



STAFF REPORT

TO: Board of County Commissioners

FROM: Nick Lelack, AICP, Director
Peter Gutowsky, AICP, Planning Manager
Kyle Collins, Associate Planner

DATE: July 8, 2021

RE: Updates for Wildfire Mitigation Amendments - Senate Bill 762

Staff is updating the Board of County Commissioners (Board) regarding possible code amendments related to wildfire hazard mitigation. Staff last updated the Board concerning wildfire hazard mitigation during a work session on February 24, 2021. During that meeting, staff outlined the results of the public outreach program concerning new defensible space standards and fire resistant building codes. Staff provided the Board with background information for proposed building code and defensible space amendments including exceptions, applicable geographic areas, a discussion of the County's current defensible space standards, and programmatic examples from other jurisdictions. Finally, staff combined the information into an initial framework for establishing any new wildfire mitigation standards in rural Deschutes County.

After reviewing the proposed next steps and possible local code amendments, the Board made two decisions regarding the project:

- 1) Maintain the Deschutes County Wildfire Hazard Zone at its current size and designation categories
- 2) Wait to see the outcome of any legislative bills from the State of Oregon that would affect local wildfire mitigation efforts

During the 2021 state legislative session, a number of bills were introduced related to wildfire mitigation. On June 26, 2021, the Oregon Legislature passed Senate Bill (SB) 762, which has significant impacts on wildfire mitigation efforts across all jurisdictions in Oregon including Deschutes County.

SB 762 contains a broad range of regulatory and non-regulatory approaches to address wildfire risk. Specifically, the bill focuses on the following areas:

- Plans for public electricity utilities to reduce risks associated with wildfire
- Statewide mapping of wildfire risks
- Defensible space standards for new and existing development
- Building code guidelines to reduce risks associated with wildfire
- Programs to support local communities in detecting, preparing for, communicating, or mitigating the environmental and public health impacts of wildfire smoke
- Emergency response and disaster recovery associated with wildfire events
- Programs to reduce wildfire risk through the restoration of landscape resiliency and the reduction of hazardous fuel on public or private forestlands and rangelands and in communities near homes and critical infrastructure
- The creation of an Oregon Conservation Corps Program to reduce wildfire risk to communities and critical infrastructure and to help to create fire-adapted communities
- Requirements for Counties to ensure all lands have a baseline level of fire protection
- Creation of a Wildfire Programs Advisory Council

All of these programs and directives will have some effect on Deschutes County, but given the previous local efforts to establish new potential wildfire mitigation code amendments, this report will focus on the following components of SB 762:

- 1) Statewide mapping of wildfire risks
- 2) Statewide land use and defensible space guidelines to reduce wildfire risk
- 3) Statewide building code guidelines to reduce wildfire risk

The remaining components of SB 762 will be brought before the Board at a future date by other County Departments such as Public Health and Natural Resources when the details of those specific policies become clear.

Finally, the Board should be aware that SB 762 contains numerous provisions that must occur at the state level before local governments can undertake additional actions. This report contains a timeline of important events and opportunities that may allow for County participation.

I. Timeline and Decision Points

The following table highlights major dates in the SB 762 implementation process, specific action items related to those dates, and information concerning whether or not local governments can participate. This table does not cover all relevant dates associated with SB 762, but targets those dates that will affect land use requirements, building codes, and other development issues:

Senate Bill 762 – Major Actions & Timeline

Date	State Actions	Agencies & Departments	Local Government Involvement
September 1, 2021	1) First members of the Wildfire Programs Advisory Council appointed.	State Wildfire Programs Director, President of the Senate and Speaker of the House of Representatives	1) The County may nominate appointees to the Wildfire Programs Advisory Council to advise the State Wildfire Programs Director on the implementation and progress of SB 762.

Date	State Actions	Agencies & Departments	Local Government Involvement
December 31, 2021	1) State Forestry Department Report to an interim committee of the Legislative Assembly related to wildfire, to the State Wildfire Programs Director, and to the Wildlife Programs Advisory Council on the progress of the department and Oregon State University in creating a statewide map of wildfire risk.	State Forestry Department, Oregon State University	None

Date	State Actions	Agencies & Departments	Local Government Involvement
June 30, 2022	1) State Forestry Department completes and publishes the statewide map of wildfire risk.	State Forestry Department, Oregon State University	1) Local governments may comment on proposed administrative rules and/or appeal assignment of risk classes, if necessary.

