

Agenda Item No.:	6
Work Plan:	Fire Protection
Topic:	Wildfire Hazard Map and Procedural Rules
Presentation Title:	Overview of proposed rules June 6, 2024
Date of Presentation:	Chris Cline, (Interim) Chief – Fire Protection
Contact Information:	541-505-4521 Christopher.L.Cline@odf.oregon.gov Tim Holschbach, Deputy Chief – Policy & Planning 503-945-7434, Tim.J.Holschbach@odf.Oregon.gov

SUMMARY

The purpose of this agenda item is to seek approval from the Board of Forestry (Board) to hold public hearings regarding updates to the wildfire hazard map in Oregon Administrative Rule 629-044 and procedural rules in Oregon Administrative Rule 629-001.

BACKGROUND

Following the 2013-2015 fire seasons, two parallel review processes were initiated, the Secretary of State Audit and the Fire Program Review. Both efforts are aligned to help continue a highly functioning wildfire protection system for Oregon into the future. The Oregon Department of Forestry (Department) has fully embraced the findings and recommendations from both final reports. The 2017-2018 fire seasons experience reinforced the need for the agency to continue efforts on these recommendations. Additionally, the Governor issued Executive Order 19-01 creating the Governor's Council on Wildfire Response.

The Secretary of State Performance Audit offered a third-party review of the Department's ability to sustain its multiple missions, as increased demand to support the fire protection effort has been required from the entire agency.

The Fire Protection Review Committee was coordinated with all agency partners through a transparent process including legislators, governor's office, forest landowners, and cooperators to reach for continuous improvement in Oregon's complete and coordinated fire protection system.

The Governor's Council on Wildfire Response offered 37 recommendations to improve Oregon's wildfire protection system. Many of the recommendations required legislative action to be carried out.

Senate Bill (SB) 762 captured many of the recommendations of the Governor's Council on Wildfire Response, providing legislative direction to the Board regarding the wildland- urban interface; statewide fire risk mapping; prescribed fire; directed the Department to review and clarify the enforcement of rules

pertaining to forestland; and baseline standards for unprotected and under-protected lands in Oregon.

CONTEXT

The original wildfire risk map was launched in July of 2022, meeting the statutory deadline. In August, it was taken down to undergo revisions. The Department and Oregon State University received substantial feedback from the public and appeals of risk classifications. Responses were analyzed to identify themes and trends. Items that were immediately addressed were fuel components of hay and pasturelands that were showing as elevated, as well as identifying avenues to address irrigated agricultural.

Furthermore, Senate Bill 80 in the 2023 Legislative session modified the framework of the wildfire risk map in the following ways:

- Established the intent of the map;
 - o Educate Oregon residents and property owners about the residents' and property owners' wildfire exposure by providing transparent and science-based information;
 - o Assist in prioritizing fire adaptation and mitigation resources for the most vulnerable locations; and
 - o Identify where defensible space standards and home hardening codes will apply.
- Renamed the wildfire "risk" map to wildfire "hazard" map;
- Modified 5 risk classes to 3 hazard classes;
- Modified the appeals process from a Department determined process to a contest case hearing;
- Modified the notification requirements, to only those property owners within the wildland-urban interface and designated as high hazard; and
- Required the Department to meet with county commissioners and staff in 8 meetings throughout the state.

The Department, along with Oregon State University, Oregon State Fire Marshal, Building Codes Division, and the Department of Financial Regulations, met with county commissioners and staff of all 36 counties throughout September and October 2023. A summary of the discussions is in Attachment 5.

Following those meetings, the Department assembled a Rules Advisory Committee to assist with determining how to best give consideration to irrigated agricultural lands. This group was composed primarily of county personnel and commissioners, as well as the Oregon Farm Bureau and the Oregon Cattleman's Association.

ANALYSIS

This section is intended to provide a basis for the modified rules. A significant portion of the proposed modifications are directly related to the passage of Senate Bill 80.

620-001-0000 to 0057

Aligning this rule with the Administrative Procedures Act regarding notifications of rulemaking, and integration of the appeal process of the wildfire hazard map as a contested case.

629-044-1000 – Purpose

The proposed modifications are technical edits resulting from Senate Bill 80.

629-042-1005 - Definitions

The proposed modifications are technical edits resulting from Senate Bill 80. A definition for “wildfire hazard” was added.

629-042-1016 – Periodic Wildland-Urban Interface Lands Identification and Classification Added clarification that a property may be entirely or partially located within the wildland-urban interface.

629-042-1021 – Wildfire Hazard Rating

Added additional clarification regarding the description of each hazard class, as well as removing “no risk” and “extreme risk”.

629-042-1026 –Wildfire Hazard Map

The proposed modifications are technical edits resulting from Senate Bill 80. The considerations for irrigated agriculture recommend by the rules advisory committee are integrated into this rule.

629-042-1031 - Notification

The proposed modifications are technical edits resulting from Senate Bill 80.

629-042-1036 – Locally Developed Wildfire plans

The proposed modifications are technical edits resulting from Senate Bill 80.

629-042-1040 – Appeals of Wildfire Risk Assignment

The proposed modifications are technical edits resulting from Senate Bill 80, transitioning the appeals process from Department designed to a contested case hearing.

RECOMMENDATION

The Board directs the Department to proceed with the public hearing process and return in September 2024 with the final rule language for Chapter 629, Division 44.

NEXT STEPS

Pending the Board of Forestry’s direction, the Department will schedule and hold public hearings. Following public input, the Department will return to the Board requesting promulgation of the rules.

RULE REVIEW TIMELINE

June 6, 2024 – ODF presents proposed rules to BOF to seek permission to conduct public hearings.

June 15, 2024 – Notice of Proposed Rulemaking and Fiscal Impact Statement sent to Secretary of State. Notify legislators and interested parties.

July 2024 – Conduct public hearings.

September 4, 2024 – ODF submits the final rule draft language with public comments to BOF for final consideration and approval.

September 15, 2024 – Submit rule to Secretary of State and Legislative Counsel for filing. Effective date September 30, 2024.

ATTACHMENTS

1. Division 001 rule modifications – track changes
2. Division 001 rule modifications
3. Division 044 rule modifications – track changes
4. Division 044 rule modifications
5. Executive Summary – County meetings

629-001-0000

Administrative Rule Notification

Prior to the adoption, amendment, or repeal of any rule, the State Forester shall give notice of the proposed adoption, amendment, or repeal:

1. In the Secretary of State's Bulletin referred to in ORS 183.360 at least ~~1521~~ days prior to the effective date.
- ~~2.~~ By mailing a copy of the notice to persons on the Forester's mailing list established pursuant to ORS 183.335(8)(c), at least ~~3028~~ days prior to the effective date.

- ~~3.~~ By mailing a copy of the notice to the following persons, organizations, and publications at least ~~3028~~ days prior to the effective date:

~~State Agencies:~~

- ~~Agriculture, Oregon Department of;~~
- ~~Environmental Quality, Oregon Department of;~~
- ~~Fire Marshal Division, Oregon Department of Commerce;~~
- ~~Fish and Wildlife, Oregon Department of;~~
- ~~Geology and Mineral Industries, Oregon Department of;~~
- ~~Governor's Office, Assistant for Natural Resources;~~
- ~~Health Division, Oregon Department of Human Resources;~~
- ~~Land Conservation and Development, Oregon Department of;~~
- ~~Lands, Division of State;~~
- ~~Parks and Recreation Department;~~
- ~~Revenue, Oregon Department of;~~
- ~~Water Resources, Oregon Department of.~~

~~News Media:~~

- ~~Associated Press, Salem;~~
- ~~United Press International, Salem;~~
- ~~Albany — Democrat Herald;~~
- ~~Astoria — Daily Astorian;~~
- ~~Bend — The Bulletin;~~
- ~~Coos Bay — The World;~~
- ~~Corvallis — Gazette Times;~~
- ~~Eugene — Register Guard;~~
- ~~Forest Grove — The News Times;~~
- ~~John Day — Blue Mountain Eagle;~~
- ~~Klamath Falls — Herald and News;~~
- ~~La Grande — Observer;~~
- ~~Medford — Mail Tribune;~~
- ~~Newport — News Times;~~
- ~~Pendleton — East Oregonian;~~
- ~~Portland — The Oregonian;~~
- ~~Prineville — Central Oregonian;~~
- ~~Roseburg — News Review;~~

~~Salem — Statesman Journal;
The Dalles — Chronicle;
Tillamook — Headlight Herald;
Oregon Administrative Law News, Tigard.
Each Regional Forest Practices Committee member.~~

~~4.2.~~

629-001-0003

Definitions

The following words, when used in this division shall mean the following unless otherwise required by context:

1. "Board" means the State Board of Forestry.
2. "State Forester" means the State Forester or the duly authorized representative of the State Forester.

