

To: Chair Kropf, Vice Chairs Chotzen & Wallan & Members of the Judiciary Committee
From: Ralph Bloemers, Director of Fire Safe Communities, Go Alliance
Date: March 16, 2025
Re: HB 3666 - Preventing Utility Ignited Fires & Ensuring Accountability for Oregonians
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A. Introduction.

This memo provides an analysis of HB 3666, as introduced, and it also sets forth some of the existing requirements in Oregon law regarding the safe operation of utility lines in Oregon. In preparing this memo, I have relied on my own analysis, as well as analysis provided to me by practicing attorneys, a retired Oregon judge and several law clerks. I have spoken to Representative Marsh, and I have reviewed the information she shared with me. I am an attorney licensed in Oregon, and I have over 25 years experience in wildfire, fire science, land management, community safety, insurance and related topics.

I have submitted information on utility caused fires in Oregon in Oregon, and included Exhibits with this memo. Not only did Pacificorp ignite dozens of fires on Labor Day 2020, but it has ignited more fires since 2020. As noted in my submission to the 7th Oregon Climate Assessment:

Ignitions caused by power generation, transmission, or distribution accounted for two percent of the total number of fires >1 acre, and 0.3 percent of the area burned. Nevertheless, the role of power systems is attracting increasing attention given that they ignited or contributed to ignition of some of the recent wildfires that caused the greatest losses of life and structures. These include the Tubbs (2017, Santa Rosa, California), Camp (2018, Paradise, California), Almeda (2020, Talent and Phoenix, Oregon), Marshall (2021, Boulder County, Colorado), and Lahaina (2023, Maui, Hawaii) fires. From 2015 through 2020, energized power lines ignited six of 20 of California’s most destructive fires (California State Auditor 2021). Wildfires ignited by power systems rapidly can become large because they generally begin during periods of high wind. Public safety power shutoffs increasingly are being implemented with the aim of preventing ignitions from power generation, transmission, or distribution. Use of such shutoffs was approved in California in 2012, and Portland General Electric implemented one in Oregon in 2020.

While powerline ignited fires are a low percentage of total ignitions, they are incredibly dangerous because they occur during wind events. Fires ignited during wind events are where most home and community losses occur, around 88 percent of home and structure loss occurs in fast fires. (Oregon Climate Assessment, 2025 *citing to* Balch et al 2024)

HB 3666 creates a required certification process that can lead to a grant of certification to a utility that satisfies applicable certification standards. The bill does not contain specific safety standards, rather as discussed below these exist in the Oregon Revised Statute or were adopted in administrative rules (OAR).

As introduced, the bill provides that the safety certification provided by HB 3666 could be used to establish “reasonableness.” In testimony on March 4, 2025 before the House Judiciary Committee and [in news coverage](#), two legal experts, Michael Wara and Cody Berne, described this provision as providing a “safe harbor” or immunity for powerline ignited fires. I understand from speaking with Representative Marsh that the intent was not to provide for immunity. The -1 Amendment is being offered to eliminate doubt and clarify that the legislation does not provide a safe harbor for utilities to be able to avoid a jury trial and the right of victims to present evidence of their actual conduct.

I appreciate Representative Marsh’s commitment to fire survivors and her work on both recovery after fire and her commitment to reducing ignitions at the wrong time and place, and preparing Oregonians for future fire. This memo reviews the effect of the -1 Amendments and also presents policies that could increase wildfire safety, reduce the chance of powerline ignited fires, and ensure accountability in the unfortunate event that utilities cause more fires that burn up Oregon homes, structures, recreation areas, forests, grasslands, and kill people.

B. Analysis of Bill, As Introduced, and Effect of -1 Amendment.

In section 2, subsection (2), the bill provides that the Legislative Assembly intends to establish the wildfire safety standards that apply to a public utility and to authorize the Public Utility Commission to implement and enforce those standards in a manner consistent with state law. Section 3 obligates an electric utility to apply for a certification of compliance with wildfire safety standards and procedures promulgated by the Commission. In the bill, as introduced, Section 3, subsection (5) states the legal consequence or conclusion that follows from a successful application for certification: “A wildfire safety certification **establishes that an applicant is acting reasonably with regard to wildfire safety practices and materially consistent with the applicant’s wildfire protection plan or wildfire mitigation plan....**”

A certification which establishes that the applicant utility is acting reasonably will have preclusive consequences, as a matter of law, in any legal forum in which the reasonableness of the utility’s conduct is the subject of a legal contest. The most familiar example will be a legal proceeding in which wildfire victims assert a legal claim that an electric utility’s negligence has caused personal injury or property damage. Pursuant to Section 3 (5) of the bill, as introduced, an electric utility will be able to rely on its commission certificate to avoid litigation and move for summary judgment of claims that its negligent failure to comply with its wildfire mitigation plan has caused injury or property damage.