Date	State Actions	Agencies & Departments	Local Government Involvement
<p style="text-align: center;">October 1, 2022</p>	<ol style="list-style-type: none"> 1) The Department of Land Conservation and Development (DLCD) will identify and complete updates to the statewide land use program, local comprehensive plans, and zoning codes that are needed to incorporate the state-wide wildfire risk maps and minimize overall wildfire risk. 2) The Department of Consumer and Business Services will amend section R327 of the Oregon Residential Specialty Code to include standards for additions to existing dwellings and accessory structures and for replacement of existing exterior elements covered in section R327 of the 2021 Oregon Residential Specialty Code. These new standards will apply to properties identified as extreme or high risk and located within a designated wildland-urban interface on the statewide map of wildfire risk. 	<p style="text-align: center;">DLCD, State Fire Marshal, State Forestry Department, Department of Consumer and Business Services</p>	<ol style="list-style-type: none"> 1) Consultation with DLCD staff to identify and develop and updates to the Deschutes County comprehensive plan or zoning codes.

Date	State Actions	Agencies & Departments	Local Government Involvement
<p>December 31, 2022</p>	<p>1) The State Fire Marshal shall establish minimum defensible space requirements for lands in areas identified as extreme or high risk and located within a designated wildland-urban interface on the statewide map of wildfire risk.</p>	<p>State Fire Marshal, Oregon Fire Code Advisory Board</p>	<p>Local governments may:</p> <ol style="list-style-type: none"> 1) Adopt and enforce requirements for defensible space that are greater than the requirements established by the State Fire Marshal. Any local requirements that a local government adopts for defensible space must be defensible space standards selected from the framework set forth in the International Wildland-Urban Interface Code or other best practices specific to Oregon. 2) Administer, consult on, and enforce the requirements established by the State Fire Marshal. Must periodically report to State Fire Marshal regarding compliance. 3) Expend financial assistance provided by the State Fire Marshal to give priority to the creation of defensible space: <ul style="list-style-type: none"> • On lands owned by members of socially and economically vulnerable communities, persons with limited proficiency in English and persons of lower income as defined in ORS 456.055 • For critical or emergency infrastructure • For schools, hospitals and facilities that serve seniors.

Date	State Actions	Agencies & Departments	Local Government Involvement
April 1, 2023	1) Earliest date that section R327 updates to the Oregon Residential Specialty Code may become operative.	State Forestry Department, Oregon State University	None

Date	State Actions	Agencies & Departments	Local Government Involvement
October 1, 2024	1) The Department of Consumer and Business Services must update section R327 of the Oregon Residential Specialty Code to include alterations required in SB 762.	Department of Consumer and Business Services	1) Ultimately, local governments will be required to adopt state-level changes to R327 into the local jurisdiction’s building code.

II. Statewide Wildfire Risk Mapping

Mapping Process and Rule-Making

A key component of SB 762 is the development and maintenance of a comprehensive statewide map of wildfire risk that displays the risk classification for properties down to a parcel level. The Oregon Department of Forestry (ODF) in collaboration with Oregon State University (OSU) will undertake the creation of this map. Based on a number of risk factors such as weather, vegetation, and topography, the statewide map will ultimately assign one of five different risk classifications to each property in Oregon: extreme, high, moderate, low, and no risk.

Additionally, the map will be required to identify areas described as the “wildland-urban interface” which must be consistent with national risk standards. ORS 477.015 defines “wildland-urban interface” as follows:

“The meaning given that term in rule by the State Board of Forestry.”

The definition replaces a previous definition in ORS 477.015 for “forestland-urban interface” which was 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.”

SB 762 expressly recognizes the following:

“Oregon varies by condition, situation, fire hazard and risk, that different wildland-urban interface fire protection problems exist across the state because of this variability, and that these different problems necessitate varied fire prevention and protection practices.”

The Oregon State Board of Forestry (Forestry Board) is required to conduct the rule-making session to develop and adopt the “wildland-urban interface” definition described above no later than 100 days after the effective date of SB 762. Staff anticipates the specific definition will be adopted in late September or early October 2021.

SB 762 also requires the Forestry Board to establish a process for private property owners and local governments to appeal the statewide risk map findings. The Forest Board is required to provide notice and information about how a property owner may appeal an assignment of property to the extreme or high wildfire risk classes. The specific appeals process has not been developed at this time, but staff can notify the Board at a future work session when that program is formally established.

Staff notes that the statewide risk maps must also display the locations of socially and economically vulnerable communities. It is currently unclear what specific characteristics or thresholds will be used to identify “socially and economically vulnerable communities,” however, staff notes that these parameters will possibly be addressed during the same rule-making session to define “wildland-urban interface.”

As described in the timeline above, ODF and OSU are required to finish all actions associated with the map creation, rule-making process, and the associated appeals procedures by June 30, 2022.

