

OSACA Conference Highlights  
January 13 & 14 2009  
Valley River Inn, Eugene Oregon

**Discussion of Department of Forestry's Fire Patrol Program – Teresa Vonn, ODF  
Dennis Sifford & Kasi Weaver Douglas Forest Protective Assoc.**

Historical Perspective Oregon Forestland Fire Protection

- 1902-Western Oregon fires->700,000 acres
- 1904-Company Fire Patrol/FPAs
- 1910-Great Basin Fires
- 1911-12 Oregon Fire Laws; BOF; First State Forester
- 1913- Compulsory Fire Patrol
- 1937 Forestland Classification Act

ORS 477.001 (9) Forestland Definition

- “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. As used in this subsection, “clearing” means any grassland, improved area, lake, meadow, mechanically or manually improved area, road, rocky area, stream or other similar forestland and that has been included in areas classified as forestland under ORS 526.305 to 526.370.

Landowner has responsibility to protect forestland in Oregon

- Oregon unique in this responsibility
- Landowner has three options for providing protection for forestlands:
  - Member of a forest protective association
  - Protection provided by the forester (ODF)
    - ODF/Associations “seamless” in system
  - Protection provided by the LO with an approved plan by the state forester
- Protection provided by the LO with an approved plan by the state forester
- Other legal responsibilities
  - Every reasonable effort responsibility

Forest Protection Districts

- ORS 477.225 Establishment and change of forest protection districts.

“The state Forester, by rule, shall designate areas of forestland within this state as forest protection districts within which the forester is required to provide protection pursuant to this chapter.”

Also authorized to change boundaries after public process, may add or remove protection.

BLM Lands Protection

- Intermingled lands (O&C) with private lands in W. Oregon
- Contributes to efficiency of complete and coordinated system

- Western Oregon contract-2.3 M Acres
- Partners in the system

### Complete and coordinated System

477.005 Policy. (1) The preservation of the forests and the Conservation of the forest resources through the prevention and suppression of forest fires hereby are declared to be the public policy of the state of Oregon.

(2) In order to accomplish the purposes of the policy stated in this section:

(a) The need for a complete and coordinated forest protection system is acknowledged and the primary mission of the State Forestry Department in such a system is protecting forest resources, second only to saving lives. Structural protection, though indirect, shall not inhibit protection of forest resources...

### Overlapping Protection

- Rural Fire Protection Districts often are included within ODF/Association Districts
  - Rural protect structures
  - ODF/Assoc. protect forestland
  - Capacity to fight large fires

### ORS 478.010.2(C)

- (c) Forestlands included within a forest protection district under ORS 477.205 to 477.281 unless the owner consents and notifies the rural fire protection district, however, forestland protected pursuant to ORS 477.205 to 477.281 and not exceeding five acres in one ownership shall be included in the rural fire protection district without the owners consent if the ownership includes any structures subject to damage by fire. Forestland included in a rural fire protection district under this subsection subjects the forestland to assessments for fire protection by the rural fire protection district and the forest protection district.

### Forestland Classification

- ORS 526.324 Classification of forestland by committee
  - Class 1, Timber Class-all forestland primarily suitable for the protection of timber.
  - Class 2, Timber and Grazing class-all forestland primarily suitable for joint use for timber production and the grazing of livestock... (Eastern Oregon)
  - Class 2, Agricultural Class-all forestland primarily suitable for grazing or other agricultural use.
- “Grazing land” means forestland, within a forest protection district, that has been classified as Class 3, agricultural class, as provided by ORS 526.305 to 526.370.
- “Timberland” means forestland, within a forest protection district, that has not been classified as Class 3, agricultural class, under ORS 526.305 to 526.370 [1965 c.253 §56]

## Timber

- Class 1, Timber class, includes all forestland primarily suitable for the production of timber.
- This would include the following: Timber, reproduction, cutover land, predominate oak and madrone stands, and brush lands.

## Grazing

- Class 3, agricultural class, includes all forestland primarily suitable for grazing or other agricultural use.
- This would include the following: Grass, hay, grain, mixed grass and oak madrone lands, mixed grass and brush land, and cutover land that has been cleared or burned and seeded to permanent pasture for grazing purposes.

ORS 526.305 through 526.332

Land Classification committee

### 526.305 Definitions for ORS

- As used in ORS 526.305 to 526.370, unless the context requires otherwise:
- (1) “Committee” means a county forestland classification committee.
- (2) “Governing body” means the board of county commissioners or county court of a county, as the case may be.

