



**In The Matter of Douglas County, by
and through the Douglas County
Public Works Department**

ODF Case No. 23-DG021

Background – Timeline

- On August 24, 2023, The Tye Ridge Complex Fire in Douglas County. The fire was contained on 12 September 18, 2023.
- September 14 – 19, 2023, Douglas County evaluated area for danger trees along Hubbard Creek Rd
- September 25 to September 27, Douglas County obtained consent of three landowners
- On October 18, 2023, the Douglas County Commissioners approved agreement to enter and harvest trees on the 3 private landowners



Background – Timeline *cont.*

- On October 19, 2023, ODF Discovered a harvest operation along Hubbard Creek Road. Determined no NOAP filed and informed Operator and Douglas County a NOAP was required.
- ODF informed Douglas County multiple times that a NOAP was required for the harvest operation and requested one be submitted.





Image 4. Photo of Open Slope HLHL at the top of the Debris Flow profile in Image 3.



Background – Timeline *cont.*

- Douglas County Public Works Director and a County Commissioner both informed ODF that they rejected the ODF request for a NOAP to be filed.
- On October 30, 2023, ODF issued a citation to Douglas County for Failure to Notify



Background – Timeline *cont.*

- Douglas County's hazard tree abatement work, conducted through a contractor, along Hubbard Creek Road occurred between October 18, 2023, and October 30, 2023, resulted in the felling of between approximately 200 and 500 trees
- In abating the hazard trees along Hubbard Creek Road, Douglas County, through its contractor
 - Felled the trees, limbed and bucked to mill lengths
 - Hauled & decked in sort yard down the road and sorted by landownership logs removed from





History of the Case

- **October 30, 2023**, the Oregon Department of Forestry (Department) issued a Notice of Violation/Citation, Order to Cease Further Violation, and Order to Repair Damage or Correct Unsatisfactory Condition Caused by Violation (Repair Order) to Douglas County, by and through the Douglas County Public Works Department (Respondent).
- **November 21, 2023**,
 - Douglas County requested a hearing on the case & agreed to extending the time periods established in ORS 527.700(1)
 - The Department referred the hearing request to the Office of Administrative Hearings (OAH)
- **February 21, 2024**, a prehearing conference was held to review issues, hearing date and establishing related deadlines. Timelines were also agreed to for Motions for Summary Determination (MSDs) process.
- **May 23, 2024**, MSD deadlines were extended.
- **July 12, 2024**, MSDs were filed by both parties
- **August 2, 2024**, Response were filed by both parties
- **August 16, 2024**, Replies to the response filed by both parties
- **October 2, 2024**, ALJ Schmidt issued Ruling on MSDs and a Proposed Order

Notification of Operation

- An operator, timber owner or landowner, before commencing an operation, shall notify the State Forester. ORS 527.670(6)
- The operator, landowner or timber owner shall notify the State Forester as required by ORS 527.670(6), at least 15 days before starting an operation. OAR 629-605-0150(1)



Definition: Operation

- Operator means any person who conducts an operation. ORS 527.620(14)
- Operation means any commercial activity relating to the establishment, management or harvest of forest tree species. ORS 527.620(13)



Definition: Commercial

- Commercial means of or pertaining to the exchange or buying and selling of commodities or services. This includes:
 - any activity undertaken with the intent of generating income or profit;
 - any activity in which a landowner, operator, or timber owner receives payment from a purchaser of forest products;
 - any activity in which an operator or timber owner receives payment or barter from a landowner for services that require notification under OAR 629-605-0140;
 - or any activity in which the landowner, operator, or timber owner barter or exchanges forest products for goods or services. OAR 629-600-0100(23)



Definition: Forestland

- Forestland means land that is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied. ORS 527.620(8).



Guidance: Forestland

- December 21, 2021 Forest Practices Rule Guidance for the term “forestland” as used to determine FPA applicability and as defined in OAR 629-600-0100(26), in relevant part:

“Forestland” is defined broadly in ORS 527.620 “Definitions” and includes any land being used to grow and harvest forest tree species, even if that is not the primary use of the land. The zoning, tax status, other state or local statutes, ordinances, rules or regulations that may apply to the parcel are not considered when making the forestland determination. If forest tree species are growing on the land and activities for managing or harvesting trees for commercial purposes have been or are being conducted, it is forestland.



Guidance: Forestland

Guidance also states:

Forestland: Any size tract or patch of trees that can be harvested for a commercial forest product regardless of the surrounding land use or zoning of the land, including:

- The forested portions of rights-of-ways are considered “forestland” for purposes of FPA administration.



Guidance: Forestland

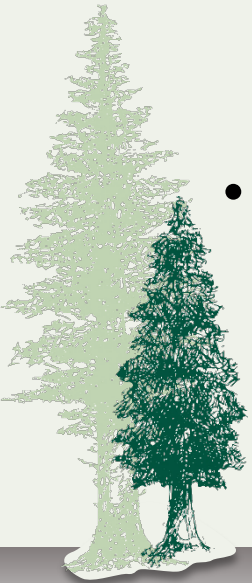
Guidance also states: Non-forestland, considered to be already converted to a non-forest use, includes:

“Utility rights-of-way” such as power line or gas pipeline corridors, where commercial trees have already been harvested. However, within the non-forestland portion of the ROW, notifications are required for incidental commercial forest harvest for DOR and PDM purposes only. ... **Note:** Notifications are needed for stream crossings, road building and harvesting. Where written plans are needed, they would usually be in the form of existing planning documents. Other concerns, such as landslides and public safety should be considered in the planning process.



Road Hazards

- Landowners may not allow trees to present a danger to or create a hazard for public traveling on public road. ORS 368.256(1)(b).
- The county may order the landowner to abate the hazard; process includes a right to a hearing. ORS 368.261 to 266.
- In specific situations, the county may abate the hazard through any “reasonable actions.” ORS 368.271.
- County is exempt from liability for its reasonable actions including but not limited to trespass or conversion. ORS 368.271.



ALJ Proposed Order

On October 2, 2024, Administrative Law Judge Schmidt issued a ruling on Motions for Summary Determination and Proposed Order:

- Granted Department of Forestry’s Motion
- Denied Douglas County’s Motion.
- Proposed order finding Douglas County in violation.

On October 17, 2024, Douglas County filed objections (called “exceptions”) to the Proposed Order, asserting five specific objections.



BOF Decision Points

1. Entertain written and/or oral argument from the State Forester and any party that filed exceptions to the proposed order if the board determines it is necessary or appropriate to assist the board in the proper disposition of the case. If allowed, oral argument will be limited to matters raised in written exceptions and shall be presented under time limits determined by the board chair; or
2. Remand the matter to the administrative law judge for further hearing on such issues as the Board specifies and to prepare a revised proposed order as appropriate under OAR 137-003-0655(2); or
3. Enter a final order adopting the recommendations (proposed order) of the hearings officer; or
4. Reject the hearing officer's proposed order and adopt a different final order that contains the necessary findings of fact and conclusions of law based on the record.