The -1 Amendment replaces the controversial declaration that the certification establishes the reasonableness of a utility’s action regarding wildfire safety practices with a provision that ensures that the utilities’ actual conduct will be at issue in any proceeding.

C. -1 Amendment Respects Constitutional Right to a Jury Trial.

For centuries, dating back to the earliest English common law, juries have been responsible for deciding whether a defendant in negligence cases has acted reasonably

under all the circumstances. Oregon's Bill of Rights incorporates and protects from infringement the jury trial right that was familiar to the state's founders. The immunity and preclusion of a jury trial embodied in HB 3666, Section 3, subsection (5), as introduced, conflicts with the constitutional right to a jury trial.

Legislators have a duty under their oath, equal to the duty of our judges, to ensure that their legislative product does not run afoul of the state and federal constitutions, including the right to a jury trial. Legislators must evaluate whether proposed legislation would respect the rights of Oregon fire victims to receive the jury trial to which they are constitutionally entitled. The -1 amendment listed in OLIS will ensure that the bill does not supplant Oregonian's right to a jury trial.

D. Opportunity to Protect Oregonians From Utility Caused Fires.

This bill presents an opportunity for the legislature to fix some things in existing law that need fixing, and improve utility safety in Oregon. To bring this into focus, let's take a look at what Oregon already has in place:

ORS 757.020. "REQUIREMENTS OF UTILITIES TO FURNISH ADEQUATE AND SAFE SERVICE AT REASONABLE RATES," is already the law in Oregon, "Every public utility is required to furnish adequate and safe service, equipment and facilities, ..."

ORS 757.960. "WILDFIRE PROTECTION AND MITIGATION WORKSHOP," already requires the PUC to hold workshops to help power companies develop and share information about wildfire best practices, risk-based wildfire protection and risk-based wildfire mitigation procedures and standards.

ORS 757.963. "PUBLIC UTILITY RISK-BASED WILDFIRE PROTECTION PLAN; REQUIREMENTS; EVALUATION AND APPROVAL BY COMMISSION...", already requires investors owned utilities like PacifiCorp and PGE to have and comply with a wildfire protection plan that is filed with the PUC and evaluated by the PUC. The plan requires the power companies, among other things, to identify areas subject to heightened risk, identify ways to mitigate risk, identify preventative actions, describe vegetation management.

OAR 860-024-0010, "CONSTRUCTION, OPERATION, AND MAINTENANCE OF ELECTRICAL SUPPLY AND COMMUNICATION LINES," already requires power companies to "construct, operate, and maintain" their equipment in compliance with NESC (National Electrical Safety Code) standards.

OAR 860-024-011, "INSPECTIONS OF ELECTRIC SUPPLY AND COMMUNICATION FACILITIES," already requires a power company to maintain its equipment in compliance with PUC safety rules and inspect its power lines.

OAR 860-024-0016, "MINIMUM VEGETATION CLEARANCE REQUIREMENTS," already sets the minimum distance trees and branches can be from power lines. And subpart (7) says, "(7) Each Operator of communications facilities must ensure vegetation

around communications lines do not pose a foreseeable danger to the pole or electric supply Operator's facilities.”

OAR 860-024-0017, “VEGETATION PRUNING STANDARDS,” requires power companies to prune trees in compliance with American National Standard for Tree Care Operations.

OAR 860-024-0018, “HIGH FIRE RISK ZONE SAFETY STANDARDS,” already creates safety and inspection rules. It requires safety patrols. (5) explains that any violation that is an imminent danger must be fixed, disconnected, or isolated.

