



# Oregon

Kate Brown, Governor

## Department of Forestry

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"STEWARDSHIP IN FORESTRY"

September 13, 2019

Representative Brad Witt, Chair  
House Interim Committee on Natural Resources  
900 Court Street NE  
H-178 State Capitol  
Salem, OR 97301-4048

### Re: Oregon Department of Forestry (ODF)—Initial report under House Bill (HB) 2222

Dear Chair Witt,

House Bill (HB) 2222 (2019) requires the department to report on the implementation and enforcement status of property notifications and certifications under *Oregon's Forestland-Urban Interface Fire Protection Act*. The department welcomes this opportunity to connect with the Legislature on this critical topic. Across the west, we have experienced dramatic, catastrophic loss from wildfire, including civilian and firefighter loss of life. HB 2222 provides an opportunity to consider advancement and modernization of protection within Oregon's wildland-urban interface. Please accept this report as the department's effort to fully meet the intent of HB 2222 and our unwavering commitment to mitigating the risk of catastrophic wildfire to our communities and natural resources.

### Background

In 1997, at the request of the department, Office of the State Fire Marshal (OSFM), forest landowners, and communities at risk from wildfire, the Senate Committee on Agriculture and Natural Resources sponsored a bill to address the issue of a growing number of homes being threatened and destroyed by wildfire.

Thirteen public hearings and work sessions were held by legislative committees, ten in the Senate and three in the House. Throughout this process, the bill consistently received strong support from a broad array of interested parties. Many entities and organizations testified in favor of the bill, including the governing bodies of both Deschutes and Jackson counties—two of the counties with communities at most risk from wildfire. In the end, the Legislature passed Senate Bill 360 and formally named it the "*Oregon Forestland-Urban Interface Fire Protection Act of 1997*."

The Act officially became law on January 1, 1998. Under the authority of the Board of Forestry, the next five years were devoted to the development and promulgation of the administrative rules necessary to implement the Act. The extended time to rule promulgation was intentional to ensure an inclusive process and alignment with legislative intent. The Legislature had verbally directed the

department to take a “deliberate, go slow” approach to implementation and, in addition, had inserted provisions into the Act which delayed full implementation until January 1, 2002.

The Act required that affected property owners be “... *involved in the processes of development of administrative rules ...*” related to the Act. With this in mind, two ad hoc citizen advisory committees were established, one in Deschutes County and one in Jackson County, to help develop the standards called for in the Act. The membership of both committees was a diverse mix of local citizens, fire service professionals, county government officials, and landowner representatives. ODF staff facilitated the committees’ work and conducted an extensive literature review of fire codes and interface standards. A single set of draft standards were developed from the work of the two committees. The standards were then formatted into administrative rules that were presented to the public for review and input during a number of hearings around the state. The Board of Forestry formally approved the administrative rules on September 19, 2002, and they went into effect on November 15, 2002.

### **Implementing Oregon’s forestland-urban interface fire protection laws**

The “wildland-urban interface” (WUI) is defined as properties within an ODF forest protection district that lie within a county where a specific concentration of homes exist (10 acres or less, or 4 homes per legal 40 acres). Property owners within the WUI are required to create “defensible space,” which consists of a variety of vegetation treatments to provide space where firefighters may safely defend a structure. Defensible space measures came out of research conducted by the U.S. Forest Service Research Station in Missoula, Montana. The amount of defensible space required depends on the fire risk classification for a given area (moderate to extreme risk). Areas classified as low fire risk are not required to create defensible space. Fire risk is defined in rule based upon a number of factors, including weather, forest fuels and topography.

Counties must initiate a local land classification committee to determine the fire risk for particular properties. The committees are comprised of representatives from ODF, OSFM, and three individuals appointed by the county, one of whom must reside within the WUI. The classification committee identifies properties as in or out of the WUI and classifies properties within the WUI as low, moderate, high, and extreme fire risk. After lands have been identified and classified by the committee for fire risk, the affected landowners must meet the required defensible space standards on their property. Identification and classification are intended to take place every five years to ensure properties are maintained in accordance with the defensible space standards.

