

## Sampling of Legislative Treatment of Wildfire Mitigation in the Wildland-Urban Interface Utah, Oregon, Arizona, California

Prepared for the Environmental Quality Council Assigned Studies Subcommittee  
by  
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### Introduction

In the wake of catastrophic wildfires that destroyed homes and property, or in anticipation of such events and a "not-if-but-when" mentality, state legislatures in the West have adopted various approaches to mitigate damage, property loss, and expense. What follows is a summary of four states' statutory responses to wildfire mitigation in the wildland-urban interface (WUI), an area defined by the National Wildfire Coordinating Group's *Glossary of Wildland Fire Terminology* as "the line, area, or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels."

### UTAH

Citing increasing incidence, intensity, and cost of wildland fires in Utah,<sup>1</sup> the state's Legislature passed a resolution in 2003 entitled "Compliance Cost of Fire Program -- to study United States Forest Service and Bureau of Land Management billing to the Utah State Division of Lands and Forestry Fire program and the cost to Utah citizens from federal and state fire programs." That resolution resulted in the creation of a task force, which included legislators, county commissioners, and state fire suppression agency staff.

As the 2003 resolution's title would indicate, one of this task force's primary goals was to explore alternatives for funding wildfire suppression to meet Utah's current and projected needs. The group also looked at counties' participation in Utah's Wildland Fire Suppression Fund and incentives for county enactment of ordinances that deal with fire mitigation and suppression in the WUI.

One of the task force's findings is as follows:

*Without wildland-urban interface development guidelines, uncontrolled development in the interface will continue to increase public safety concerns, as well as escalate the costs of fire suppression.*

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<sup>1</sup> According to the Utah Wildland Fire Task Force report, "Wildfire Issues and Costs in the State of Utah", in 2002, over 600 wildfires burned 263,000 acres, costing the state \$13 million.

Only two counties in Utah had adopted wildland-urban interface ordinances at the time the task force began its work.

A number of recommendations resulted from the work of the task force. These included creation of an actuarially-sound, dedicated Wildfire/Watershed Protection Trust Fund, providing the state and counties with a revenue source for fire suppression, training, and pre-suppression hazard mitigation projects. To participate in the funding, counties would be required to adopt WUI ordinances that comply with standards established by the Utah State Division of Forestry, Fire, and State Lands.

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*In order to enter into cooperative agreements for fire protection with the state Division of Forestry, Fire, and State Lands, each county is required to adopt an ordinance that meets minimum standards established by the Division.*

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The trust fund concept didn't fly as an alternative funding mechanism, but requiring counties to adopt WUI ordinances in order to receive state assistance did meet with the Legislature's

overwhelming approval.

#### County Cooperative Agreements

The 2004 Utah Legislature enacted HB 146, amending section 65A-8-6 of the Utah Code, providing the following:

In order to be eligible to enter into a cooperative agreement with the [Division of Forestry, Fire, and State Lands], the county shall:

- adopt a wildland fire ordinance based upon minimum standards established by the division;
- require that the county fire department or equivalent private provider under contract with the county meet minimum standards for wildland fire training, certification, and wildland fire suppression equipment based upon nationally accepted standards as specified by the division; and
- file with the division a budget for fire suppression costs.

HB 146 further provided that a "county that chooses not to enter into a cooperative agreement with the division may not be eligible to receive financial assistance from the division." HB 146 sailed through the Utah Legislature, with no dissenting votes in either the House or the Senate.

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*Administrative rules provide the "minimum standards" for the purposes of the ordinance requirement. The rules are based on the 2003 International Urban Wildland Interface Code, with specific modifications.*

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The "minimum standards established by the division" are articulated in administrative rules adopted by the Division of Forestry, Fire, and State Lands. The Division used the

2003 International Urban Wildland Interface Code as the basis for its standards, with very specific exceptions and modifications.

## OREGON

### Forestland-Urban Interface Fire Protection Act of 1997

In 1997, the Oregon Legislature passed the Oregon Forestland-Urban Interface Fire Protection Act. As stated in the act, it, in general:

- establishes state policy with regard to the interface that "minimizes cost and risk while maximizing effectiveness and efficiency" of fire protection;
- recognizes the risks to which structures in the interface are subject;
- recognizes that development in the interface will continue to expand;
- acknowledges that "one solution or set of solutions will not fit all situations";
- promotes involvement at all levels of government and in the private sector.