629-001-0005

Model Rules of Procedure

The Model Rules of Procedure under the Administrative Procedures Act, promulgated by the Attorney General effective January 1, ~~2008~~2024 are hereby adopted as the rules of procedures of the Board of Forestry and the State Forester.

629-001-0010

Agency Representation by Officer or Employee

1. Department of Forestry officer or employee is authorized to appear (but not make legal argument) on behalf of the department in a hearing or in a class of contested hearings in which the Attorney General or the Deputy Attorney General has given written consent for such representation. A copy of the list of contested case hearings for which the Attorney General has given consent is maintained by the Department of Forestry and the Department of Justice.
2. "Legal argument" as used in ORS 183.452(3)~~(4)(8)~~ and this rule shall include arguments on:
 - a. The jurisdiction of the agency to hear the contested case;
 - b. The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;
 - c. The application of court precedent to the facts of the particular contested case proceeding.
3. "Legal argument" does not include presentation of evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:
 - a. The application of the facts to the statutes or rules directly applicable to the issues in the contested case;
 - b. Comparison of prior actions of the agency in handling similar situations;

- c. The literal meaning of the statutes or rules directly applicable to the issues in the contested case;
 - d. The admissibility of evidence or the correctness of procedures being followed.
4. When an agency officer or employee represents the agency, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections involve legal argument, the presiding officer shall provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

629-001-0015

Rules of Procedure for Contested Cases; Applicability

The rules of procedure in this Division, OAR 629-001-0010 to 629-001-0055, apply to all contested cases before the board and State Forester, unless otherwise provided by law, and are in addition to the procedural requirements of the Attorney General's Model Rules adopted in 629-001-0005. Contested cases covered by these rules include, but are not limited to the following:

1. Appeal of civil penalties assessed under ORS 527.687;
 2. Appeal of "any finding or order" under ORS 527.610 through 527.770 and 527.992;
 3. Hearings requested by persons adversely affected or aggrieved by an operation requiring a written plan under ORS 527.700(3) through (9);
 4. Appeal of temporary orders to cease further activity under ORS 527.680(3) and 527.680(4);
 5. Appeal of repair orders issued under ORS 527.680(2)(b) and 527.690(1);
 6. Appeal of orders prohibiting new operations under ORS 527.680(5);
 7. Appeal by any person adversely affected by operations to be conducted under an approved or amended stewardship agreement under ORS 527.662;
 8. Review of State Forester's proposal to conduct repair work at state expense under ORS 527.690(2); and
 9. Appeals of decisions on land exchanges under OAR 629-033-0055.
- [9.10. Appeals of all property assignments on the wildfire hazard map, including high hazard zones as provided under ORS 477.4190\(7\)\(d\) \(as amended by Section 1, 2023 Oregon Law ###\).](#)

629-001-0020

Requesting Hearings

1. All requests for hearing shall be made in writing, within the time period provided by statute or rule.
2. All requests shall specifically state the issues to be addressed and the relief sought.
3. Requests for hearing involving civil penalties shall comply with OAR 629-670-0310.

4. Requests for hearing involving a finding or order of the State Forester issued under ORS 527.610 to 527.770 shall comply with OAR 629-672-0200.
5. Requests for hearing by persons adversely affected or aggrieved by an operation approved under ORS 527.670(3) shall comply with OAR 629-672-0210.
6. Requests for hearing by persons adversely affected or aggrieved by a proposed or amended stewardship agreement shall comply with ORS 527.662(12).
7. Requests for hearing involving land exchanges shall comply with OAR 629-033-0055.
- 7-8. [Requests for hearing involving the wildfire hazard map shall comply with OAR 629-044-1041.](#)

629-001-0025

Conduct of Hearings

1. Unless otherwise provided by law or order of the board or State Forester in a specific case, contested case hearings will be conducted by an administrative law judge, who shall prepare a proposed order for consideration by the board or State Forester.
2. Unaccepted proposals of settlement shall be privileged and shall not be admissible as evidence in the proceeding.
3. In civil penalty proceedings, conferences and hearings shall be held at locations which are within the forest practices region of the person being assessed the penalty, unless otherwise agreed to by the State Forester and parties.
4. The issues for hearing shall be limited to those raised by the parties or by the State Forester in a request for hearing or other pre-hearing filings.
5. Timing of hearings and orders are stated as follows, unless all parties agree to an extension of the time limits:
 - a. For appeals from orders of the State Forester under ORS 527.700(1), hearings shall be commenced within 14 days after receipt of the request for hearing, and a final order shall be issued within 28 days of the request for hearing.
 - b. For appeals by persons adversely affected or aggrieved by an operation under ORS 527.700(3), hearings shall be commenced within 21 calendar days after receipt of the request for hearing. The board's comments shall be issued within 45 days after the request for hearing was filed.
 - c. For appeals by persons adversely affected or aggrieved by a proposed or amended stewardship agreement, hearings shall be commenced within 45 calendar days after receipt of the request for hearing. A final order shall be issued within 45 calendar days of the concluded hearing.
 - e.d. Hearings on notices of civil penalty under ORS 527.687 shall not be held less than 45 days from the date of service of the notice of penalty. The hearing shall be held not more than 180 days following issuance of the notice.
 - ~~d.~~ ~~Hearings on notices of civil penalty under ORS 527.687 shall not be held less than 45 days from the date of service of the notice of penalty. The hearing shall be held not more than 180 days following issuance of the notice.~~
6. In order to comply with statutory timelines, the administrative law judge may establish time limits different from those under OAR 137-003-0580 for making and responding to motions for

ruling on legal issues. The administrative law judge shall not consider a motion for ruling on a legal issue if the agency requests that the case proceed to a hearing on that issue.

629-001-0030

Transmittal of Questions to the Agency

1. Questions transmitted to the agency, as provided for in OAR 137-003-0635 in the Attorney General's Model and Uniform Rules, shall be transmitted to the State Forester.
2. Response may be made by the State Forester or the State Forester's delegate.

629-001-0035

Immediate Review by Agency

1. Matters referred to the agency for immediate review, as provided for in OAR 137-003-0640 in the Attorney General's Model and Uniform Rules, shall be transmitted to the State Forester.
- ~~2.~~ Rulings on requests for immediate review may be made by the State Forester or the State Forester's delegate.
- ~~3.~~ ~~Statutory/Other Authority: ORS 526.016(4), 527.687(3) & 527.715~~
~~Statutes/Other Implemented: ORS 183.310 – 183.550~~
- ~~4.2.~~

629-001-0040

Exceptions to Proposed Orders

1. In all cases in which the administrative law judge is to issue a proposed order, exceptions by a party or the agency must be filed in the manner and time specified by the administrative law judge, making allowance for any statutory timeline applicable to the proceeding. If no time is specified, exceptions must be filed with the administrative law judge within seven days after the proposed order is issued.
2. The exceptions shall:
 - a. be confined to factual and legal issues which are essential to the ultimate and just determination of the proceeding, and shall be based only on grounds that:
 - A. A necessary finding of fact is omitted, erroneous, or unsupported by the preponderance of the evidence on the record;
 - B. A necessary legal conclusion is omitted or is contrary to law or the board's policy; or
 - C. Prejudicial procedural error occurred;
 - b. and be numbered and shall specify the disputed finding, opinions, or conclusions. The nature of the suggested error shall be specified and the alternative or corrective language provided.
3. A proposed order will become a final order if no exceptions are filed within the time specified, unless the agency notifies the parties and the administrative law judge that the agency will issue the final order. All proposed orders shall include a statement to this effect.

629-001-0045

Final Orders in Contested Cases

1. Following hearing, the administrative law judge will prepare the record and proposed order for filing with the board as expeditiously as possible. In the case of hearings related to orders of the State Forester pursuant to ORS 527.700, the record and proposed order shall be filed with the board within five working days of the close of hearing unless an extension has been agreed to by the parties and State Forester. Except as provided in section (2) of this rule, no less than a majority of the board shall then review and consider the proposed order and record, hold a meeting or telephone conference, and take final action as provided for in this rule.
2. If upon a determination by the board chairperson, the board cannot complete a final order within applicable statutory time limits, the chairperson may delegate authority to issue a final order to the administrative law judge.
3. After reviewing and considering the proposed order and record, the board may do any of the following:
 - a. Schedule written or oral argument from the State Forester and any party that filed exceptions to the proposed order. The board chairperson shall determine whether oral argument, written argument, or both will be permitted after consulting with the board members.
 - A. Oral argument shall be allowed only if the board determines it is necessary or appropriate to assist in the proper disposition of the case, and shall be:
 - i. Limited to matters raised in written exceptions; and
 - ii. Conducted under such time limits as the board chairperson determines are appropriate.
 - B. The board chairperson shall notify the agency and parties of the form of argument, if any, to be allowed.
 - b. Remand the matter to the administrative law judge for further hearing on such issues as the board specifies, and to prepare a revised proposed order as appropriate, under OAR 137-003-0655(2).
 - c. Enter a final order adopting the recommendation of the administrative law judge.
 - d. Enter an amended proposed order or final order that modifies or rejects the recommendation of the administrative law judge. If the board decides to modify or reject the proposed order, the board must comply with OAR 137-003-0655 and 137-003-0665.