Finally, the Department of Land Conservation and Development (DLCD) must identify updates to the statewide land use planning program, local comprehensive plans, and zoning codes that are needed in order to incorporate wildfire risk maps and minimize wildfire risk. Updates may include any provisions regarding sufficient defensible space, building codes, safe evacuation, and development considerations in areas of extreme and high wildfire risk. SB 762 requires that DLCD take into account regional or local differences when requiring land use updates or revisions. Additionally, the updates will include appropriate levels of state and local resources necessary for effective implementation of any wildfire mitigation programs, but the specifics of those resources are unknown at present.

DLCD must complete any proposed updates by October 1, 2022 and submit a report detailing recommended code changes to the State Wildfire Programs Director and to the Wildfire Programs Advisory Council. Additional information concerning the Wildfire Programs Advisory Council is described later in this report.

County Implications

Properties which are determined to fall within either the high risk or extreme wildfire risk categories and are located within designated wildland-urban interfaces will be required to comply with new state-wide mitigation measurements including defensible space and building code standards. While the statewide wildfire risk maps are not yet established, staff notes that based on Deschutes County's Wildfire Hazard Zone maps, it is probable that a large percentage of our local region will be defined as either high or extreme risk.

As stated previously, citizens and local governments will be afforded an opportunity to appeal any mapping designations they feel were established incorrectly. While the specific appeals process has not been determined at this time, staff notes that SB 762 requires any application for appeal be based on the following characteristics:

- Whether the property designation is consistent with the mapping criteria established by the Forestry Board
- Any pertinent facts that may justify a change in the assignment
- Any error in the data ODF used to determine the designation and if the error justifies a change risk classification

Staff points out the following findings included in the the Wildfire Mitigation Outreach Summary Report¹, which was presented to the Board in February 2021. These findings are drawn from several public outreach events conducted by County staff to gauge public opinion regarding new wildfire mitigation measures:

- 1) A majority of residents, both rural and urban, were supportive of new building code standards to reduce impacts from wildfires (e.g. – fire hardening standards)
- 2) A plurality² of residents, both rural and urban, were supportive of new defensible space standards for new and existing development
- 3) A majority of residents, both rural and urban, were willing to incur at least some additional cost to implement new building code standards for wildfire mitigation. The level of expenditure residents were willing to undertake varied widely, with the plurality of respondents willing to expend at least \$6,000 above the average cost of a 2,400 square-foot home (representing an approximate 1% increase) and the next largest group of respondents willing to expend more than \$6,000.

A more detailed breakdown of Deschutes County residents' thoughts and concerns regarding new wildfire mitigation measures is located in the full Wildfire Mitigation Outreach Summary Report.

¹ A copy of the Wildfire Mitigation Outreach Report is attached for reference

² A plurality is defined as "the number of votes cast for a proposal which receives more than any other, but does not receive an absolute majority"

III. Statewide Defensible Space Standards

State Actions and Process

As described above, after completion of the state wildfire risk map, all properties that are determined to fall within either the high risk or extreme risk categories and are located within a designated wildland-urban interface will be required to comply with new statewide mitigation measurements including defensible space.

SB 762 directs the State Fire Marshal to establish minimum defensible space requirements for wildfire risk reduction. The State Fire Marshal is required to consult with the Oregon Fire Code Advisory Board to establish any defensible space requirements. The Oregon Fire Code Advisory Board is composed several members representing a variety of interest groups and agencies, including:

- The Oregon Fire Chiefs Association
- The Oregon Fire Marshals Association
- The Oregon Building Codes Division
- A public member at large
- A business or industry representative
- An approved design professional

The established Oregon defensible space standards must be consistent with and cannot exceed the defensible space set forth in the International Wildland-Urban Interface Code published by the International Code Council. Additionally, the State Fire Marshal may consider best practices that are specific to Oregon in order to establish a new program. This approach is intended to help set minimum and maximum standards for defensible space, while also allowing some local control to meet the state's various environmental conditions. Any adopted defensible space standards will be periodically reviewed to ensure local requirements still reflect best practices for defensible space wildfire mitigation.

The State Fire Marshal must establish minimum defensible space requirements by December 31, 2022.

County Implications

SB 762 allows local governments to interact with any new defensible space programs in the following ways:

- Enforcement and monitoring
- Increasing local standards
- Financial assistance distribution

Initially, the State Fire Marshal and associated staff will provide the majority of enforcement and monitoring work regarding defensible space standards. However, local governments have the authority to administer, consult on, and enforce the requirements established by the State Fire

Marshal. More specifically, local governments have the ability to designate any fire districts, fire departments, or fire agencies to enforce the adopted state requirements. If desired, the Board may begin conversations with local fire protection districts in the coming months to discuss how enforcement and monitoring of these standards might be undertaken.

