 629-041-0035. Also note that any request for a hearing regarding this assessment notice must be received by the State Forester within 30 days of the date of this written notice. If you wish to request such a hearing, please send a letter with that request to the State Forester at 2600 State Street, Salem OR 97310.

Sincerely,  
Rob Pentzer  
Central Oregon District Forester

<b>Tax Lot</b>	<b>Timber Acres (Class 1 and 2)</b>	<b>Grazing Acres (Class 3)</b>
130916A001500	1.80	0.00

**BEFORE THE OREGON BOARD OF FORESTRY**

**In the Matter of:** )  
 )  
 )  
**Forest Patrol Assessment** )  
**Owned by Bruce Byerly** )  
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**FINAL ORDER**

Introduction

On February 27, 2024, Bruce Byerly was sent a notice from the Department of Forestry as required by ORS 477.250(2), that property Mr. Byerly owns, property account 130916A001500 in Jefferson County, will be added to the forest patrol assessment roll beginning July 1, 2024. Along with that notice, Mr. Byerly was provided information regarding procedures for hearings and appeals prescribed in ORS 477.260(2). On March 25, 2024, Mr. Byerly 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. Byerly asked for a hearing “...to request a formal appeal ...”. In his letter, Mr. Byerly expressed the following points, in summary:

- 1. The notification letter of being added to the Forest Patrol Assessment did not constitute an enforceable order.
- 2. There are no detailed findings of fact.
- 3. It does not provide an adequate explanation of appeal rights and jurisdiction.
- 4. A hearing request to set aside the findings and conclusions expressed in the letter.

Background Information

In January of 2023, Jefferson 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 Jefferson County Forestland Classification Committee, in accordance with ORS 526.328(2) filed its formal written order, delineating which parcels of land in Jefferson County are forestlands, with the Jefferson County Clerk in January of 2024.

ORS 526.332 provides for appeals of forestland classification to the circuit court within 30 days of filing of the written order discussed above. No landowners appealed the determination forestland classification final orders filed with the Jefferson County Circuit 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. No authority

is 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 Jefferson County, ODF personnel of the Central Oregon District compared the classified forestland against the existing forest patrol assessment roll and the district boundaries. The forestland classification committee determined an increase in timber acres within the county from 84,359.3 to 85,513.6 acres and grazing acres increased from 42,962.1 to 83,048.1 acres, with a net increase of 1,154.33 timber acres and 40,086.1 grazing acres. A total of 1,359 additional tax lots were added which resulted in 1,334 owners newly added to the Forest Patrol Assessment.

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 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.

The 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. Annually, the district forester 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 47.210, each owner of forestland is required 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 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. Bruce Byerly is the owner of property account 130916A001500 in Jefferson County as shown in the records of the Jefferson County Assessor.
2. The Jefferson County Forestland Classification Committee classified property accounts 130916A001500 as Forestland in its final order, as filed with the County Clerk in January of 2024.



3. The Department of Forestry believes that the Jefferson County Forestland Classification Committee classified property account 130916A001500 in a manner consistent with law, and that property account 130916A001500 is forestland.
4. Once property account 130916A001500 was classified as forestland, the State Forester is obligated to ensure that the land has adequate protection from fire. Pursuant to ORS 477.210, Bruce Byerly 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.
5. Bruce Byerly has not provided a bona fide forest protection plan approved by the Board.
6. Bruce Byerly is not a member in good standing with a forest protective association. Property account 130916A001500 in Jefferson County is within the boundary of the East Oregon Forest Protective Association. 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 East Oregon Forest Protective Association. Bruce Byerly is not a member of that association.
7. Since property account 130916A001500 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.
8. Costs for fire protection of property account 130916A001500 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.
9. The State Forester notified Bruce Byerly of the proposed addition of property account 130916A001500 to the forest protection assessment roll in Jefferson County, as required by ORS 477.250.
10. Bruce Byerly 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.
11. The State Forester attempted to contact Bruce Byerly through a letter to address the concerns raised in the hearing request. No response was received from Mr. Byerly. The State Forester is obligated to protect forestland under ORS 477.210.

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Conclusions of Law

ORS 477.210 requires the State Forester to provide fire protection to the forestland owned by Bruce Byerly in Jefferson 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 property account 130916A001500 in Jefferson County, owned by Bruce Byerly shall be added to the Jefferson 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 6<sup>th</sup> day of June, 2024,

Jim Kelly, Chair

Oregon Department of Forestry