The department is responsible for administrative responsibilities beyond identification and classification. The department has formed an interagency committee made up of OSFM and local fire service representatives to help guide the Act’s implementation. Once the county classification committees identify and classify properties, the department is required by law to notify property owners by mail every five years of their obligations under the Act. Property owners are then required to evaluate their property, mitigate risks, and self-certify that their property meets standards outlined in the law. Property owners must self-certify every five years or when ownership changes.

Property owners can be held liable for up to \$100,000 in extra fire suppression costs if a fire starts on their property and spreads out of control and they either failed to certify and/or did not meet the defensible space standards. The law does not supersede other laws, such as the Forest Practices Act. To date, no liabilities have been assessed under the Act. In many cases, the party responsible for the

fire was held liable for full fire suppression costs because of their role in causing the fire, rather than the limited liability of \$100,000 for violation(s) of the Act.

In 2003, county committees were formed in Deschutes and Jackson counties, and the identification and classification process was completed one year later. Between 2004 and 2008, Baker, Crook, Douglas, Jefferson, Josephine, Klamath, Lake, Umatilla, and Wasco counties also formed committees. In addition, preliminary implementation work began in Coos, Curry, Hood River, and Lane counties. By 2011, 17 counties had implemented the Act.

Since the Act was implemented in 2003, 59,338 properties have been self-certified as meeting defensible space standards. This represents 39 percent of the 151,132 total properties in the participating 17 counties that have been identified as falling within the WUI.

### **Funding**

Enactment of the law was not accompanied by increased funding or staffing for the department for program implementation. For one biennium, the Legislature specifically directed the department to use federal monies for implementation activities. A 2005 budget note said, in part: “... *seek federal grants to aid in the implementation of state laws relating to the urban-rural interface solution to reduce the risks of fire.*”

Originally, three federal community assistance (CA) grants were awarded by the Forest Service to fund implementation in Deschutes, Jackson, Josephine and Klamath counties. A fourth CA grant was awarded to fund statewide implementation work, and was primarily used to fund ODF’s WUI standards development work. In all, **\$592,000** in CA grants were secured in the first several years of implementation.

Next, a series of federal national fire plan (NFP) grants – totaling **\$909,000** through 2006 – were awarded for additional county and statewide implementation work. Over time, NFP grants from federal agencies became increasingly difficult to obtain because priority was given to funding projects that would result in immediate and measureable fuels reduction within the WUI.

Federal monies allocated to the department under the State Fire Assistance (SFA) program have also been used to help fund statewide activities since 1998. Beginning in 2006, SFA monies became the primary source of funding. Approximately **\$677,500** in SFA funds have gone toward implementation work.

In 2008, the department applied for and was approved to receive approximately **\$800,000** in “Bush Stimulus” funds for further implementation of the Act. However, these funds were specifically for personnel costs and, therefore, could not be used to cover the contractual services or other services and supplies costs – such as the multiple mailings required under the Act – that make up a significant portion of the program’s administrative expenditures.

For each district, ongoing maintenance and operation costs typically include personnel and mailing costs:

- One person to organize and conduct program activities. In most districts, this task can be performed on a part-time basis. However, a dedicated full-time position is preferable for districts that span multiple counties – such as the Central Oregon District, which includes 11 counties – or have a large number of tax lots subject to the Act.

- One person to serve on each county classification committee (part-time). Although not required, districts usually request that the State Forester appoint a district employee as the one ODF member position on the committee to reinforce local relationships.
- Administrative staff have been necessary to support program activities. This task can be performed on a part-time basis, although the associated workload has varied widely across districts.
- In addition to other services and supplies costs, program implementation work requires a sizeable expenditure for printing and mailing.
  - For each tax lot that becomes subject to the Act for the first time or has its classification changed, two mailings must go to the property owner at a cost of about \$1 each. As an example, Deschutes County has 35,000 identified parcels, so the cost to the department for just the required mailings would be approximately \$70,000.
  - For each tax lot that is already subject to the law and is not reclassified, one mailing must be made every five years. At a minimum, this mailing consists of a letter with a certification card enclosed. The cost of printing and mailing this letter and card is approximately \$1.