[4.—Final orders regarding the wildfire hazard map will be issued in accordance with OAR 629-044-1041.](#)

~~5.4.~~

629-001-0050

Reconsideration and Rehearing

As a condition of judicial review, a party must file a petition for reconsideration or rehearing with the person or body which rendered the final order in the proceeding. The petition must state with specificity the grounds for objection to the order, and the remedy sought.

629-001-0055

Delegation of Authority to State Forester

In addition to any duties and responsibilities conferred upon the State Forester by law or delegation of authority from the Board of Forestry, the State Forester may, with regard to the administration of contested cases:

1. Execute any written order, on behalf of the board, which has been consented to in writing by the person or persons adversely affected by the order;
2. Prepare and execute written orders, on behalf of the board, implementing any action taken by the board on any matter;
3. Prepare and execute orders, on behalf of the board, upon default where:
 - a. The adversely affected party or parties have been properly notified of the time and manner in which to request a hearing and have failed to file a proper, timely request for a hearing; or
 - b. Having requested a hearing, the adversely affected person or persons have failed to appear at the hearing.
4. [Prepare and execute written orders related to OAR 629-044-1041.](#)

629-001-0057

Delegation of Authority to State Forester — Responding to Claims under ORS [195.305197.352](#)

1. This rule delegates to the State Forester certain duties and responsibilities to carry out the authorities of the Board of Forestry and the Department in responding to claims under ORS [195.305197.352](#) (Formerly Chapter 1, Oregon Laws 2005, 2004 Ballot Measure 37). This rule further provides for review and modification by the Board of Forestry of certain actions taken by the State Forester pursuant to this delegation of authority.
2. The State Forester is vested by the Board of Forestry with authority to respond to claims under ORS [195.305197.352](#) by:
 - a. Reviewing claims;
 - b. Denying claims;
 - c. Recommending approval of claims by modifying, removing, or not applying the statute(s) or rule(s) that are the basis of the claim; or
 - d. Recommending payment of claims. These actions shall be done in compliance with Department of Administrative Services administrative rules relating to ORS [195.305197.352](#).
3. The State Forester shall submit to the Board any recommendation made under paragraph (2)(c) or (d) of this rule. The Board may accept or modify the State Forester's recommendation.
4. The State Forester shall establish procedures to provide notice of any action on a claim under ORS [195.305197.352](#) as required by Department of Administrative Services administrative rules relating to ORS [195.305197.352](#).

5. Actions by the Board of Forestry or State Forester on claims under this rule are actions under ORS ~~195.305-197.352~~, and are not orders under ORS 527.700.

DRAFT

629-001-0000

Administrative Rule Notification

Prior to the adoption, amendment, or repeal of any rule, the State Forester shall give notice of the proposed adoption, amendment, or repeal:

1. In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date.
2. By mailing a copy of the notice to persons on the Forester's mailing list established pursuant to ORS 183.335(8)(c), at least 28 days prior to the effective date.

629-001-0003

Definitions

The following words, when used in this division shall mean the following unless otherwise required by context:

1. "Board" means the State Board of Forestry.
2. "State Forester" means the State Forester or the duly authorized representative of the State Forester.

629-001-0005

Model Rules of Procedure

The Model Rules of Procedure under the Administrative Procedures Act, promulgated by the Attorney General effective January 1, 2024 are hereby adopted as the rules of procedures of the Board of Forestry and the State Forester.

629-001-0010

Agency Representation by Officer or Employee

1. Department of Forestry officer or employee is authorized to appear (but not make legal argument) on behalf of the department in a hearing or in a class of contested hearings in which the Attorney General or the Deputy Attorney General has given written consent for such representation. A copy of the list of contested case hearings for which the Attorney General has given consent is maintained by the Department of Forestry and the Department of Justice.
2. "Legal argument" as used in ORS 183.452(3) and this rule shall include arguments on:
 - a. The jurisdiction of the agency to hear the contested case;
 - b. The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;
 - c. The application of court precedent to the facts of the particular contested case proceeding.
3. "Legal argument" does not include presentation of evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:
 - a. The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

- b. Comparison of prior actions of the agency in handling similar situations;
 - c. The literal meaning of the statutes or rules directly applicable to the issues in the contested case;
 - d. The admissibility of evidence or the correctness of procedures being followed.
4. When an agency officer or employee represents the agency, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections involve legal argument, the presiding officer shall provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

629-001-0015

Rules of Procedure for Contested Cases; Applicability

The rules of procedure in this Division, OAR 629-001-0010 to 629-001-0055, apply to all contested cases before the board and State Forester, unless otherwise provided by law, and are in addition to the procedural requirements of the Attorney General's Model Rules adopted in 629-001-0005. Contested cases covered by these rules include, but are not limited to the following:

1. Appeal of civil penalties assessed under ORS 527.687;
2. Appeal of "any finding or order" under ORS 527.610 through 527.770 and 527.992;
3. Hearings requested by persons adversely affected or aggrieved by an operation requiring a written plan under ORS 527.700(3) through (9);
4. Appeal of temporary orders to cease further activity under ORS 527.680(3) and 527.680(4);
5. Appeal of repair orders issued under ORS 527.680(2)(b) and 527.690(1);
6. Appeal of orders prohibiting new operations under ORS 527.680(5);
7. Appeal by any person adversely affected by operations to be conducted under an approved or amended stewardship agreement under ORS 527.662;
8. Review of State Forester's proposal to conduct repair work at state expense under ORS 527.690(2); and
9. Appeals of decisions on land exchanges under OAR 629-033-0055.
10. Appeals of all property assignments on the wildfire hazard map, including high hazard zones as provided under ORS 477.490(7)(d) (as amended by Section 1, 2023 Oregon Law ###).

629-001-0020

Requesting Hearings

1. All requests for hearing shall be made in writing, within the time period provided by statute or rule.
2. All requests shall specifically state the issues to be addressed and the relief sought.
3. Requests for hearing involving civil penalties shall comply with OAR 629-670-0310.
4. Requests for hearing involving a finding or order of the State Forester issued under ORS 527.610 to 527.770 shall comply with OAR 629-672-0200.

5. Requests for hearing by persons adversely affected or aggrieved by an operation approved under ORS 527.670(3) shall comply with OAR 629-672-0210.
6. Requests for hearing by persons adversely affected or aggrieved by a proposed or amended stewardship agreement shall comply with ORS 527.662(12).
7. Requests for hearing involving land exchanges shall comply with OAR 629-033-0055.
8. Requests for hearing involving the wildfire hazard map shall comply with OAR 629-044-1041.

629-001-0025

Conduct of Hearings

1. Unless otherwise provided by law or order of the board or State Forester in a specific case, contested case hearings will be conducted by an administrative law judge, who shall prepare a proposed order for consideration by the board or State Forester.
2. Unaccepted proposals of settlement shall be privileged and shall not be admissible as evidence in the proceeding.
3. In civil penalty proceedings, conferences and hearings shall be held at locations which are within the forest practices region of the person being assessed the penalty, unless otherwise agreed to by the State Forester and parties.
4. The issues for hearing shall be limited to those raised by the parties or by the State Forester in a request for hearing or other pre-hearing filings.
5. Timing of hearings and orders are stated as follows, unless all parties agree to an extension of the time limits:
 - a. For appeals from orders of the State Forester under ORS 527.700(1), hearings shall be commenced within 14 days after receipt of the request for hearing, and a final order shall be issued within 28 days of the request for hearing.
 - b. For appeals by persons adversely affected or aggrieved by an operation under ORS 527.700(3), hearings shall be commenced within 21 calendar days after receipt of the request for hearing. The board's comments shall be issued within 45 days after the request for hearing was filed.
 - c. For appeals by persons adversely affected or aggrieved by a proposed or amended stewardship agreement, hearings shall be commenced within 45 calendar days after receipt of the request for hearing. A final order shall be issued within 45 calendar days of the concluded hearing.
 - d. Hearings on notices of civil penalty under ORS 527.687 shall not be held less than 45 days from the date of service of the notice of penalty. The hearing shall be held not more than 180 days following issuance of the notice.
6. In order to comply with statutory timelines, the administrative law judge may establish time limits different from those under OAR 137-003-0580 for making and responding to motions for ruling on legal issues. The administrative law judge shall not consider a motion for ruling on a legal issue if the agency requests that the case proceed to a hearing on that issue.

629-001-0030

Transmittal of Questions to the Agency

1. Questions transmitted to the agency, as provided for in OAR 137-003-0635 in the Attorney General's Model and Uniform Rules, shall be transmitted to the State Forester.
2. Response may be made by the State Forester or the State Forester's delegate.