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*The forestland-urban interface is defined as "a geographic area of forestland inside a forest protection district where there exists a concentration of structures in an urban or suburban setting."*

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The act requires the state Department of Forestry to establish by administrative rule a classification system and criteria for forestland-urban interface areas. The criteria must "recognize differences across the state in fire hazard, fire risk and structural characteristics within the forestland-urban interface," and the system must "include not less than three nor more than five classes of forestland-urban interface."

Under the act, a county may establish a forestland-urban interface classification committee, consisting of five appointed members, one of which must be an owner of forestland-urban interface property. The committee assigns all areas of forestland-urban interface within the county boundaries to one of the interface classifications developed by the Department of Forestry.

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*Using system set by administrative rule, county classification committees designate all interface areas in the county according to the degree of fire hazard posed, i.e. Moderate, High, Extreme, High Density Extreme. Property owners' specific responsibilities (also established by rule) depend on how land is classified.*

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Owners of property that is classified as Moderate, High, Extreme, or High Density Extreme must comply with certain standards and certify compliance with the state forester. The standards, specified in administrative rule, address defensible space and fuel breaks, building materials, ingress and egress, open burning on the property. Obviously, the higher-hazard area, the more stringent the standards.

There is no fine for failure to comply with the standards or for failure to properly certify compliance; rather the "stick" in Oregon's system is that the state may

collect up to \$100,000 in suppression costs from a property owner that has not complied if:

- a wildland fire originates on the property;
- the ignition or spread of the fire is directly related to the failure of the owner to comply; and
- the state forester incurs costs in suppressing the fire.

### Wildfire Hazard Zones

Local jurisdictions in Oregon that have building code or life safety ordinance authority may identify Wildfire Hazard Zones (WHZ), using criteria and factors established in Department of Forestry administrative rules. Once WHZs are delineated, dormant provisions of Oregon's Building Code become active. The Building Code provisions include prohibiting the use of flammable roofing materials on new construction, requiring the use of fire-safe materials when roofing is replaced, and requiring clear identification of structure addresses.

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*Once WHZs are established by local governments, dormant provisions of Oregon's Building Code become active.*

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In both the Forestland Urban Interface Act and the WHZ processes, the specific details, standards, and directives are provided in Department of Forestry administrative rule and local jurisdictions have significant responsibility and authority.

### Land Use Planning

The Oregon Department of Land Conservation and Development has established 19 Statewide Planning Goals. Oregon state law requires every local jurisdiction to adopt a comprehensive plan and the zoning and subdivision ordinances needed to effectuate the plan. Plans must be consistent with the 19 goals and must be reviewed and approved by the Department before they may be implemented.

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*Local governments are required to zone forest lands and adopt natural hazard comprehensive plans.*

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Goal 4 requires local governments to inventory, designate, and zone forest lands and to adopt plans for those zones that conserve forest lands. Goal 7 requires local governments to adopt comprehensive plans "to reduce risk to people and property from natural hazards", including wildfires. The goals all contain specific planning and implementation guidelines.

## **ARIZONA**

The Governor's Arizona Forest Health Oversight Council, created by executive order in 2003, is an ongoing entity that studies wildland fire and issues recommendations to the Legislature, the governor and executive branch, Congress, communities, and individuals. The council also recommends areas for future study. Some of the most intense and highly publicized wildfires have occurred in Arizona over the last

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*The Forest Health Oversight Council issues recommendations to the Legislature.*

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several years,<sup>2</sup> prompting the Arizona Legislature to adopt some, but not all, of the council's 2003 recommendations.

### Authority to Adopt Code

In 2004, the Arizona Legislature gave local governments specific authority to adopt a current WUI code.<sup>3</sup> Arizona Revised Statutes (ARS) Section 9-806 (cities and towns) and section 11-861 (counties) provide that the "code may be adapted from a model code adopted by a national or international organization or association for mitigating fire hazard to life and property." The ARS requires certain procedures for and public participation in adoption of the code.