The Legislature did include a self-funding mechanism for the Act. ORS 477.060 sets forth a process by which a district may levy a “forest patrol assessment” surcharge upon lands subject to the Act. Originally, the Act contained no limitations on the maximum amount of this surcharge. However, in 2001, ORS 477.060 was amended to place an annual cap of \$25 per tax lot on the surcharge. In addition, the Board of Forestry further limited the amount of the surcharge that can be used for “...assessment processing, certification administration, or program administration...” to \$10 per year (OAR 629-44-1110).

No district has initiated the surcharge funding mechanism. Property owners in the WUI are currently subject to a per-acre assessment for ODF fire protection services and an improved lot assessment if a structure is on the lot through the forest patrol assessment. The concept of also paying for administration of the Act has not been well received given this context. It is also important to note that the option to use the forest patrol assessment surcharge is not available until after completion of both forestland classification and initial implementation of the Act, both of which carry significant administrative costs.

### **Current status**

The program has stalled in recent years for a number of reasons. The current status of the program in the 17 counties and nine ODF and protective association districts that were involved in the Act’s initial implementation are provided in Table 1 below.

The northwest region of Oregon—which includes three ODF protection districts and 11 counties—has never implemented the Act. The vast majority of lots in this region would ultimately be classified as low fire risk, which would not require any mitigation action from landowners. Under these circumstances, it would not be fiscally responsible to expend the dollars required to stand up classification committees, complete the identification and classification process, mail the required notices, and pay for other services and supplies. Instead, emphasis has been placed on promoting

defensible space assistance programs, such as Firewise USA, and implementing WUI recommendations established through community wildfire protection plans (CWPP).

Table 1: Current status of program work related to the Oregon Forestland-Urban Interface Fire Protection Act

District(s)	# of counties	Classification expiration	Reason
Northeast Oregon	3	2012	Very few properties met the Act's criteria and opted out after the first cycle.
Klamath-Lake and Walker Range Forest Patrol	2	2012	Implementation challenges, engagement in other WUI-related programs, lack of funding and personnel and the increasing wildfire suppression workload.
Western Lane and South Cascade	1	2015	Implementation challenges, engagement in other WUI-related programs, lack of funding and personnel, and the increasing wildfire suppression workload.
Douglas Forest Protective Association	1	2017	Implementation challenges, engagement in other WUI-related programs, lack of funding and personnel and the increasing wildfire suppression workload.
Central Oregon	6	2017	Implementation challenges, engagement in other WUI-related programs, lack of funding and personnel and the increasing wildfire suppression workload.
Coos Forest Protective Association	2	2020	To be determined
Southwest Oregon	2	2022	To be determined

### Opportunities to modernize and advance WUI protections

Although the implementation of the Act and support for maintaining classification committees has essentially halted state-wide, the Department contends that the Act still has value. Empowering all landowners in the WUI to take proactive measures in mitigating the risk of catastrophic loss from wildfire remains a powerful vision, especially given the loss from wildfire western states have experienced in the recent past.

Following the devastating fire seasons of 2013–2015, the department completed a fire program review in 2016 that recommended a comprehensive review and modernization of the Act. In response, the interagency implementation committee identified the following opportunities for WUI protection improvement:

1. Utilizing new technologies and seek other efficiencies in implementation
  - a. Utilize the Oregon Wildfire Risk Explorer (OWRE), along with fire risk data sets, as a statewide vehicle to inform the implementation of defensible space standards under

the Act. The OWRE program should be used as the foundation for defensible space standards across all WUI programs. Existing online certification tools could be added to OWRE, streamlining Act compliance.