### 526.310 County Classification committees

- The governing body of each county containing forestland may establish a county forestland classification committee of five persons.
- One shall be appointed by the State forester.
- One by the director of the Oregon State University Extension Service.
- Three by the governing body.
  - One must be an owner of forestland or a representative thereof.
  - One must be an owner of grazing land or a representative thereof.
  - the third may be a citizen at large.
- Each member of the committee at all times is subject to replacement by the appointing authority.

### 526.310 County Classification Committees

- The committee shall elect from among its members a chair and a secretary.
- The committee may elect or employ other officers, agents and employees, as it finds advisable.
- It shall adopt rules governing its organization and proceedings and the performance of its duties, and shall keep written minutes of all its meetings.
- The members of the committee shall receive no compensation for their services but the governing body or the forester may reimburse them for their actual and necessary travel and other expenses incurred in the performance of their duties.

## Oregon Forestland-Urban interface fire protection Act of 1997 (SB 360) ORS 477.015-477.061

Some key elements of the law:

- Establishes legislative intent for Forester's role in the interface.
- Forestland Urban interface—"geographic area of the forestland inside a forest protection district where there exists a concentration of Structures in an urban or suburban.
- Interface situation will continue to grow
- Increased risk of catastrophic damage
- Complete and coordinated system required
- Interface property owners have a responsibility
- Board of Forestry and State Forester lead role
- The B.O.F shall establish rules and criteria for classification of land in interface.
- SB 360 County classification committee
- State Forester can classify if county does not act
- Landowner obligation to mitigate hazard/risk
- \$100,000 liability/conditions
- Voluntary certification program
- Primarily encourages fuel breaks for defensible space around homes and driveways

### 477.029 Local land classification committee rules and members

The governing body of each county containing forestland-Urban interface may establish a county forestland-Urban interface classification committee

The committee shall elect members and shall adopt rules governing its organization and proceedings.

If the county has funding, they can help support the group

### 477.057 State Forester to Classify

In the event of no classification in the state Forester may make the final classifications that were otherwise to be made by a committee.

However classifications made by the state forester cease to be effective if replaced by classifications made pursuant to ORS 477.052 by the appropriate committee.

### 477.052 Hearing on proposed classifications

Classifying or reclassifying forestland-urban interface property shall be conducted in a formal manner, include maps and hold a public hearing.

### Appeal process

- (1) After 30 days after the date of the order making appeals can be made/
- (2) The appeal shall be tried by the circuit court as an action not triable by right to a jury.

## Wildland/urban interface in Oregon

- Estimate of 250,000 homes in Oregon's Wildland/urban interface
- Estimated total value of \$6.5 Billion

## ODF's role in protecting transitional lands or "non forest" cover lands?

- Consistency/Criteria for providing protection
- Consistency/criteria for classification
- Lands adjacent to the district
- ODOT & RR right of way

## Applicable ORS'-Chapter 477

- 477.001 Definitions
- 477.015 Definitions
- 477.017 Policy and purpose
- 477.023 Integration of fire Protection with existing laws
- 477.025 Classification for different protection problems
- 477.027 Rules for Classification of lands
- 477.029 Local land classification committee Rules and members
- 477.052 Hearings on proposed classifications
- 477.054 Appeal process
- 477.057 State Forester to classify
- 477.205 Definitions
- 477.220 Land not provided protection
- 477.225 Establishment of Districts
- 477.315-.320 Rangeland Associations

## Applicable ORS'-Chapter 526

- 526.305 Definitions of a committee
- 526.310 County classification committees
- 526.320 Investigation of lands
- 526.324-340 Classifications publication, hearings and appeals
- 526.350 Administration and contracting

## Administrative Rules-Chapter 629

- 629-041-0505 Definitions
- 629-041-0510 Administration
- 629-45-0005-0010 Land Classification definitions

## 478.130 Structures Added

- Any land upon which structures subject to damage by fire have been built shall be added to the assessment roll.

## Landowner assessments

A district budget committee and a district establish a level of fire protection.

A rate per acre is developed by dividing the budgeted total cost by the districts acres to arrive at a per acre rate.