### State Forester Responsibilities

Among the responsibilities imposed on the Arizona state forester is a report during the legislative session to legislative committees with jurisdiction over forestry issues. The report must contain information about the WUI, "including the effects of county and municipal zoning policies and wildfire hazards on public and private property."<sup>4</sup>

### State Wildland-Urban Fire Safety Committee

The 2004 Legislature also established the State Wildland-Urban Fire Safety Committee, per the Oversight Council's recommendation. Section 41-2148, ARS, established the committee and provides a definition of the WUI as a "geographical area where residential or commercial structures meet or intermingle with federal, state, tribal, or other public land that is undeveloped, other than transportation or utility infrastructure."

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*For the purposes of the committee, the WUI is defined as a "geographical area where residential or commercial structures meet or intermingle with federal, state, tribal, or other public land that is undeveloped, other than transportation or utility infrastructure."*

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The committee has 12 members, including a fire chief or fire marshal, the state forester, a member of the state fire chiefs' association, a local government planner from a high-risk area, a resident of a high-risk area, a volunteer firefighter, a watershed management expert, a member to serve as a liaison

with Arizona's Congressional delegation, a Forest Service wildland fire science expert, a forest ecologist, a rural county property owner, and a registered architect.

The committee is required to develop recommendations for minimum standards for:

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<sup>2</sup> During the 2002 wildfire season, over 400,000 acres burned. Over 500,000 acres of urban interface lands are considered highly susceptible to wildfire, according to the 2003 Executive Order (2003-16).

<sup>3</sup> Section 7-5-108, MCA, allows any local government to adopt or repeal an ordinance that incorporates by reference the provisions of any code or portion of code, including fire prevention codes. Section 7-5-4202, MCA, allows the governing body of an incorporated city or town to adopt technical building, zoning, health, electrical, fire, and plumbing codes in whole or in part by reference. In Arizona, the authority to adopt building codes by reference is only given to counties that have adopted zoning.

<sup>4</sup> Section 37-622, ARS.

- safeguarding life and property from wildland fire and fire hazards;
- preventing wildland fires and alleviation of fire hazards;
- storage, sale, distribution and use of dangerous chemicals, combustibles, flammable liquids, explosives and radioactive materials in the WUI;

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*The committee develops and recommends to the governor and the Legislature minimum standards for development in the WUI.*

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- fire evacuation routes and community alert systems;
- the creation of defensible spaces in and around WUI areas as authorized by existing county and municipal laws and ordinances;
- the application of adaptive management practices to use in monitoring data from treatment programs to assess the effectiveness of those programs in meeting forest health objectives; and
- other matters relating to wildland-urban fire prevention and control.

The committee is required to issue an annual report with recommendations to the governor and the Legislature by December 31 each year.

#### Forest Health Oversight Council 2005 Recommendations

In its 2005 report, the Oversight Council recommended the following:

- Authorize fire districts, cities, towns, and counties to enforce the International Urban Wildland Interface Code. The 2004 Legislature gave entities the authority to adopt the code but did not provide clear enforcement authority.
- Allow local jurisdictions, including fire districts, to require establishment of defensible space and allow the jurisdictions to develop and implement an administrative review process to enforce hazardous fuels reduction.
- Expand county planning and zoning authority to enable better management of growth in high hazard areas.
- Provide tax incentives to support utilization of small wood products

The Arizona Legislature is in session. A search of bills currently being considered did not indicate that any of the 2005 recommendations had been proposed.

### **CALIFORNIA**

California Code addresses the WUI and hazardous fuels reduction, defensible space, building standards, classification of lands depending on their degree of fire hazard, and vegetation management.

Statutory Recognition of WUI and Hazardous Fuels Reduction

In Section 4854 of the California Public Resources Code, the Legislature recognizes that under the National Fire Plan, hazardous fuels treatment has expanded significantly, "with a greater focus on treatments intended to protect communities in the wildland urban interface." The section further provides that cutting of timber for the purpose of hazardous fuels reduction must be in accordance with regulations adopted by the Board of Forestry and Fire Protection and with the additional provisions of Section 4584. No definition is provided in California's code for the WUI but the requirements for defensible space describe the area that is affected.

