



*Advocating for a liveable and sustainable
Rogue Valley through responsible land use.*

September 8, 2022

Oregon Department of Land Conservation and Development
635 Capital Street NE, Suite 150
Salem, OR 97301

Re: Comments on Wildfire Adapted Communities Recommendations Report

Introduction

Thank you for the opportunity to comment on the Public Review Draft of the Wildfire Adapted Communities Recommendations Report. Rogue Advocates is a land use advocacy organization dedicated to cultivating livable and sustainable communities in southern Oregon's Rogue Valley region. Through advocacy, education, and outreach around local land use issues, we work to preserve productive rural lands and promote vibrant urban centers. Rogue Advocates was a stakeholder participant in DLCD's Wildfire Adapted Communities Stakeholder Group and appreciates the opportunity to submit comments on the Wildfire Adapted Communities Recommendations Report.

Wildfires are a reality of life in Oregon, and climate change will continue to increase the frequency and severity of the fires we face every year. The Rogue Valley is one of the most fire prone regions in Oregon, and faced significant losses in the 2020 wildfires. To be nimble in the face of these realities, land use planning must play a central role in both preventing human-caused wildfires and preventing harm to life, property, and natural resources when fires do occur. We cannot continue to develop into extreme and high hazard zones with wildfire risks as an afterthought or toothless consideration in land use applications. DLCD and the legislature should take the opportunity created by Senate Bill 762 to spur real preventative action that will protect Oregon's remarkable people and places in the face of increasingly devastating wildfires.

Preventative focus on new development or uses (Recommendation 4)

Much of the backlash around the Oregon Department of Forestry's (ODF) wildfire risk map released in June stemmed from concerns about the map not being true to existing land use reality (e.g. not accounting for prior fire hardening efforts by property owners or use of irrigation) and fears of impacts to existing insurance policies. The risk classifications assigned to individual properties were based on

weather, climate, topography, and vegetation and do not directly take into account activities occurring on those individual properties.

Ground truthing the risk map to account for the activities and nuances of individual properties will be a large regulatory lift that ODF has already rolled back the risk map to address. In contrast, the backlash and need for more ground truthing does not extend to consideration of new development on resource lands, where fire risk assessment can be more accurately based simply on weather, climate, topography, and vegetation because generally no previous activities or structures exist in the location being considered for new development. Knowing the risks posed by expansion of new development into areas identified as extreme or high fire risk calls for a preventative set of rules applying best practices when weighing new development in these areas.

There are numerous universally accepted best practices for reducing or avoiding wildfire risk that are the low-hanging fruit for limitations around new development. Just as the state recognized that use of certain building materials can increase the cost and harms of a wildfire, the state should also recognize that siting of new development has a huge impact on costs to the community for fire suppression, risk of harm, and likelihood of human-caused wildfires. Rogue Advocates believes that the following best practices should be included as part of DLCD's recommendations to the legislature, to universalize and mandate these widely accepted practices across the state. DLCD should recommend a regulatory, and not voluntary, approach to ensuring these best practices are established.

1. Prohibit and/or limit increased residential densities or more intensive uses in areas of greatest wildfire risk.

Rogue Advocates supports DLCD's recommendation to "[p]rohibit comprehensive plan or zone map amendments that would result in increased residential densities or more intensive uses in areas of greatest wildfire risk unless additional mitigation is implemented."¹ Density limitations in high wildfire hazard areas is a listed best practice by the National Fire Protection Association,² and upholds Goal 14's intent to concentrate residential density within UGBs. Oregon's work to analyze and map wildfire risk supports the feasibility of implementing such a restriction.

Many recent legislative efforts have targeted increasing residential density within UGBs to address the affordable housing crisis (e.g. HB 2001, SB 8), and rezoning to increase densities on resource lands or rural residential lands is already intentionally limited by land use planning rules to uphold Oregon's commitment to

¹ DLCD Wildfire Adapted Communities Draft Recommendations at 10.

² NFPA, Community Wildfire Safety Through Regulation: A Best Practices Guide for Planners and Regulators 23 (2013), <https://www.nfpa.org/-/media/Files/Public-Education/By-topic/Wildland/WildfireBestPracticesGuide.ashx>.

protecting rural lands from urban development. DLCD should recommend that the legislature add additional restrictions to increasing densities in these high and extreme wildfire risk zones and/or the WUI. One example of a restriction could be minimizing structures in high risk areas to those necessary for farm and forest use only, furthering Goal 3 and 4 policies while preventing increased risk and hazard associated with residences in high hazard areas.³

2. Prohibit construction on slopes greater than 30%.

Steeper slopes pose greater fire risk and make fighting fires difficult, and it is considered best practice to limit development on slopes above a certain degree.⁴ Rural towns with development on steep slopes and few evacuation routes are considered the most vulnerable to wildfire based on a study of Pacific Northwest communities by the US Forest Service.⁵ A February 2022 report by the University of Oregon's Institute for Policy Research and Engagement that evaluated best practices for wildfire mitigation found that "best practices find that development should be prohibited on slopes greater than 30%."⁶

In Oregon, development is commonly permitted on slopes up to 40%, exposing hillside buildings to greater fire risk, and slope restrictions are frequently limited to forest land.⁷ For example, both Josephine and Jackson County only prohibit development above 40% in forest zones, while only imposing additional development standards on steep slopes in other zones without prohibiting development.⁸ Prohibiting new development on slopes over 30% across all zones is a recognized best practice and low impact way to minimize loss and costs of wildfires. Additionally, limiting development on steep slopes will also minimize risk in the aftermath of wildfires, as such slopes are more prone to landslides that could impact existing and surrounding land uses. DLCD should recommend that the legislature include a limit on new development on slopes above 30%.