OAR 860-024-0050, “INCIDENT REPORTS,” requires power companies to report fires they start to the PUC. However, the OAR prohibits the reports from being used in court. “(5) An incident report filed by a public or telecommunications utility in accordance with ORS 654.715 **cannot be used as evidence** in any action for damages in any suit or action arising out of any matter mentioned in the report.”

I request that the Judiciary take this opportunity to look at what California has in place for wildfire mitigation plans, public safety power shutoffs, reporting of powerline ignitions and more. For example, I understand from tracking the California laws and rules closely that **California requires that all utility ignitions be reported within less than 24 hours**, and allows the reports to be used in court to prove liability. This is accountability. This is what Oregon needs. I encourage you to consider amending the law to require reporting of all ignitions as California has done. <https://www.cpuc.ca.gov/industries-and-topics/wildfires>

Here in Oregon, we are entering the fifth year since the powerline ignited fires of Labor Day 2020 and **we still do not have a report** from either the Oregon Department of Forestry or from the Oregon State Fire Marshall on the causes and origins of the fires. (The last reporting on this was in the [Statesman Journal in 2023](#) entitled: *3 years later, why hasn't Oregon released investigations into deadly Labor Day wildfires?*)

I know that investigators working for the Oregon Department of Forestry were on the scene of the Santiam Canyon Fire, as I was in the Santiam Canyon working with an arson investigator in the days, weeks and months after the fire. Our team documented dozens of powerline ignitions in the Santiam Canyon, took photographs and videos and provided those to OPB. [OPB made a film about the fires in the Santiam Canyon](#) using the evidence and videos I provided to them, and numerous Oregon news organizations reported on the ignitions.

In the trial against PacifiCorp, as OPB reported, [the victims showed that Pacificorp had taken evidence of ignitions and destroyed it shortly after the fires](#). PacifiCorp also destroyed internal text messages that showed its responsibility. PacifiCorp was held grossly negligent, reckless and punitive fines were levied for its conduct. Requiring immediate reporting would help prevent this behavior in the future, and this information should be available to victims to prove liability.

E. Questions for Judiciary Committee & Sponsors.

In light of the foregoing and the ongoing risk to Oregon from utility-ignited fires, I submit the following questions for the committee's consideration and investigation.

What **specific** gaps in current wildfire safety regulations does HB 3666 address that necessitate its passage? Where and how does the bill enhance existing safety measures beyond what is already mandated for utilities? Does it change the existing legal standard for utilities to comply with—does it make them more strict, or less strict?

California requires reporting of utility caused fires within 2-4 hours, with follow-up in 24 hours? Is the committee aware that is required and did the committee consider requiring that here?

Why does Oregon not allow for the reports of utility ignitions to be used by Oregonians who suffer losses of their homes, businesses and assets from powerline fires, while California does allow it? Would you consider changing the law?

What criteria will the PUC use to evaluate and approve a utility's wildfire protection or mitigation plan? How will the bill ensure that utilities implement and maintain effective wildfire prevention strategies beyond obtaining the certification?

How is the PUC going to audit and ensure that utilities are complying with safety certificate requirements? Where is the funding for that? How many inspectors would the PUC need to inspect every mile of the utilities' grids each year? How many does it have today?

G. Conclusion.

HB 3666, as introduced, could have provided immunity and infringed on Oregon's constitutional right to a jury trial. The -1 amendment clarifies that the certificate does not act as a substitute for the actual conduct of the utility in starting fires. The utility's conduct determines its liability.