629-001-0035

Immediate Review by Agency

1. Matters referred to the agency for immediate review, as provided for in OAR 137-003-0640 in the Attorney General's Model and Uniform Rules, shall be transmitted to the State Forester.
2. Rulings on requests for immediate review may be made by the State Forester or the State Forester's delegate.

629-001-0040

Exceptions to Proposed Orders

1. In all cases in which the administrative law judge is to issue a proposed order, exceptions by a party or the agency must be filed in the manner and time specified by the administrative law judge, making allowance for any statutory timeline applicable to the proceeding. If no time is specified, exceptions must be filed with the administrative law judge within seven days after the proposed order is issued.
2. The exceptions shall:
 - a. be confined to factual and legal issues which are essential to the ultimate and just determination of the proceeding, and shall be based only on grounds that:
 - A. A necessary finding of fact is omitted, erroneous, or unsupported by the preponderance of the evidence on the record;
 - B. A necessary legal conclusion is omitted or is contrary to law or the board's policy; or
 - C. Prejudicial procedural error occurred;
 - b. and be numbered and shall specify the disputed finding, opinions, or conclusions. The nature of the suggested error shall be specified and the alternative or corrective language provided.
3. A proposed order will become a final order if no exceptions are filed within the time specified, unless the agency notifies the parties and the administrative law judge that the agency will issue the final order. All proposed orders shall include a statement to this effect.

629-001-0045

Final Orders in Contested Cases

1. Following hearing, the administrative law judge will prepare the record and proposed order for filing with the board as expeditiously as possible. In the case of hearings related to orders of the State Forester pursuant to ORS 527.700, the record and proposed order shall be filed with the

board within five working days of the close of hearing unless an extension has been agreed to by the parties and State Forester. Except as provided in section (2) of this rule, no less than a majority of the board shall then review and consider the proposed order and record, hold a meeting or telephone conference, and take final action as provided for in this rule.

2. If upon a determination by the board chairperson, the board cannot complete a final order within applicable statutory time limits, the chairperson may delegate authority to issue a final order to the administrative law judge.
3. After reviewing and considering the proposed order and record, the board may do any of the following:
 - a. Schedule written or oral argument from the State Forester and any party that filed exceptions to the proposed order. The board chairperson shall determine whether oral argument, written argument, or both will be permitted after consulting with the board members.
 - A. Oral argument shall be allowed only if the board determines it is necessary or appropriate to assist in the proper disposition of the case, and shall be:
 - i. Limited to matters raised in written exceptions; and
 - ii. Conducted under such time limits as the board chairperson determines are appropriate.
 - B. The board chairperson shall notify the agency and parties of the form of argument, if any, to be allowed.
 - b. Remand the matter to the administrative law judge for further hearing on such issues as the board specifies, and to prepare a revised proposed order as appropriate, under OAR 137-003-0655(2).
 - c. Enter a final order adopting the recommendation of the administrative law judge.
 - d. Enter an amended proposed order or final order that modifies or rejects the recommendation of the administrative law judge. If the board decides to modify or reject the proposed order, the board must comply with OAR 137-003-0655 and 137-003-0665.
4. Final orders regarding the wildfire hazard map will be issued in accordance with OAR 629-044-1041.

629-001-0050

Reconsideration and Rehearing

As a condition of judicial review, a party must file a petition for reconsideration or rehearing with the person or body which rendered the final order in the proceeding. The petition must state with specificity the grounds for objection to the order, and the remedy sought.

629-001-0055

Delegation of Authority to State Forester

In addition to any duties and responsibilities conferred upon the State Forester by law or delegation of authority from the Board of Forestry, the State Forester may, with regard to the administration of contested cases:

1. Execute any written order, on behalf of the board, which has been consented to in writing by the person or persons adversely affected by the order;
2. Prepare and execute written orders, on behalf of the board, implementing any action taken by the board on any matter;
3. Prepare and execute orders, on behalf of the board, upon default where:
 - a. The adversely affected party or parties have been properly notified of the time and manner in which to request a hearing and have failed to file a proper, timely request for a hearing; or
 - b. Having requested a hearing, the adversely affected person or persons have failed to appear at the hearing.
4. Prepare and execute written orders related to OAR 629-044-1041.

629-001-0057

Delegation of Authority to State Forester — Responding to Claims under ORS 195.305

1. This rule delegates to the State Forester certain duties and responsibilities to carry out the authorities of the Board of Forestry and the Department in responding to claims under ORS 195.305. This rule further provides for review and modification by the Board of Forestry of certain actions taken by the State Forester pursuant to this delegation of authority.
2. The State Forester is vested by the Board of Forestry with authority to respond to claims under ORS 195.305 by:
 - a. Reviewing claims;
 - b. Denying claims;
 - c. Recommending approval of claims by modifying, removing, or not applying the statute(s) or rule(s) that are the basis of the claim; or
 - d. Recommending payment of claims. These actions shall be done in compliance with Department of Administrative Services administrative rules relating to ORS 195.305.
3. The State Forester shall submit to the Board any recommendation made under paragraph (2)(c) or (d) of this rule. The Board may accept or modify the State Forester's recommendation.
4. The State Forester shall establish procedures to provide notice of any action on a claim under ORS 195.305 as required by Department of Administrative Services administrative rules relating to ORS 195.305.
5. Actions by the Board of Forestry or State Forester on claims under this rule are actions under ORS 195.305, and are not orders under ORS 527.700.

DIVISION 44

Wildland-Urban Interface and ~~Statewide~~ Wildfire ~~Risk-Hazard~~ Mapping

629-044-1000

Purpose

- (1) The purpose of OAR 629-044-1000 to 629-044-1040 is to implement the provisions of ORS 477.027 and ORS 477.490.
- (2) The purpose of OAR 629-044-1010 to 629-044-1015 is to establish criteria by which the wildland-urban interface shall be identified and classified pursuant to ORS 477.027
- (3) The purpose of OAR 629-044-1020 to 629-044-1026 is to set forth the criteria by which a ~~statewide~~ wildfire ~~risk-hazard~~ map must be developed and maintained pursuant to ORS 477.~~027490~~.
- (4) The purpose of OAR 629-044-1030 is to set forth the process for notification to property owners pursuant to ORS 477.~~027490~~.
- (5) The purpose of OAR 629-044-1035 is to set forth the process of integrating public input into the ~~statewide~~ wildfire ~~risk-hazard~~ map pursuant to ORS 477.~~027490~~.
- (6) The purpose of OAR 629-044-1040 is to set forth the process of how a property owner or local government may appeal the assignment of wildfire ~~risk-hazard~~ pursuant to ORS 477.~~027490~~.

629-044-1005

Definitions

- (1) The definitions set forth in ORS 477.001, shall apply.
- (2) The following words and phrases, when used in OAR 629-044-1000 to 629-044-1040, shall mean the following:
 - (a) "Geographical area" means an area of land with similar characteristics that can be considered as a "unit" for the purposes of classification of the wildland-urban interface.
 - ~~(b) "Hazard rating" is a numerical value describing the likelihood and intensity of a fire, based on specific factors or conditions including weather, climate, topography, and vegetation.~~
 - ~~(c)~~ "Intermingles with wildland or vegetative fuels" means a minimum of 50% coverage of wildland or vegetative fuels.
 - ~~(d)~~ "Meets with wildland or vegetative fuels" means located within a 1.5-mile buffer from the edge of an area greater than 2 square mile with a minimum of 75% cover of wildland or vegetative fuels.
 - ~~(e)~~ "Occluded geographical area" means an area with a minimum of one structure or other human development per 40-acres within 1.5 miles of an area greater than 1 square mile but less than 2 square miles with a minimum of 75% cover of wildland or vegetative fuels
 - ~~(f)~~ "Other human development" means essential facilities, special occupancy structures, or hazardous facilities as defined in ORS 455.447 that support community functions, public communication, energy, or transportation.
 - ~~(g)~~ "Structure" means any building that is at least 400 square feet.
 - ~~(h)~~ "Unincorporated community" has the meaning provided in OAR Chapter 660, Division 22.
 - ~~(i)~~ "Urban growth boundary" has the meaning provided in OAR Chapter 660, Division 15.
 - ~~(j)~~ "Vegetative fuels" means plants that constitute a wildfire hazard.

(jk) "Wildland fuels" means natural vegetation that occurs in an area where development is essentially non-existent, including grasslands, brushlands, rangelands, woodlands, timberlands, or wilderness. Wildland fuels are a type of vegetative fuels.

(k) "[Wildfire Hazard](#)" is a numerical value describing the likelihood and intensity of a wildfire, based on specific factors or conditions of weather, climate, topography, and vegetation, as modeled for a given pixel.

(l) "[Wildfire Risk](#)" means the wildfire impacts to values based on scientifically modeled wildfire frequency and wildfire intensity.

(m) "Wildland-Urban Interface" means a geographical area where structures and other human development meets or intermingles with wildland or vegetative fuels.