Mandated Defensible Space

Section 4291 of the Public Resources Code requires people who own, lease, control, or maintain structures ("owner" for the purposes of this report) "in, upon, or adjoining any mountainous area,

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*Flammable vegetation and combustible growth must be cleared away for specified distances from structures in certain areas.*

*Penalties apply for noncompliance.*

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forest-covered lands, brush-covered lands, grass-covered lands, or any land that is covered with flammable material" to clear and maintain firebreaks of specific distances around the structures. The law exempts individual specimens or trees, well-pruned landscaping, and grass necessary to prevent erosion. Flammable vegetation or combustible growth must be cleared in an area of not less than 30 feet around the structure, and all brush, flammable vegetation, and combustible growth that is within 100 feet must also be cleared.

Owners must remove trees or portions of trees that are within 10 feet of a chimney and keep rooftops clear of debris.

Failure to comply subjects the owner to fines ranging from \$100 to \$500 and following a third consecutive violation within a specified time period, the department may conduct the work and bill the owner for costs incurred.

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*Certification that a structure meets applicable building standards is required for structures built in certain areas. The state fire marshal and others are required to develop fire-specific building standards.*

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Building Standards

Prior to construction of a new building or reconstruction of a building damaged by fire in the area described, the owner "shall obtain a certification from the local building official that the dwelling or structure, as proposed to be built, complies with all applicable state and local building standards", including those

provided in Section 51189 of the state's Government Code. The owner must give the certification to the insurer of the structure.

Failure to comply subjects the owner to the same penalties as for the defensible space requirement.

Section 51189 of the Government Code states:

The Legislature finds and declares that space and structure defensibility is essential to effective fire prevention. This defensibility extends beyond vegetative management practices ... and includes, but is not limited to, measures that increase the likelihood of a structure to withstand intrusion by fire, such as building design and construction requirements that use fire resistant building materials, and provide protection of structure projections, including, but not limited to, porches, decks, balconies and eaves, and structure openings, including but not limited to, attic and eave vents and windows.

The section requires the state fire marshal, in consultation with the director of Forestry and Fire Protection and the director of Housing and Community Development to recommend building standards pursuant to Section 18930 of the Health and Safety Code "that provide for comprehensive space and structure defensibility to protect structures from fires spreading from adjacent structures or vegetation and vegetation from fires spreading from adjacent structures."

#### Classification of Fire Hazard Severity Zones

Under Sections 51175 through 51189 of the Government Code, local jurisdictions, acting upon a recommendation from the director of Forestry and Fire Protection must designate Very High Fire Hazard Severity Zones within their boundaries. Defensible space and building standard requirements and penalties for noncompliance are essentially the same in these zones as for all

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*Local governments get involved through designation of Fire Hazard Severity Zones.*

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other land described above. The only discernable differences are a requirement that disclosure of the structure's existence in the zone must be made upon transfer of the property and upon a third consecutive conviction of noncompliance, the local jurisdiction may take corrective action and cause the expense incurred to become a lien on the property.

The stated purpose of the classification system is to allow public officials to "identify measures that will retard the rate of spread, and reduce the potential intensity, of uncontrolled fires that threaten to destroy resources, life, or property, and to require that those measures be taken."

Local jurisdictions may impose fire and panic safety ordinances that are more restrictive, as provided by law.

#### **Conclusion**

The approaches each state has taken to address wildland fire mitigation and suppression in the WUI differ in their degrees of restriction, the sanctions used to achieve compliance, and in how standards are developed and implemented. There exist common threads in each state's approach, however. In one way or another, statutes in all four of the states recognize the WUI and the unique problems associated with fire mitigation and suppression. In addition, each state either allows or requires significant local government involvement and authorizes extensive, detailed rulemaking by the state agency with fire suppression responsibilities.



Legislation and a regulatory, statutory response to the WUI provide one means to reduce risks of catastrophic fires, thereby reducing loss of property, life, and taxpayer dollars. But it is important to note that various tools and programs are available to property owners and communities in each state and in Montana that are aimed at reducing hazardous fuels, promoting community planning, and providing funding for mitigating problems ahead of a disaster. The best approach for Montana may consist of those voluntary programs coupled with some level of legislative involvement.