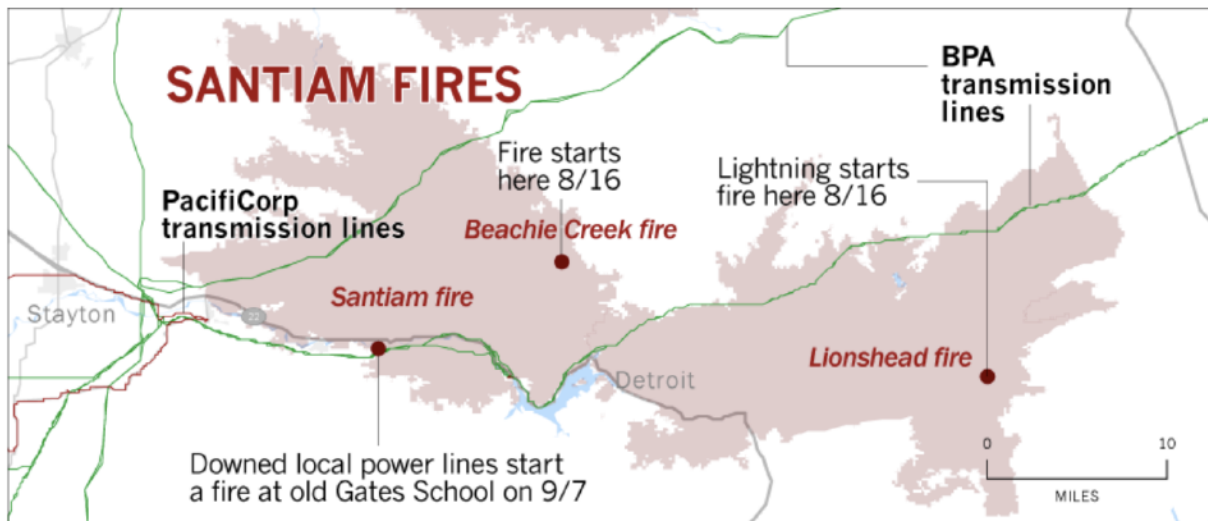
However, the bill does not propose any changes to the law to reduce the odds of a utility-caused wildfire. Our goal in Oregon must be to prevent utility caused wildfires, as they occur during wind events and are incredibly dangerous and destructive. This bill provides an opportunity to fix some missing elements in Oregon's wildfire mitigation laws and regulations, namely, the requirements for promptly reporting utility caused wildfires, preserving evidence, and allowing victims, authorities and affected parties to use the evidence to seek compensation and accountability.

Thank you for your kind attention and your interest in looking out for future Oregon wildfire victims and survivors, and in ensuring fire safety in Oregon.

Exhibits



Gates Mayor Ron Carmickle stands before his destroyed home and garage. Ron witnessed powerlines arcing, and heard and saw transformers popping. Ron sued PacifiCorp for his losses, but died in 2022.



Map: Mark Friesen/staff

Sources: Esri, U.S. Department of Homeland Security, National Interagency Fire Center

Beachie Creek/Santiam fires



Firefighters attempted and failed to control a fire that destroyed a fire camp at the old Gates Elementary School on Labor Day. The fire was ignited when a power line fell on a cyclone fence.

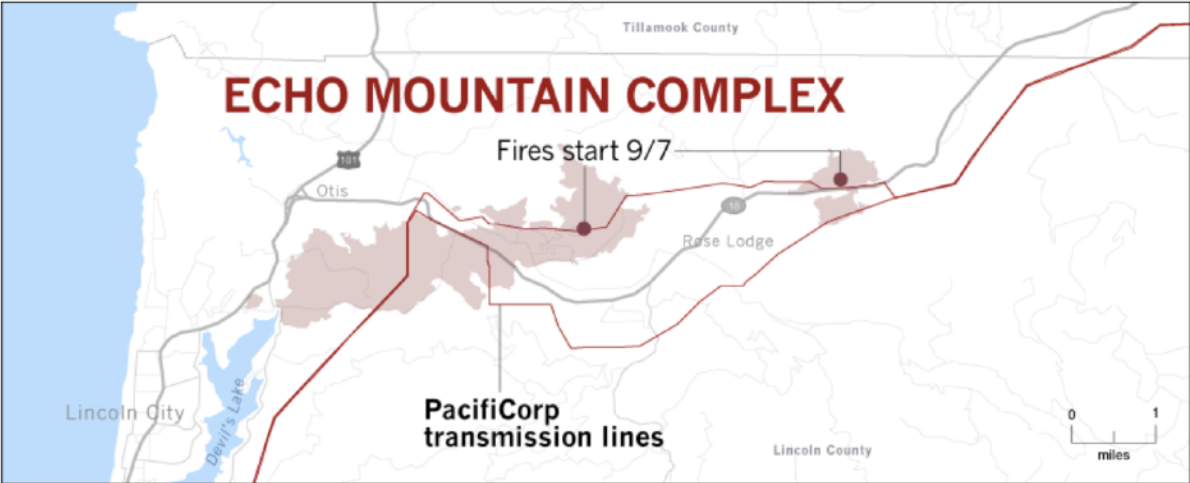
Aftermath - Incident Team 13 Command Post wreckage, the power line in the foreground was laying across the cyclone fence.