- b. Remove costly mail notification requirement and replace with electronic certification option. There is already an online certification tool in use, but this approach—while it does make it easier for property owners to comply with certification requirements—is inconsistent with the law as currently written.
2. Funding, capacity, and efficiencies in implementation
    - a. Eliminate the fire risk classifications within the law, and instead allow OWRE to guide determination of fire risk as detailed above. Focus resources on the outreach and education aspects of the Act through minimum, or default, defensible space standards.
    - b. Authorize the positions the department requires for Act implementation. Lack of position authority has proven to be a limiting factor in successful implementation.
    - c. Consider alternate sources of program funding. The program administration funding authority in the Act has not been executed given the lack of support to implement locally.
  3. Modernizing risk factors and defensible space standards
    - a. Keep default defensible space standards in place as minimum standards and remove the tie to fire risk classification. This approach would align all of the programs working to mitigate fire risk in the WUI. Consider additional risk mitigation practices for areas classified as high and extreme risk.
    - b. Apply defensible space standards to all homes on classified forestland within a forest protection district, thus reducing confusion and applying equity to the program. This change would also eliminate the need for a county committee to identify and classify properties.
    - c. Ensure that standards align across the statutes and rules of all agencies that have jurisdiction within the WUI, including ODF, OSFM and the Department of Land Conservation and Development (DLCD).
  4. Incentives for compliance
    - a. Replace the penalty portion of the Act with a more positive incentive or a fee-based incentive to encourage compliance with defensible space requirements. Research homeowners' insurance reduction incentives.

In considering advancements in WUI protections, understanding how modernizing the Act would intersect with the following programs and ongoing efforts will be critical:

- The Firewise USA program: Voluntary. Encourages local solutions for safety by encouraging homeowners to take responsibility for protecting their homes from wildfire. Oregon currently ranks third nationally, with 162 registered Firewise USA communities. Defensible space standards established in the Act are used when creating community protections for the

Firewise USA program. ODF's National Fire Plan coordinator also serves as the Firewise USA coordinator for Oregon. This position is completely federal grant funded.

- Community wildfire protection plans: Locally driven. Addresses issues such as wildfire response, hazard mitigation, community preparedness and structure protection. ODF's National Fire Plan coordinator also serves as the state's representative for the development of CWPPs. The Act's defensible space standards are used to set the goals and objectives of these community plans. Every county in Oregon has an established plan. These plans are utilized to leverage federal dollars for fuels mitigations through National Fire Plan grants. ODF procures \$1.5 to \$2 million dollars annually for fuel reduction projects on private lands.
- Oregon's Wildfire Risk Explorer: A web-based mapping program that gives property owners access to the latest tools and data to review their fire risk, defensible space standards, and guidance on reducing their overall risk in the event of a wildfire. ODF procured federal grant dollars to initiate this project and developed this explorer in partnership with Oregon State University and OSFM, among other partners. Because the Wildfire Risk Explorer uses modern data to determine risk, its outputs are not in alignment with the risk levels as defined in the Act, which was drafted using much older data.
- Mitigating catastrophic wildfire risk on federal lands: The Legislature initiated the Federal Forest Restoration program in 2013 and made it a permanent ODF program in 2017. Millions of acres of federal lands have been identified as in need of fuels reduction treatments. Much of this landscape falls within the WUI, where fuel reduction projects are often prioritized due to communities at risk. The Good Neighbor Authority has propelled federal forest restoration work forward by using federal dollars to fund state assets for use in implementing fuels reduction projects. The recently signed shared stewardship agreement will further aid in this work by aligning forest health and wildfire mitigation efforts across federal, state and private lands in Oregon.
- Governor's Council on Wildfire Response: The work of all three of the council's committees—Suppression, Mitigation, and Recovery—intersects with the WUI in some way. The council is delivering its recommendations to the Governor later this month, some of which relate to advancing protections in the WUI.

### Action requested

The department requests that the committee accept this initial report.

Sincerely,



Peter Daugherty  
Oregon State Forester

cc Jason Miner, Natural Resources Policy Manager, Office of Governor Brown  
Tom Imeson, Chair, Board of Forestry