A private landowners pays 50% of the per acre rate established by the district in conjunction with the various budget committee. The general funds pay the other 50%. Public lands (BLM, BOF, ODFW, etc) pay 100% of the assessed rate....There is no general fund match.

#### Assessment Rates in 2008

On class 1 and class 2 timber land, the per acre assessment to private landowners ranged from \$0.73/acre to \$1.36/acre. Again, public lands pay 2 times this rate.

-West Oregon	\$0.73/acres
-North Cascade	\$1.10/acre
-Coos	\$0.84/acre
-Southwest Oregon	\$1.18/acre
-Central Oregon	\$1.36/acre

On Class 3-grazing lands, the per acre assessment to private landowners ranged from \$0.58/acre to \$1.03/acre. Public lands pay 2 times this rate.

-Northeast Oregon	\$0.50/acre
-Klamath Lake	\$0.52/acre
-Coos	\$0.61/acre
-Southwest Oregon	\$1.03acre
-Douglas	\$0.58/acre

#### Assessment Shapefile attributes

- Unique MapID or TaxID (required)
- Account number/Parcel number or propID (required)
- Parcel acres/legal acres (required)
- Landowner address (required)  
Separate fields for: City, State, Zip Code
- Situs address (required)
- Improvement values (optional)-useful for checking lots that should pay a surcharge
- Dual assessment (optional)-used for other ODF business needs

#### Data Standards for SB 360

- County taxlot number (Required, unique, duplicates not allowed)
- Site address (required, but if unavailable we insert "no address")
- Property owner (required)
- Property co-owner/agent (optional)
- Mailing address 1 (required) single field
- Mailing address 2 (optional) single field
- Mailing city (required) " "
- Mailing state (required) " "
- Mailing Zip (required) " "

- Mailing County (Optional) single field
- Site City (optional) “ “
- Site Zip( Optional) “ “

#### ODF Contacts

- ODF GIS Coordinators
- ODF Fire Patrol Assessment Coordinators
- ODF Salem staff
- Teresa Vonn (541) 664-3328
- Toni Chambers (541) 945-7229

### **ESRI Cadastral Tools Demonstration- Leah Saunders, ESRI, Olympia Office.**

Leah showed everyone how the 9.2 ESRI cadastral Editor Works and what it can do for us.

There are basically 4 goals for this software:

- ❖ Land Record Information
- ❖ Land Information systems
- ❖ GPS coordinates
- ❖ Improve the accuracy of the boundary data.

Basic data model:

- ❖ Plan. The plans table stores your basic information like your ID, survey date any basic information.
- ❖ Parcel Table.
- ❖ Lines. Boundary lines.
- ❖ Control Points.
- ❖ Line points. A Parcel point becomes a line point when it sits on the boundary.

Summary- All the data comes together. You have your lines. You have your points, which are your coordinates. You have your polygons which are made up of those boundary lines. You have the line points which sit on top of boundary lines which you don't want to actually divide up. You have control points so that you can create accurate data. Then on top of that you have the plan table and the overhead table and all the parcels that are part of the plan, and a couple over lines. So then you have a fabric job.

You can get more information on the ESRI website. Cadastral Fabric Data Migration kit:

[esri.com/software/arcgis/extension/surveyanalyst](http://esri.com/software/arcgis/extension/surveyanalyst)

## **Practical application of GIS Valuation case study- Brian Evans and David Cutting.**

Using GIS for neighborhood realignment by Brian Evans.

They used to:

- Reappraise Lane County once a year
- New Land study
- New local cost market buyers
- New depreciation charts
- New market fair bench marks
- Property to property to inspect and appraise those properties.

We now:

- Can use the GIS system. It has allowed them to do so much more, so much quickly.
- Group our neighborhoods within the school districts. Bigger neighborhoods had the larger school districts.
- 3 factors also play into the Homogeneous neighborhood groupings. 1. Go by DOR's Plat scull??? typical very uniform lots. 2. Quality of the neighborhood. 3. Location of the neighborhoods.

Power of GIS. Type in map number, zoom to and you are instantly brought to that property. It tell them the tax code lines, the City limits line, boundary lines, zoning in each area and lets them know what neighborhood they are in. Most important is the area photos that it provides.

David Cutting-GIS geo database. The point of this is to create an assessors map. Maintaining the tax lots and utilizing the tax lots.