Should Deschutes County elect to handle enforcement or monitoring of new defensible space standards, the County is required to periodically report to the State Fire Marshal regarding compliance. The compliance reports must include the extent of compliance for each property within the jurisdiction of the local government, any change in the degree of compliance, and any other information required by the State Fire Marshal by rule. It is unclear at present if the State Fire Marshal will implement additional reporting requirements.

Additionally, SB 762 allows local governments to establish requirements for defensible space that are greater than the requirements established by the State Fire Marshal. As with the chosen state standards, any local defensible space requirements must be consistent with and cannot exceed the defensible space set forth in the International Wildland-Urban Interface Code or other best practices specific to Oregon.

Finally, SB 762 allows the State Fire Marshal to provide a variety of financial, technical, or other assistance to local governments specifically to handle administration and enforcement of the state defensible space requirements. Ultimately, the local government will be responsible for spending or distributing any financial assistance provided by the state, but those expenditures must give priority to the creation of defensible spaces that affect the following groups/development:

- Lands owned by members of socially and economically vulnerable communities, persons with limited proficiency in English, and persons of lower income as defined in ORS 456.055³
- Critical or emergency infrastructure
- Schools, hospitals and facilities that serve seniors

It is unclear at present when the State Fire Marshal will provide estimates concerning local government financial assistance, but staff will update the Board as more information becomes available.

IV. Statewide Building Code Standards

State Actions and Process

As described above, after completion of the state wildfire risk map, all properties that are determined to fall within either the high risk or extreme risk categories and are located within a designated wildland-urban interface will be required to comply with new building code regulations to reduce wildfire damage. The new building code requirements will apply to new dwellings and the

³ "Person of lower income" or "family of lower income" means a person or a family, residing in this state, whose income is not greater than 80 percent of the area median income, adjusted for family size, as determined by the Housing and Community Services Department using United States Department of Housing and Urban Development information.

accessory structures of dwellings, as described in section R327 of the 2021 Oregon Residential Specialty Code. Staff has briefed the Board multiple times on the components of R327, most recently in February 2021. Section R327 requires new residential construction in a Wildfire Hazard Zone to use certain types of materials and incorporate specific requirements for roofing, ventilation, exterior wall coverings, overhanging projections, decking surfaces, and glazing in windows/skylights and doors. No individual construction elements can be amended by local governments.

However, SB 762 directs the Department of Consumer and Business Services to amend section R327 of the Oregon Residential Specialty Code to include standards for additions to existing dwellings and accessory structures and for replacement of existing exterior elements covered in section R327.

As presently written, R327 has a number of exemptions:

- Infill Exception: Dwellings or accessory structures constructed on a lot in a subdivision, do not need to comply with R327.4 when at least 50 percent of the lots in the subdivision have existing dwellings that were not constructed in accordance with Section R327.4.
- Accessory Structure Exception: Non-habitable detached accessory structures, with an area of not greater than 400 square feet, located at least 50 feet from all other structures on the lot do not need to comply with R327.4.
- Initial Exemption: Existing lots would be broadly exempted from R327 for a period of three years from the date of adoption.

Staff notes that it is unclear whether the referenced amendments to R327 undertaken by the Department of Consumer and Business Services will maintain these exemptions, alter them, or include additional exemptions not currently outlined.

No more than two years after the code amendments are adopted, SB 762 requires the Department of Consumer and Business Services to update section R327 of the Oregon Residential Specialty Code. The amended R327 standards for existing dwellings and accessory structures must be established by October 1, 2022 and formally adopted into the Oregon Residential Specialty Code by October 1, 2024 at the latest. However, any new building code standards cannot become operative until April 1, 2023 at the earliest.

In addition to the relevant code updates, the Department of Consumer and Business Services is required to develop and maintain an interactive mapping tool that displays, at the property level, wildfire hazard mitigation standards covered in section R327 of the Oregon Residential Specialty Code. The department will coordinate with Oregon State University on development of the tool, and ultimately the tool will be displayed in an electronic format and available to the public at no charge. The development of the R327 mapping tool will be developed in tandem with the statewide wildfire risks maps discussed previously.