Echo Mountain Complex



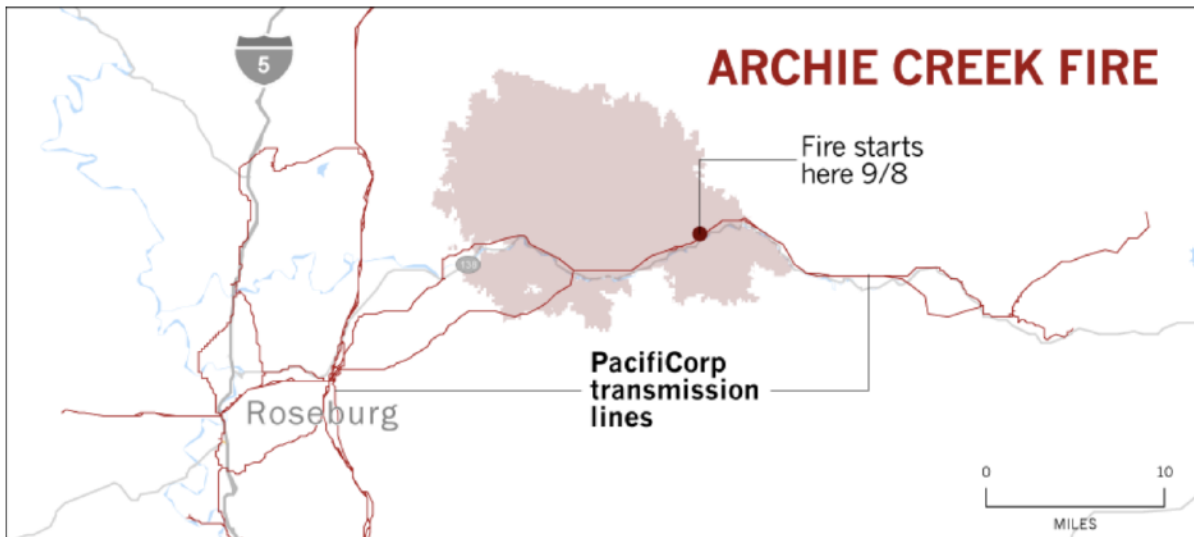
The Echo Mountain fire burned 29 of the 31 homes in the Salmon River Mobile Village on the north side of Oregon Highway 18.