629-044-1011

Wildland-Urban Interface Identification Criteria

(1) The Wildland-Urban Interface is a geographic area comprised of tax lots, or portions of tax lots that includes:

- (a) an average density of one structure or other human development per 40 acres and either:
 - (A) meets with wildland or vegetative fuels; or
 - (B) intermingles with wildland or vegetative fuels; or
 - (C) is an occluded geographical area.

(2) The Wildland-Urban Interface also includes:

- (a) lands identified within an urban growth boundary or unincorporated community boundary by local comprehensive plans that meet the criteria in (1)(a); or
- (b) a planned development, within the urban growth boundary or unincorporated communities, that is not identified in 1(a) but that is approved for development that meets the criteria in 1(a).

(3) If multiple structures or other human developments are located on a single tax lot, then the totality will be considered a single structure or other human development.

(4) Each tax lot in the State of Oregon shall be assigned a wildfire [risk-hazard classification-zone](#) in accordance with 629-044-~~1020~~[1021](#).

629-044-1016

Periodic Wildland-Urban Interface Lands Identification and Classification

Tax lots [wholly or partially](#) identified as [within the](#) Wildland-Urban Interface shall be reviewed in conjunction with updates to the [statewide](#)-wildfire [risk-hazard](#) map in accordance with OAR 629-044-1026.

629-044-1021

Wildfire Risk Classification and Wildfire Hazard Rating

1. Wildfire [risk-hazard classifications-zones](#) are established ~~by a range of wildfire hazard factors that determine a net value change that illustrates likely wildfire consequences. Each net value change range is identified as a wildfire risk class~~ as follows:
 - a. ~~No Wildfire Risk. A net value change of zero. Typically characterized as non-burnable areas.~~

- ~~b.a.~~ Low Wildfire Risk Hazard. A net hazard value less than ~~change from greater than 0.00 to~~ 0.001911. Typically characterized as having the capacity to generate a wildfire which produces a flame length of less than 4 feet, a wildfire that exhibits little to no spotting, torching, or crowning
 - ~~c.b.~~ Moderate Wildfire Risk Hazard. A net value ~~change of greater than~~ ~~between~~ ~~than~~ 0.001911 to 0.137872. Typically characterized as having the capacity to generate a wildfire which produces a flame length of 4 to 6 feet, and that occasionally exhibits spotting, torching, or crowning.
 - ~~d.c.~~ High Wildfire Risk Hazard. A net value ~~change of greater than~~ 0.137872 ~~to~~ 0.522288. Typically characterized as having the capacity to generate a wildfire which produces a flame length of 6 to 8 feet, and frequently exhibits spotting, torching, or crowning.
 - ~~e.~~ Extreme Wildfire Risk. A net value ~~change greater than~~ 0.522288. Typically characterized as having the capacity to generate a wildfire which produces a flame length of over 8 feet, and exhibits frequent spotting, torching, or crowning.
2. It is recognized that natural vegetation is highly variable and that the fuel models used in subsection (1) of this rule may not always accurately reflect expected wildfire behavior, due to variations in local species and vegetation conditions. Therefore, consistent with peer reviewed methods, modifications may be made to the hazard rating, ~~net value change, and risk classification~~ as necessary to ensure accuracy.
 3. Each wildfire ~~risk hazard class zone~~ assignment shall be based on the average ~~pixel-level~~ wildfire hazard ~~values rating of within~~ each tax lot.
 4. Each wildfire ~~risk hazard class zone~~ shall consist of a ~~net value change~~ range. The ~~net value change~~ ranges that correlate to a given wildfire ~~risk hazard class zone~~ shall be determined using a statistically objective methodology.

629-045-1026

Statewide Wildfire Risk Hazard Map

1. Oregon State University shall develop and maintain the ~~Statewide~~ Wildfire Risk Hazard Map in a publicly accessible format. The map shall be developed:
 - a. ~~Using~~ current, peer reviewed data sets when calculating wildfire ~~risk hazard~~;
 - b. calculating wildfire ~~risk hazard~~ as a combined ~~hazard rating~~ value incorporating ~~how often wildfires occur~~ annual burn probability and wildfire ~~burn~~ intensity;
 - c. ~~to and~~ utilize ~~fuel loading measured at the time of year when large wildfires generally occur~~ the most representative fuel characteristics practical; ~~and~~
 - d. ~~shall to~~ include a layer that geospatially displays the locations of socially and economically vulnerable communities; ~~and,~~
 - ~~d.e.~~ to include adjustments for irrigated agricultural, in locations identified as irrigated at least one of five years within the most recent IrrMapper dataset, prior to updates in accordance with Section 2 of this rule.
2. ~~The State Forester~~ Oregon State University shall update the map and other publicly available web-based tools ~~shall be updated,~~ in consultation with ~~Oregon State University~~ the State Forester and other agency partners, within 12 months after updates to the most current wildfire risk assessment data sets are available.

629-044-1031

Notification

1. The State Forester shall provide written notice ~~of to the owners of~~ properties ~~classified-designated~~ as ~~high hazard zone-high or extreme wildfire risk~~ that are also within the Wildland-Urban Interface.
2. The written notice shall be sent to the property owner address included in the county assessor records.
3. The written notice shall include:
 - a. the wildfire ~~risk-hazard class-zone~~ assignment;
 - b. where a map of the property can be found in the publicly accessible mapping portal; ~~including the average wildfire hazard value of the property;~~
 - c. information regarding what the wildfire hazard assignment means for the property owner;
 - ~~c.d. information regarding available wildfire related resources and programs available to address wildfire risk; and~~
 - d. ~~information regarding what the wildfire risk assignment means for the property owner; and~~
 - e. information about how a property owner may appeal the assignment of wildfire ~~risk-hazard classzone~~, including the specific elements that may be appealed.
4. Prior to the effective date of updates to the ~~Statewide~~ Wildfire Risk-Hazard Map, the Department shall hold regional public meetings.
5. The Department shall provide a notice of the times and places of all statewide and regional meetings, and the other ways by which comments may be submitted, using a variety of notice methods designed to reach diverse audiences, both statewide and within each region.
6. The Department, in consultation with Oregon State University, shall present anticipated changes to the Wildland-Urban Interface boundary and Wildfire Risk-Hazard Classification-Zone assignments at a county scale.
7. The meeting shall allocate time to receive input from any interested persons relating to the proposed wildfire ~~risk-hazard class-zone~~ assignments.
8. The Department shall establish and publicize a place where electronic and written comment may be received.
9. Following the public meeting the Department, in consultation with Oregon State University, may make changes in the proposed wildfire ~~risk-hazard classification-zone~~ assignments, hold additional meetings, and thereafter shall make final wildfire ~~risk-hazard class-zone~~ assignments.

629-044-1036

Locally Developed Wildfire Plans

1. The following types of locally developed wildfire plans may be integrated into the wildfire ~~risk hazard~~ mapping portal if the local jurisdiction chooses.
 - a. Community Wildfire Protection Plans developed under the Healthy Forests Restoration Act;
 - b. Natural Hazard Mitigation Plans developed under the Robert T. Stafford Disaster Relief and Emergency Assistance Act; or
 - c. Firewise USA Action Plans developed under the Firewise USA Program administered by the National Fire Protection Association.
2. Information in the types of locally developed wildfire plans identified in subsections (1)(a) thru (c) above, may complement, but does not supplant or supersede the ~~Statewide~~ Wildfire Risk-Hazard Map.z

629-044-1041

Appeal of Wildfire Risk-Hazard Assignment

Any affected property owner or local governments may appeal the assignment of properties to the wildfire hazard zones. All appeals of the assignment classification of wildfire hazard to a property

shall be considered as a referred for a contested case hearing in accordance with ORS Chapter 183, OAR Chapter 629 Division 1. Hearings will be conducted in accordance with OAR 629-001-0025-0003 to OAR 629-001-0045-0055.