County Implications

As currently written, section R327 includes the following language:

“Nothing in the code or adopting ordinance prevents a local municipality from waiving the requirements of Section R327.4 for any lot, property or dwelling, or the remodel, replacement or reconstruction of a dwelling within the jurisdiction”

After the final adoption of the amended R327 by the Department of Consumer and Business Services into the Oregon Residential Specialty Code, it is unclear if local governments will be given broad latitude to develop waivers or other exemptions to new building code requirements. SB 762 specifically states:

“For extreme and high wildfire risk classes in the wildland-urban interface that are identified pursuant to section 7 of this 2021 Act, the Department of Consumer and Business Services shall adopt wildfire hazard mitigation building code standards that apply to new dwellings and the accessory structures of dwellings, as described in section R327 of the 2021 Oregon Residential Specialty Code”

Staff interprets this language to mean that if a property is identified as an “extreme or high wildfire risk class,” development on that parcel will be mandated to comply with the amended R327 building standards. As stated above, it is unclear if the original exemptions currently included in R327 will be maintained in the final adoption.

Finally, it is unclear when local governments will be required to amend their local building codes to comply with the listed standards of SB 762. Over the coming year, staff can update the Board on the R327 amendments and the process for adopting those standards into the Deschutes County code.

V. Wildfire Programs Advisory Council

State Actions and Process

SB 762 requires the Governor to appoint a State Wildfire Programs Director (Director) to oversee the implementation and monitoring of all wildfire mitigation actions required by the bill. The position will ensure compliance with all set deadlines, address the financial and equity impacts of the bill across jurisdictions, and coordinate across multiple agencies to ensure effective implementation of necessary actions. The Director is required to report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of relevant committees and interim committees of the Legislative Assembly at least every 60 days. These reports will discuss progress on implementing the mitigation activities, obstacles and opportunities, and catalog possibilities for future improvements.

SB 762 also requires a designated 19 member Wildfire Programs Advisory Council (Council) to assist and advise the Director on wildfire mitigation issues. The Council will not serve as a decision-making body, but will provide advice, assistance, perspective, ideas and recommendations to the Director. The Council membership is required to represent the following interest groups that have specific bearing on Deschutes County:

- One member who represents county government
- One member who is a land use planning director of a county that is wholly or partially within the wildland-urban interface

Each Council member would serve a four-year appointment, with possible reappointment to subsequent Councils. The initial Council members must be appointed on or before September 1, 2021.

County Implications

The Board and County administration may wish to pursue local nominations of County staff or other local citizens with relevant experience, such as fire protection district volunteers, to serve on the Council. It is unclear when the Council appointment process will begin. However, SB 762 requires the state to provide public notice of an opportunity for interested parties to submit names of interest for appointment to the Council. Staff will update the Board when additional information on the appointment process becomes available. The Board should be aware that Council members serve in a volunteer capacity and are not entitled to any expense reimbursements from the state.

VI. Impacts to Previous County Efforts

County staff and the Board have worked through numerous steps in a process to establish a suite of wildfire mitigation code amendments specific to Deschutes County. This process began by establishing the Wildfire Mitigation Advisory Committee (WMAC) that held meetings from October 2019 to January 2020. The WMAC provided a report that included a series of recommendations to the Board concerning updates to the Deschutes County Wildfire Hazard Zone, new building code amendments to incorporate R327 at a local level, and possible new defensible space requirements in the rural county.

Subsequently, County staff conducted a series of outreach initiatives in Fall and Winter of 2020 to gather public perspective on the recommendations put forward by the WMAC and new wildfire mitigation requirements more generally. Staff presented the results of that outreach to the Board in February 2021 as part of the Wildfire Mitigation Outreach Summary Report. As referenced previously, during those discussions the Board elected to leave the currently adopted Wildfire Hazard Zone unchanged and directed staff to track state legislative efforts related to wildfire mitigation.

The County may still elect to pursue new local wildfire mitigation code amendments. However, it is likely that SB 762 would supersede any local efforts unless the proposed standards exceeded those ultimately adopted at the state level. If desired, the Board can direct staff to begin drafting text amendments or outlining programmatic options to implement wildfire mitigation in Deschutes County. Conversely, SB 762 does allow local governments to adopt more stringent standards than those adopted by the state. After final establishment, the Board may elect to evaluate the state's wildfire mitigation land use/code requirements and determine if more rigorous standards are needed.

VII. Next Steps

As stated previously, Senate Bill 762 requires significant actions that must be completed by state agencies before any major efforts can take place at a local level. The Board should be aware that full resolution of the land use and building code portions of the bill might not be complete until Summer or Fall 2023 at the earliest. Staff can continue to update the Board on a regular basis when the state completes major action items and when there are opportunities for local involvement or specific County action items.

Attachments:

Document	Item No.
Senate Bill 762: Adopted	1
Wildfire Hazard Mitigation: Public Outreach Report	2
Wildfire Mitigation Advisory Committee Report	3