The application which was developed at Lane County is a GIS application being used by an appraiser for a neighborhood realignment project. This application was designed, built, and supported by A&T cartography staff. It's an application in the ArcView environment, which the appraiser uses to view and edit neighborhood data. The use of GIS on this project has improved the quality of the data, while also dramatically improving the speed in which it can be edited. In addition to this data being created/edited in the neighborhood realignment project, the new neighborhood data is also now being used by appraisers as they process permits, and segs. The neighborhood data is viewed through a pmf by appraisers, which has also sped up their process and improved the quality of their work.

## **Cartography Issues-DOR**

Introductions were made on who are the District managers.

**Southwest:** Tim Mercer (Jackson, Josephine, Lane, Curry, Douglas, Klamath, Coos,)

**Northwest:** Rod Therriault (Clackamas, Columbia, Tillamook, Linn, Lincoln, Yamhill, Clatsop, Washington, Multnomah, Polk, Marion, Benton.)

**Northeast:** Nancy Holmes (Hood River, Wasco, Sherman, Gilliam, Umatilla, Baker, Morrow, Wallowa, Union, Wheeler.)

**Southeast:** James Kivley (Jefferson, Deschutes, Crook, Grant, Lake, Harney Malheur)

Rod Therriault went on to talk about putting Counties into the Data Model. We currently have 12 counties into the data model and hope to add more soon. He introduced a few individuals that work on this. Mike Allen, Robert Ayers, Matthew Taylor, John Prychun and Tim Mercer.

Rod asked if anyone was having issues with version 9.3. There were some issues. John Prychun said that if you downloaded service pack 1 that should take care of it.

Since much of the discussion was centered on ESRI software and database structures, Brett Juul asked if any of the three GeoMedia Pro counties in attendance were having any issues with their software or data? They were not having any issues at this time.

There were discussions on tax lot Gaps and how the various counties handled them. Some counties would let gaps get dealt with in the customary manner of going into foreclosure then to auction. Some counties would go to adjacent owners first to see if they were willing to purchase these pieces of land before going to auction.

Rod Therriault wanted to remind everyone to Query their tables. Please read the Cadastral Exchange standards. Please use the 5 character letters. Page 13 of the Cadastral Data Exchange Standard Taxlot Field attributes (Text, Length = 5) Taxlot number padded with leading zeros (00100, 00200, etc., or, for polygons without taxlot numbers, the allowable values are, ROADS, RAILS, WATER or [NONTL])

It was asked if other adjacent property owners could have portions of their land taken for roadway purposes. One response among the group was that unless a particular property owner was named in the lawsuit, their property could not be taken.

Some county cartographers felt that a presentation on mapping spiral curves would be beneficial. DOR will look into developing training for a future cartographer breakout session.

There was discussion on the importance of making sure that information on the assessor's map is as accurate as possible since it is becoming used more and more by other departments. A reminder was raised that this has to be done within reason and considered in with the cartographers' current workload and that these maps are still produced for assessment purposes only.

### **Determining whether right-of-way is owned or an easement. Dan Linscheid**

City Street & county roads, fee simple or Easement.

## Oregon History of Public Rights-of-way.

- “Public roads shall be open twelve feet wide, clear of trees, logs and other obstructions, the stumps cut low, and sufficient bridges and causeways; and the space of ten feet on each side of the road shall be considered as appropriated to the use of said road.” Leg Act June 22, 1844 (31’ minimum statutory width)
- 1849-1850, all Territorial roads to be 60’ wd. unless a lesser width is determined.
- 1889- Maximum width to be 80’ minimum 40’.
- 1903- All Territorial roads declared to be county roads. 60’ statutory width except under prayer of petitioners for lesser width, to be not less than 40 or more than 80’ WD.
- 1915- All county roads to be 60’, not less than 30’ nor more that 80’.
- 1931- County roads to be not less than 30’ WD.
- 1947- County roads to be 50’ wide, not less than 30’ WD., and not to exceed one mile in length.

## Applicable Statute.

- ORS 93.310 states, “Rules for construing description of real property. The following are the rules for construing the description of real property. The following are the rules for construing the descriptive part of a conveyance of real property, when the construction is doubtful, and there are no others sufficient circumstances to determine it: (4) When a road or stream of water not navigable is the boundary, the rights of the grantor to the middle of the road, or the thread of the stream, are included in the conveyance, except where the road or bed of the stream is held under another title.”