1. , and this rule. The Administrative Law Judge assigned the matter shall be authorized to issue a Proposed Order. The State Forester shall issue the Final Order.
2. The notification described under OAR 629-044-1031 shall serve as a Notice of Proposed Agency Action for property owners in the high hazard zone and also within the Wildland-Urban Interface. The posting of the hazard map on the Oregon Explorer Map Viewer website shall serve as the agency's Notice of Proposed Agency Action for all other property owners who have a right to appeal under ORS 477.490.
3. An affected property owner may appeal the assignment of a wildfire hazard zone to property by submitting a written hearing request to the Department in writing, requesting a hearing. Such request must be made within 60 days of the following events, whichever is later:
 - a. The date that the wildfire hazard map or an update to the hazard map is posted on Oregon Explorer Map Viewer website; or
 - b. The date that a correctly addressed notice, issued in accordance with OAR 629-044-1031(2), is deposited with the postal service for mailing to the affected property owner, whichever is later.
- 1.4. A local government may appeal the assignment of a wildfire hazard zone to property under its ownership by submitting a written hearing request to the Department, in writing, submitting an appeal in writing requesting a hearing. Such request must be made within 60 days of the following events, whichever is later:
 - a. The date that the wildfire risk-hazard map or an update to the hazard map is posted on Oregon Explorer Map Viewer website; or
 - b. The date that a correctly addressed notice, issued in accordance with OAR 629-044-1031(2), is deposited with the postal service for mailing to the affected property owner local government, whichever is later.
- 2.5. The written hearing appeal request for hearing under in section (13) and (4) of this rule, the property owner the hearing request must specifically state:
 - a. the objections to the wildfire risk class assignment issues to be addressed;
 - a.b. The criteria of the hazard map being contested; and
 - b. the change in wildfire risk assignment relief sought; and
 - c. any pertinent facts that may justify a change in the wildfire risk class assignment, in accordance with ORS 477.490.
 - d. Additionally, the appeal must include the following contact information for referral:
 - (A) Property owner name;
 - (B) Mailing address;
 - (C) Property address and tax lot number; and
 - (D) Phone number

This specific response is required based on the agency's determination that, due to the complexity of the program and category of cases involved, a more specific response is warranted. The requester may amend their response, except when doing so would be unduly prejudicial. Failure to raise an issue as provided in this rule shall constitute a waiver of the opportunity to raise the issue in a contested hearing.

- 3.—Upon receipt of a written request for hearing pertaining to the appeal of wildfire risk hazard assignment under this section, the State Forester Department:
- a.—~~shall review the appeal to determine whether the appellant has standing and whether the appeal addresses the issues in subsection (2)(c). shall provide a Notice of Opportunity for Hearing to the appellant, in accordance with Chapter ORS 183; and may contact the property owner or local government to seek additional information and attempt to informally resolve the appeal. clarify any pertinent facts identified in subsection (2)(c) questions or logistics; and~~
Prepare a report describing the issue and reach a final decision of the matter by:
 - (A) reviewing whether the wildfire risk assignment and map were developed and maintained according to these rules and the most current wildfire assessment.
 - (B) reviewing for any error in the data that was used to determine the wildfire risk class assignment;
 - (C) reviewing any pertinent facts that may justify a change in the assignment; and
- 4.6. ~~(D) providing the report to the appellant.~~
- 5.7. ~~d. T~~he Department shall provide information to the public describing changes to the map that result from based on approved appeals. The information shall be posted on the Department's public website.
- 1.—The State Forester will issue a Final Order resolving appeals under this section, based on the record established through the contested case hearing. The Forester's Hearings will be conducted in accordance with OAR 629-001-0025 to OAR 629-001-0045.
- 6.8. A final Final Order decision of the matter issued under section (38) of this rule shall be a final order, and is subject to appeal as prescribed by ORS 183.484482.

DIVISION 44

Wildland-Urban Interface and Wildfire Hazard Mapping

629-044-1000

Purpose

- (1) The purpose of OAR 629-044-1000 to 629-044-1040 is to implement the provisions of ORS 477.027 and ORS 477.490.
- (2) The purpose of OAR 629-044-1010 to 629-044-1015 is to establish criteria by which the wildland-urban interface shall be identified and classified pursuant to ORS 477.027
- (3) The purpose of OAR 629-044-1020 to 629-044-1026 is to set forth the criteria by which a wildfire hazard map must be developed and maintained pursuant to ORS 477.490.
- (4) The purpose of OAR 629-044-1030 is to set forth the process for notification to property owners pursuant to ORS 477.490.
- (5) The purpose of OAR 629-044-1035 is to set forth the process of integrating public input into the wildfire hazard map pursuant to ORS 477.490.
- (6) The purpose of OAR 629-044-1040 is to set forth the process of how a property owner or local government may appeal the assignment of wildfire hazard pursuant to ORS 477.490.

629-044-1005

Definitions

- (1) The definitions set forth in ORS 477.001, shall apply.
- (2) The following words and phrases, when used in OAR 629-044-1000 to 629-044-1040, shall mean the following:
 - (a) "Geographical area" means an area of land with similar characteristics that can be considered as a "unit" for the purposes of classification of the wildland-urban interface.
 - (b) "Intermingles with wildland or vegetative fuels" means a minimum of 50% coverage of wildland or vegetative fuels.
 - (c) "Meets with wildland or vegetative fuels" means located within a 1.5-mile buffer from the edge of an area greater than 2 square mile with a minimum of 75% cover of wildland or vegetative fuels.
 - (d) "Occluded geographical area" means an area with a minimum of one structure or other human development per 40-acres within 1.5 miles of an area greater than 1 square mile but less than 2 square miles with a minimum of 75% cover of wildland or vegetative fuels
 - (e) "Other human development" means essential facilities, special occupancy structures, or hazardous facilities as defined in ORS 455.447 that support community functions, public communication, energy, or transportation.
 - (f) "Structure" means any building that is at least 400 square feet.
 - (g) "Unincorporated community" has the meaning provided in OAR Chapter 660, Division 22.
 - (h) "Urban growth boundary" has the meaning provided in OAR Chapter 660, Division 15.
 - (i) "Vegetative fuels" means plants that constitute a wildfire hazard.

(j) "Wildland fuels" means natural vegetation that occurs in an area where development is essentially non-existent, including grasslands, brushlands, rangelands, woodlands, timberlands, or wilderness. Wildland fuels are a type of vegetative fuels.

(k) "Wildfire Hazard" is a numerical value describing the likelihood and intensity of a wildfire, based on specific factors or conditions of weather, climate, topography, and vegetation, as modeled for a given pixel. (l) "Wildland-Urban Interface" means a geographical area where structures and other human development meets or intermingles with wildland or vegetative fuels.

629-044-1011

Wildland-Urban Interface Identification Criteria

(1) The Wildland-Urban Interface is a geographic area comprised of tax lots, or portions of tax lots that includes:

- (a) an average density of one structure or other human development per 40 acres and either:
 - (A) meets with wildland or vegetative fuels; or
 - (B) intermingles with wildland or vegetative fuels; or
 - (C) is an occluded geographical area.

(2) The Wildland-Urban Interface also includes:

- (a) lands identified within an urban growth boundary or unincorporated community boundary by local comprehensive plans that meet the criteria in (1)(a); or
- (b) a planned development, within the urban growth boundary or unincorporated communities, that is not identified in 1(a) but that is approved for development that meets the criteria in 1(a).

(3) If multiple structures or other human developments are located on a single tax lot, then the totality will be considered a single structure or other human development.

(4) Each tax lot in the State of Oregon shall be assigned a wildfire hazard zone in accordance with 629-044-1021.

629-044-1016

Periodic Wildland-Urban Interface Lands Identification and Classification

Tax lots wholly or partially identified as within the Wildland-Urban Interface shall be reviewed in conjunction with updates to the wildfire hazard map in accordance with OAR 629-044-1026.

629-044-1021

Wildfire Hazard Rating

1. Wildfire hazard zones are established as follows:
 - a. Low Wildfire Hazard. A hazard value less than 0.001911.
 - b. Moderate Wildfire Hazard. A value between 0.001911 to 0.137872.
 - c. High Wildfire Hazard. A value greater than 0.137872 .
2. It is recognized that natural vegetation is highly variable and that the fuel models used in subsection (1) of this rule may not always accurately reflect expected wildfire behavior, due to variations in local species and vegetation conditions. Therefore, consistent with peer reviewed methods, modifications may be made to the hazard rating as necessary to ensure accuracy.

3. Each wildfire hazard zone assignment shall be based on the average pixel-level wildfire hazard values within each tax lot.
4. Each wildfire hazard zone shall consist of a value range. The value ranges that correlate to a given wildfire hazard zone shall be determined using a statistically objective methodology.

629-045-1026

Wildfire Hazard Map

1. Oregon State University shall develop and maintain the Wildfire Hazard Map in a publicly accessible format. The map shall be developed:
 - a. using current, peer reviewed data sets when calculating wildfire hazard;
 - b. calculating wildfire hazard as a combined value incorporating annual burn probability and wildfire intensity;
 - c. and utilize the most representative fuel characteristics practical;
 - d. to include a layer that geospatially displays the locations of socially and economically vulnerable communities; and
 - e. to include adjustments for irrigated agricultural, in locations identified as irrigated at least one of five years within the most recent IrrMapper dataset, prior to updates in accordance with Section 2 of this rule.
2. Oregon State University shall update the map and other publicly available web-based tools, in consultation with the State Forester and other agency partners, within 12 months after updates to the most current wildfire risk assessment data sets are available.