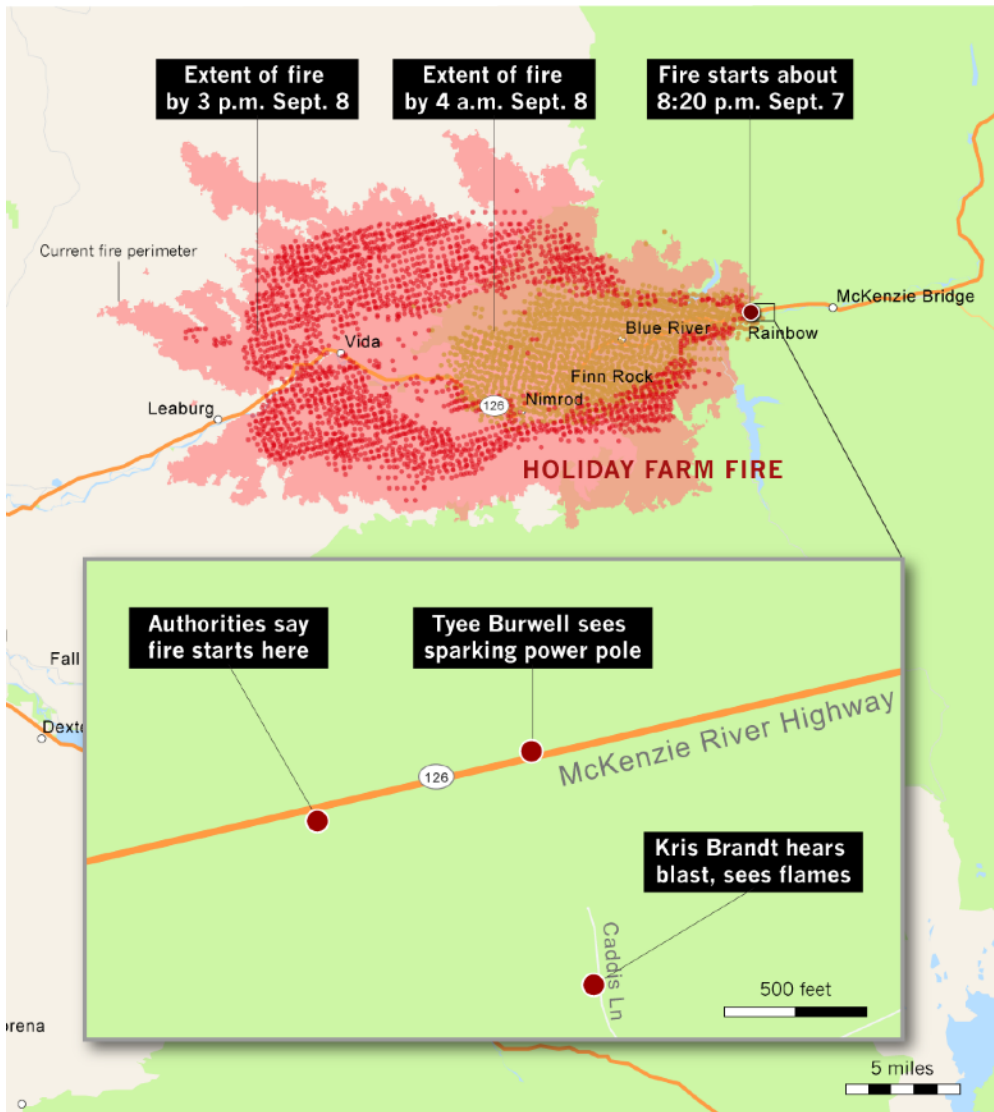
Map: Mark Friesen/staff
Sources: Esri, U.S. Department of Homeland Security, National Interagency Fire Center



The Bogus Creek Campground, which was destroyed in the Archie Creek Fire in the Umpqua National Forest. (Courtesy Francis Eatherington)



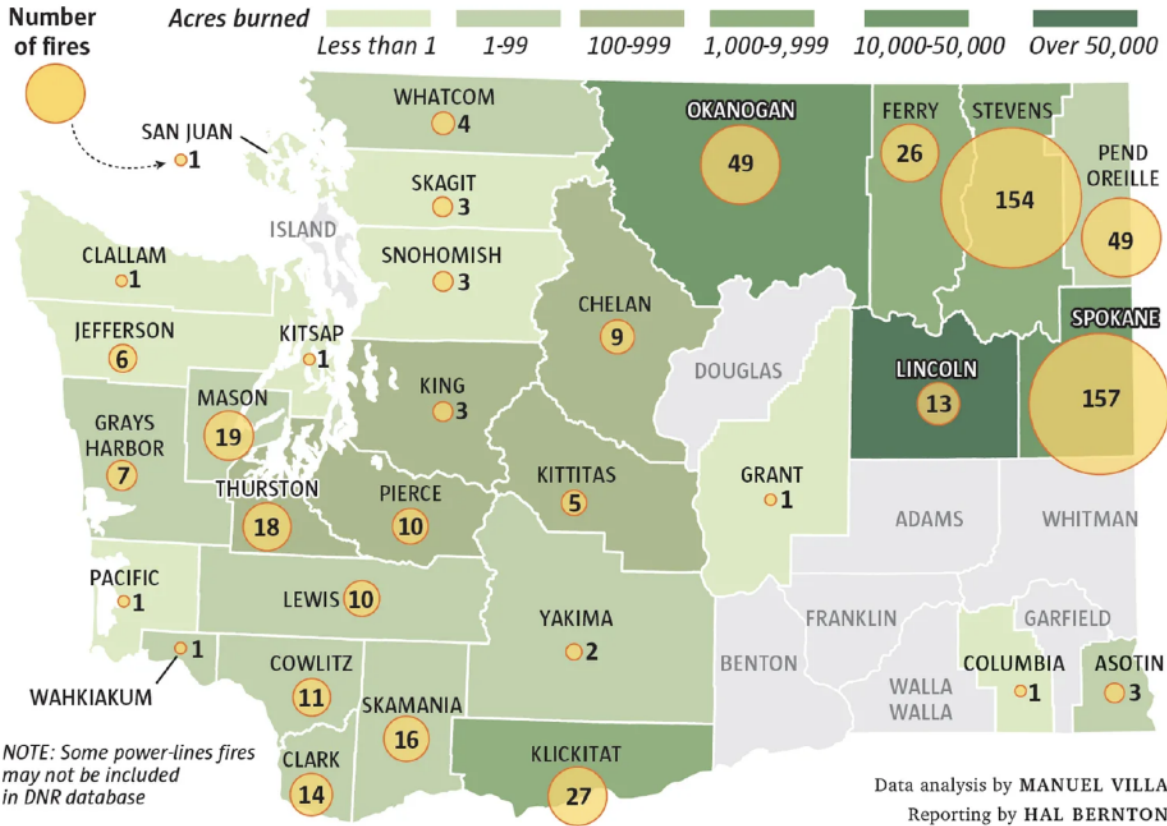
Map: Mark Friesen/staff
Sources: Esri, U.S. Department of Homeland Security, National Interagency Fire Center