## Oregon Court Cases

- Questions on r/w deeds to the public:
- Warranty or dedication deeds? Or Eminent Domain? Damages paid?
- Was the deed accepted by the county or city? Files in the clerks’ office?
- Clause “For roadway purposes”, “Street purposes”, etc.?

## Oregon Court Cases

McQuaid v. Portland & V.r’y Co. (1889):

“The public acquires only an easement in a street which has been dedicated or condemned for its use.” Paraphrasing, “The public, as a mass, does not have the capacity with the underlying lot owner or the original dedicator.” The court went on to say, “The court may have an irrevocable right to the use of the street; but how it can acquire the fee to the land? The fee must vest in someone having a legal entity. The declaration that the fee in such case is in the public, meaning the general mass of the people, without regard to any legal organization, although often made use of, is to my mind absolutely absurd.”

## Oregon Court Cases

Cappelli v. Justice (1972)

Facts: Warranty deed, containing, "Excepting there from reservation of 30 foot right of way..." (Not a public r/w)

The court said, "In common parlance, the term "right of way" signifies an easement. In the absence of special circumstances indicating a contrary meaning, the courts have generally concluded the term in accordance with the common usage."

## Oregon Court Cases

Meyer C. Portland C. Ry. Co.:

"A common law dedication does not pass legal title to the property dedicated; it merely transfers the use... Under statute of this state the land in the street goes to the adjoining lot owners when it is vacated...."

## Oregon Court Cases

Buell et ux v. Mathes et ux-

"...a grant of land described as bordering "on", "along" or "by" a highway, will, by legal implication, carry the fee to the centre of the road. But this presumption may be rebutted, and if it plainly appears, from the language used and the nature of the property, the grantor meant to limit the grant to the line of the road, and to reserve unto himself the fee in the roadbed, subject to the use of it by the public as a highway, then, of course, this plainly expressed intention must prevail."

## Exceptions

"ORS 366.360. Taking fee simple title. In all cases where title to real property is acquired by the Department of Transportation either by donation, agreement or exercise of the power of eminent domain, a title in fee\* simple may be taken."

\*Usually used today on limited access roads adjoining state highways or freeways

## Exception

Not really an exception... in 1976 the city of Baker attempted to vest the N'ly portion of vacated Park Ave to owners of lots 300 & 400. Original dedication all from one owner lying within the subdivision, so all of Park Avenue went back to the subsequent owners of the underlying fee.

## Exception

Realvest Corp. v Lane County-

"While it is accurate that the conveyance represented by the 1946 deed is a narrow strip of land and the conveying instrument refers to it as a "right of way", the language of the

deed as a whole indicates that it is more likely that the words “right of way” is a surplusage and refer to the purpose for which the land conveyed will be used by the grantee rather than as a limitation by the grantor on the nature of the estate conveyed.... Ultimately we are persuaded that the parties intended the county to receive the 80 foot strip in fee”

#### Citations

1. Barton v. Portland 74 Or 75
2. Fossi v. Meyers 271 Or 611
3. Fowler v. Gehrke 166 Or 239
4. Highway Comm. V. Pac. Shore Land Co. 201 Or 142
5. Huddleston v. Eugene 34 Or 343
6. Knott v. Jefferson Ferry Co. 9 Or 530
7. Kurtz v. Southern Pacific Co. 80 Pac 213
8. Lankin v. Terwilliger 22 Or 97
9. McQuaid v. Portland & V. Ry. 18 Or 237
10. Menstell et al v. Johnson et as 125 Or 150
11. McAdam v. Smith 221 Or 48
12. Neil v. Independent Realty 317 Mo 1235
13. NW Nat. Gas v. City of Portland 300 Or 291
14. Portland Baseball Club v. Portland 142 Or 13
15. Siegenthaler v. N. Tillamook San. 26 Or App 611
16. Realvest Corp. v. Lane County 196 Or App 199

If the court says public road way they are talking about Easements. ORS 92 on subdivisions.

#### **Cartographer Roundtable**

ArcGIS Server- One County was trying to make a web application and asked if anyone had experience on that. A suggestion was made to send the question out on the ORMAP list serve.

Brett has been working with the county cartographers to more closely reflect their duties that include GIS. He is willing to pass on copies of the DOR’s new position descriptions information for the Cartographer positions that have been moved to the Information System Specialist (GIS) classification. The Cartography leads will factor in the Cartographer Certification effort at their upcoming planning meeting.