629-044-1031

Notification

1. The State Forester shall provide written notice to the owners of properties designated as high hazard zone within the Wildland-Urban Interface.
2. The written notice shall be sent to the property owner address included in the county assessor records.
3. The written notice shall include:
 - a. the wildfire hazard zone assignment;
 - b. where a map of the property can be found in the publicly accessible mapping portal;
 - c. information regarding what the wildfire hazard assignment means for the property owner;
 - d. information regarding available wildfire related resources and programs; and
 - e. information about how a property owner may appeal the assignment of wildfire hazard zone.
4. Prior to the effective date of updates to the Wildfire Hazard Map, the Department shall hold regional public meetings.
5. The Department shall provide a notice of the times and places of all statewide and regional meetings, and the other ways by which comments may be submitted, using a variety of notice methods designed to reach diverse audiences, both statewide and within each region.
6. The Department, in consultation with Oregon State University, shall present anticipated changes to the Wildland-Urban Interface boundary and Wildfire Hazard Zone assignments at a county scale.
7. The meeting shall allocate time to receive input from any interested persons relating to the proposed wildfire hazard zone assignments.
8. The Department shall establish and publicize a place where electronic and written comment may be received.

9. Following the public meeting the Department, in consultation with Oregon State University, may make changes in the proposed wildfire hazard zone assignments, hold additional meetings, and thereafter shall make final wildfire hazard zone assignments.

629-044-1036

Locally Developed Wildfire Plans

1. The following types of locally developed wildfire plans may be integrated into the wildfire hazard mapping portal if the local jurisdiction chooses.
 - a. Community Wildfire Protection Plans developed under the Healthy Forests Restoration Act;
 - b. Natural Hazard Mitigation Plans developed under the Robert T. Stafford Disaster Relief and Emergency Assistance Act; or
 - c. Firewise USA Action Plans developed under the Firewise USA Program administered by the National Fire Protection Association.
2. Information in the types of locally developed wildfire plans identified in subsections (1)(a) thru (c) above, may complement, but does not supplant or supersede the Wildfire Hazard Map.

629-044-1041

Appeal of Wildfire Hazard Assignment

1. Any affected property owner or local governments may appeal the assignment of properties to the wildfire hazard zones. All appeals of the assignment shall be referred for a contested case hearing in accordance with ORS Chapter 183, OAR 629-001-0003 to OAR 629-001-0055, and this rule. The Administrative Law Judge assigned the matter shall be authorized to issue a Proposed Order. The State Forester shall issue the Final Order.
2. The notification described under OAR 629-044-1031 shall serve as a Notice of Proposed Agency Action for property owners in the high hazard zone and also within the Wildland-Urban Interface. The posting of the hazard map on the Oregon Explorer Map Viewer website shall serve as the agency's Notice of Proposed Agency Action for all other property owners who have a right to appeal under ORS 477.490.
3. An affected property owner may appeal the assignment of a wildfire hazard zone to property by submitting a written hearing request to the Department. Such request must be made within 60 days of the following events, whichever is later:
 - a. The date that the wildfire hazard map or an update to the hazard map is posted on Oregon Explorer Map Viewer website; or
 - b. The date that a correctly addressed notice, issued in accordance with OAR 629-044-1031(2), is deposited with the postal service for mailing to the affected property owner.
4. A local government may appeal the assignment of a wildfire hazard zone by submitting a written hearing request to the Department. Such request must be made within 60 days of the following events, whichever is later:
 - a. The date that the wildfire hazard map or an update to the hazard map is posted on Oregon Explorer Map Viewer website; or
 - b. The date that a correctly addressed notice, issued in accordance with OAR 629-044-1031(2), is deposited with the postal service for mailing to the local government.
5. The written hearing request must specifically state:
 - a. the issues to be addressed;
 - b. The criteria of the hazard map being contested; and
 - c. the relief sought.
 - d. Additionally, the appeal must include the following contact information for referral:

- (A) Property owner name;
- (B) Mailing address;
- (C) Property address and tax lot number; and
- (D) Phone number

This specific response is required based on the agency's determination that, due to the complexity of the program and category of cases involved, a more specific response is warranted. The requester may amend their response, except when doing so would be unduly prejudicial. Failure to raise an issue as provided in this rule shall constitute a waiver of the opportunity to raise the issue in a contested hearing.

6. Upon receipt of a written request for hearing under this section, the Department may contact the property owner or local government to seek additional information and attempt to informally resolve the appeal.
7. The Department shall provide information to the public describing changes to the map that result from appeals. The information shall be posted on the Department's public website.
8. The State Forester will issue a Final Order resolving appeals under this section, based on the record established through the contested case hearing. The Forester's Final Order is subject to appeal as prescribed by ORS 183.482.

DRAFT

Key Issues Identified in Review of Wildfire Risk Map Feedback



PURPOSE

This document summarizes the public input received following the release of the statutorily mandated statewide wildfire risk map in June 2022, along with key issues identified based on that input and actions planned to address those issues prior to release of the updated map in October 2023.

BACKGROUND

Climate change has brought hotter, drier summers and historic levels of drought to Oregon over the past several years. These factors are a key driver of the rapid changes to Oregon's wildfire environment over the past decade—longer fire seasons and more challenging, costlier and destructive wildfires. At the same time, Oregon's population continues to grow and increasing numbers of people are living in or near the wildland-urban interface. This convergence of factors puts the state of Oregon—along with federal, local and tribal government partners and Oregonians generally—at a critical juncture. Bold actions are necessary to mitigate the catastrophic impacts of wildfire experienced by Oregonians, communities and our state's natural resources over the past several years. Senate Bill 762 laid the foundation for that bold action.

The bill passed in 2021 with bipartisan support and made investments in fire-adapted communities, wildfire response and resilient landscapes. Eleven state agencies are tasked with implementing the various components of SB 762. Several of those components are related to fire-adapted communities, including the creation and use of a "statewide wildfire risk map." Oregon Department of Forestry is responsible for overseeing development and maintenance of that map and establishing the risk classification categories to be assigned to properties based on criteria provided in law. Oregon State University is responsible for the actual development and maintenance of the map, making it publicly available and providing technical assistance.

The map's core function is as a planning tool. Having a central source for information on hazards and vulnerability promotes consistency and alignment in wildfire-related planning and decision making at all levels of government in Oregon. It also helps ensure the most vulnerable locations—those in fire-prone regions that are also in or around homes and communities (wildland-urban interface)—are prioritized for fire adaptation and mitigation investments, including:

- » Defensible space requirements for properties that are both in the wildland-urban interface and classified as high or extreme (Office of the State Fire Marshal).
- » Wildfire hazard mitigation building code standards (home hardening) for properties that are both in the wildland-urban interface and classified as high or extreme (Department of Consumer and Business Services).
- » Fuels mitigation grant programs for forestlands and communities (ODF and the Higher Education Coordinating Commission's Oregon Conservation Corps Program) and community risk reduction (OSFM).

Building the wildfire risk map from scratch has been a massive and complex technical and policy development effort; however, there is also a considerable information and outreach aspect to successful implementation of the map and SB 762 as a whole. The scope and scale of local-level communication and engagement necessary for Oregonians to genuinely understand the intent of SB 762 was far more than what initial deadlines allowed for.

Approximately five weeks after the map was unveiled—which was also the first major milestone in the implementation of SB 762—ODF withdrew the map for revisions. In that time, ODF fielded approximately 3,000 calls, conducted four information sessions that were attended by approximately 1,700 people, and received nearly 2,200 risk classification appeals from property owners. Further details of the inputs, main themes identified and potential actions to address issues are provided below.

The withdrawal of the map has given ODF and OSU an opportunity to make technical refinements based on the considerable input received, but it also provides state agencies with an opportunity that wasn't previously available: the time for in-depth and locally focused collaboration and information sharing.

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SCOPE OF IMPACT

There are 1.8 million tax lots in Oregon, all of which were assigned a risk classification. Of those, 170,000 were classified as high or extreme (9.8% of total tax lots). Approximately half of those properties are in one of three counties: Jackson, Josephine or Deschutes. The notices required by law were sent to the mailing address for the tax lot owner provided in county records.

Of those receiving the notice, about 30% were outside the wildland-urban interface and, while defensible space and home hardening measures are encouraged because of the level of risk, those measures are not currently required under state law. The remaining 70% (~120,000 tax lots) were within the wildland-urban interface. It was further estimated that approximately 88,000 of these tax lots had a structure present and would potentially be subject to future regulation related to defensible space and home hardening, if that structure was a residence.

It is important to note that the figures provided above are the number of tax lots impacted, which isn't equivalent to the number of distinct property owners impacted, as one person may own multiple tax lots. Initial mailing refinement efforts resulted in identification of approximately 85,000 property owners for those 170,000 tax lots. The number of property owners may actually be smaller still, as mailing refinement efforts haven't yet addressed data inconsistencies, such as misspellings of individual or street names or differences in road designations (ex: "Drive" vs. "Dr."). Those further refinements will likely result in identification of additional duplicate individuals or addresses.