Sources: Esri, NASA, National Interagency Fire Center

Mark Friesen/staff

Where have Washington power-line fires flared over the past decade?



Top 20 Most Destructive California Wildfires

FIRE NAME (CAUSE)	DATE	COUNTY	ACRES	STRUCTURES	DEATHS
1 CAMP (Powerlines)	November 2018	Butte	153,336	18,804	85
2 EATON (Under Investigation)*	January 2025	Los Angeles	14,021	9,413	17
3 PALISADES (Under Investigation)*	January 2025	Los Angeles	23,707	6,833	12
4 TUBBS (Electrical)	October 2017	Napa & Sonoma	36,807	5,636	22
5 TUNNEL - Oakland Hills (Rekindle)	October 1991	Alameda	1,600	2,900	25
6 CEDAR (Human Related)	October 2003	San Diego	273,246	2,820	15
7 NORTH COMPLEX (Lightning)	August, 2020	Butte, Plumas, & Yuba	318,935	2,352	15
8 VALLEY (Electrical)	September 2015	Lake, Napa & Sonoma	76,067	1,955	4
9 WITCH (Powerlines)	October 2007	San Diego	197,990	1,650	2
10 WOOLSEY (Electrical)	November 2018	Ventura	96,949	1,643	3
11 CARR (Human Related)	July 2018	Shasta County, Trinity	229,651	1,614	8
12 GLASS (Undetermined)	September 2020	Napa & Sonoma	67,484	1,520	0
13 LNU LIGHTNING COMPLEX (Lightning/Arson)	August 2020	Napa, Solano, Sonoma, Yolo, Lake, & Colusa	363,220	1,491	6
14 CZU LIGHTNING COMPLEX (Lightning)	August 2020	Santa Cruz, San Mateo	86,509	1,490	1
15 NUNS (Powerline)	October 2017	Sonoma	54,382	1,355	3
16 DIXIE (Powerline)	July 2021	Butte, Plumas, Lassen, & Tehama	963,309	1,311	1
17 THOMAS (Powerline)	December 2017	Ventura & Santa Barbara	281,893	1,063	2
18 CALDOR (Under Investigation)	September 2021	Alpine, Amador, & El Dorado	221,774	1,003	1
19 OLD (Human Related)	October 2003	San Bernardino	91,281	1,003	6
20 JONES (Undetermined)	October 1999	Shasta	26,200	954	1

"Structures" include homes, outbuildings (barns, garages, sheds, etc) and commercial properties destroyed.

This list does not include fire jurisdiction. These are the Top 20 regardless of whether they were state, federal, local or tribal responsibility.

*Numbers not final *DINS Disclaimer: These numbers are preliminary based on aerial assessments dedicating heat sources which can include chicken coops, outbuildings, sheds, water containers, etc. *Validated inspections are currently being ground-verified by Damage Assessment Teams.



2/7/2025