³ 1000 Friends of Oregon, A New Vision for Wildfire Planning: A Report on Land Use and Wildfires 48 (2018), <https://live-otfo-bene.pantheonsite.io/sites/default/files/2019-04/A%20New%20Vision%20for%20Wildfire%20Planning%202018.pdf>.

⁴ NFPA, Community Wildfire Safety Through Regulation: A Best Practices Guide for Planners and Regulators 21 (2013), <https://www.nfpa.org/-/media/Files/Public-Education/By-topic/Wildland/WildfireBestPracticesGuide.ashx>.

⁵ U.S. Forest Service, Evaluating rural Pacific Northwest towns for wildfire evacuation vulnerability (2021), <https://www.fs.usda.gov/pnw/projects/evaluating-rural-pacific-northwest-towns-wildfire-evacuation-vulnerability>.

⁶ Institute for Policy Research and Engagement, University of Oregon, Oregon Wildfire Comprehensive Planning and Code Review Findings 5 (2022), https://www.oregon.gov/lcd/NH/Documents/Wildfire_Plan_and_Code_Findings_University_of_Oregon_February_2022.pdf.

⁷ Institute for Policy Research and Engagement, University of Oregon, Oregon Wildfire Comprehensive Planning and Code Review Findings 5 (2022), https://www.oregon.gov/lcd/NH/Documents/Wildfire_Plan_and_Code_Findings_University_of_Oregon_February_2022.pdf.

⁸ Jackson County Land Development Ordinance 4.3.12(C), 9.3; Josephine County Rural Land Development Code 19.76.030.

3. Prohibit activities that pose high risks of igniting a fire in high and extreme fire areas.

Certain activities are inherently high risk of igniting fire and pose unnecessary danger when located in high or extreme wildfire risk areas. Prohibiting hazardous land uses that increase wildfire risk, including storage of combustible materials, was included as a recommendation by the University of Oregon's Institute for Policy Research and Engagement to DLCD as part of a review of Oregon's land use planning around wildfire.⁹ For example, asphalt batch plants use highly combustible materials at high temperatures and have a history of fires and explosions. Just like fireworks and campfires, the fire risk associated with such activities is unacceptable in areas prone to wildfires, and such a land use activity should never be permitted in areas identified as high or extreme fire risk. DLCD should include prohibition of specific highly combustible land use activities in high and extreme wildfire risk zones and/or the WUI as part of its recommendations to the legislature.

Address insurance concerns

There is no evidence of insurance rate increases or cancellations being directly related to the wildfire risk map. The reaction and fears of community members has demonstrated a need for legislative security that rulemaking around wildfire risks will not impact insurance costs in order to ensure buy-in to new requirements related to wildfire that impact private property. Any rulemakings related to risk classification will not be effective or equitable without these assurances, but DLCD and the legislature must protect homeowners from impacts to their insurance while still maintaining the strength of recommendations and regulations aimed at addressing wildfire risk. The real threat related to insurance is the reality that climate disasters are increasing in frequency and intensity, and the state's action must be tied to reducing this overall threat. In the long run, land use planning rules that effectively reduce wildfire risk will be the most effective way to protect property owners' ability to insure their property.

To this end, DLCD's report to the legislature should include a recommendation to include a moratorium on insurance cancellation based on state risk classification and/or a requirement that policies cannot be increased beyond a certain amount if certain conditions are satisfied. For example, approaches pursued by California include a one-year moratorium on insurance cancellation or non-renewal for areas within or adjacent to a fire perimeter after a declared state of emergency and limits on rate increases if fire-hardening standards are applied to

⁹ Institute for Policy Research and Engagement, University of Oregon, Oregon Wildfire Comprehensive Planning and Code Review Findings 4 (2022), https://www.oregon.gov/lcd/NH/Documents/Wildfire_Plan_and_Code_Findings_University_of_Oregon_February_2022.pdf.

the property.¹⁰ To successfully and equitably regulate fire risk on private property and ensure that standards developed are implemented locally, DLCD should recommend that the state create protections around insurance cancellations and increases.

Conclusion

SB 762 created an opportunity for Oregon to utilize our strong land use planning program to address the realities of climate change and to sustainably reduce wildfire risk and harms. DLCD's recommendations to the legislature should seek to prevent adding new risks through new development as already suggested broadly in proposed Recommendation 4. DLCD should consider including the specific measures above that would prevent expansion of wildfire risk and hazards as part of its recommendations to the legislature.

Thank you,

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¹⁰ California Department of Insurance, Commissioner Lara announces new regulations to improve wildfire safety and drive down cost of insurance (Feb. 25, 2022), <https://www.insurance.ca.gov/0400-news/0100-press-releases/2022/release019-2022.cfm>.