INPUTS RECEIVED

Input was received from property owners, local governments and elected officials in a variety of ways. The majority of ODF's contacts with Oregonians were via **phone calls** and the **appeals process**. The department also received a number of emails and written letters with questions and comments. To date, OSU has also received a few hundred email inquiries, the majority of which were received between the map's release on June 30 and its withdrawal on August 5. Details on the focus of the phone calls and appeals received by ODF and the emails received by OSU are provided below.

Additionally, ODF & OSU representatives provided opportunities for questions and comments from the public during four information sessions held in late July and early August. These sessions were held in the parts of the state with a high concentration of properties classified as being in areas of high or extreme risk. The virtual session for Jackson and Josephine counties had approximately 1,300 attendees. The other sessions were in person and had more than 400 attendees total (75—La Grande, 90—The Dalles and 250—Redmond).

The virtual session for Jackson and Josephine counties was originally scheduled as two separate in-person sessions; however, ODF leadership made the decision to combine the meetings and shift to a virtual platform due to logistics in Jackson County and a public safety threat related to the Josephine County session.

Phone Calls

ODF staff responded to approximately 3,000 calls related to the wildfire risk map, half of which were received by ODF's Southwest Oregon District (Jackson and Josephine counties). The reasons for the calls were varied, but the vast majority were seeking assistance or additional information. Of the more than 1,200 calls received at ODF's Salem Headquarters through the main help line set up for the map, just over 20% were requests for ODF to **send a copy of their homeowner's report**. This report is available to download from the Oregon Explorer, but ODF directed those who didn't have the ability to access the report on their own to call the department for assistance. Some of the request volume is likely related to occasions where access to the report was removed to help the Oregon Explorer platform cope with high user volumes. A similar number of people called for **assistance or additional information about filing an appeal**.

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The final key category of calls were those needing help understanding the notices received. Examples of common inquiries included:

- » What’s the purpose of the notice I’ve received?
 - » What do I need to do?
 - » How will this impact my homeowner’s insurance? What about my property value?
 - » How was my property’s risk calculated? What does it mean?
- » I’m no longer the owner of this tax lot, so why am I receiving this notice?
 - This problem is due to data issues with the tax lot owner mailing information on record with the county.
 - » Why did I receive so many different notices?
 - This problem is because the notices are generated by tax lots, but one individual may own several tax lots.

Emails

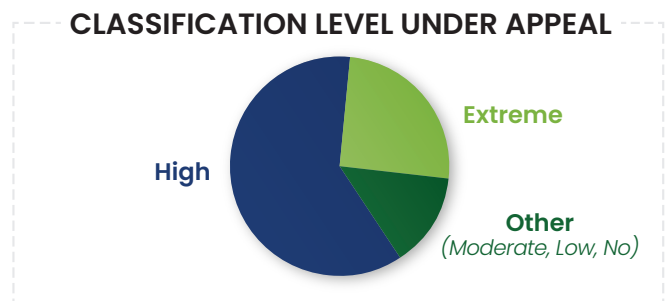
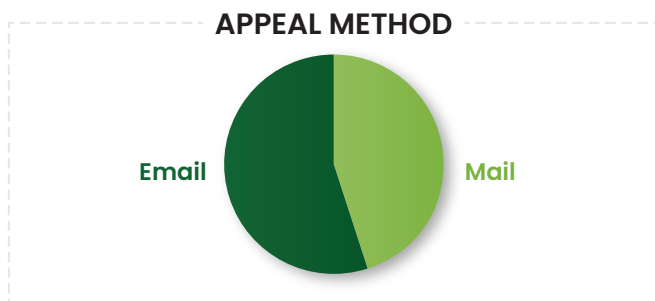
OSU has received a total of 343 email inquiries to date. Most emails included multiple questions. OSU tried to record and summarize all questions received. The most common inquiries were those requesting **more information about how risk was calculated** (20%), which included questions about modeling, mapping, criteria in legislation and more specific questions about datasets and classifications. Additional email subjects included:

- » Requests:
 - To download risk data
 - For Oregon Explorer technical support
 - For additional resources, such as speakers or information about public meetings
 - For site visits from ODF and/or OSU
 - » Disagreement with risk classification
 - » Risk not accounting for investments in defensible space and/or home hardening
- » Questions about:
 - Risk differing between neighbors
 - How irrigated land was accounted for
 - How to appeal
 - Defensible space and/or home hardening codes
 - Insurance impacts
 - Financial support for code compliance
 - » Calls to repeal SB 762, many of which copied state agencies and legislators

Appeals

The most robust and detailed source of input about the map has been the documentation and contextual information submitted through the formal classification and/or wildland-urban interface designation appeals process. The law requires ODF to provide a way for property owners to appeal the risk classification assigned to their property. When the initial map was withdrawn, the appeals period ended and any appeals submitted were rendered moot, as the classification and/or designation being appealed no longer existed. However, the department read through all appeals received and looked for recurring concerns in order to identify areas of focus for potential refinements to the map.

ODF received nearly 2,200 appeals, representing 1.3% of the 1.8 million tax lots in Oregon, all of which were designated with one of the five risk classifications. As would be expected, the majority of appeals came from the four counties with the highest number of tax lots classified as high or extreme: Jackson, Josephine, Deschutes and Klamath.



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The reasons for submitting appeals were far more specific and focused than the reasons for calling the department. Nearly half of all appeals fell into two categories: **the lot is irrigated** in some manner (28%) or the lot **already has defensible space and/or hardened buildings** (21% and consistent with one of the top categories from emails received by OSU). The other half fell into one or more of a wide variety of categories, including those who were appealing:

- » For a lower classification to protect their **ability to insure their properties** (concerns about being able to get or keep insurance if classified as high or extreme risk).
- » Because of the **uncertainty about defensible space and home hardening codes** and what would be required for compliance, as those were still under development at the time.
- » Due to concerns about future expansion of regulations connected to risk classifications.

MOVING FORWARD

1. Communication, outreach and conversation are the focus of ODF's planning efforts for development and delivery of the next iteration of the map, including:

- » Developing educational materials on wildfire hazards and fire behavior, in partnership with subject matter experts.
- » Completely overhauling the classification notification letter and homeowner's report with a focus on providing what homeowners want and need to know in a way that's easy to understand. There will also be an emphasis on ensuring both items are designed to help people easily connect to information about defensible space, home hardening, insurance and grants.
- » The same customer-focused, plain language approach will also be applied to ODF's public information materials related to the map.

Additionally, the department is looking into ways to address two key **mailing-related issues** that resulted in considerable confusion and frustration: incorrect recipients and receipt of multiple letters. As mentioned earlier in this report, the department is actively exploring ways to efficiently refine ownership and mailing data received from counties to limit the number of letters going to the same person.

Finally, there are ongoing discussions related to changing the name of the map to clearly articulate what the map depicts. Based on the requirements to base the classifications on weather, climate, fuels and topography, which better reflect hazard or exposure levels to wildfire rather than risk. Hazards are largely immutable characteristics of the area. Changing the name of the map decouples the idea that an individual can reduce their exposure through defense measures. While those measures can increase the likelihood a home will survive a wildfire, they don't change the factors that the fire will occur in the first place.

ODF recommends "**Wildfire Vulnerability Map,**" which not only reflects the vulnerability due to the hazards present, but also highlights the social and economic vulnerability layer of the map developed by OSU. Combining awareness and consideration of the **environmental, social and economic factors** that make particular areas more vulnerable to the devastating impacts of wildfires, thus driving limited resources to the areas of greatest need.

2. Local and statewide involvement in discussions

County level: ODF—with its map partners—is planning to initiate **small workgroups** comprised of **elected and wildfire leaders** in the counties with the highest numbers of tax lots classified as high and extreme on the initial version of the map. Jackson, Josephine, Deschutes, Klamath and Harney counties account for nearly 70% of high or extreme classifications (115,574 tax lots). The primary objectives of the workgroups are to:

1. Build a local leadership group that understands the purpose of the map and the science that was used to develop it to effectively advocate for community needs related to the map and associated downstream regulation.
2. Ensure consistent, accurate information sharing.
3. Reassure communities that their leaders are involved in the process and have a forum to share concerns.
4. Engage in review of draft maps and provide input related to potential issues or anomalies.

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The workgroups will likely start meeting at least once monthly in February 2023 and continue through the end of the next appeal period, which is tentatively December 2023. The plan is to keep the groups small to promote relationship building and encourage dialogue and would ideally be comprised of local representatives from ODF and other implementation agencies, local city and/or county elected officials (no more than one county commissioner to avoid a quorum), local fire service representation and others as identified by local leadership.

ODF will be reaching out to those identified above in late December and early January to gauge interest and, if interested, determine who specifically will be participating. While efforts will be focused on the five counties listed above for these small workgroups, there are also plans for multiple **town halls throughout the state** to provide forums for information and questions in far more counties (tentatively scheduled for April through June). Additionally, representatives from the commissions of counties that neighbor the five listed above may attend the workgroup meetings if they're interested in more information.

Statewide: ODF is exploring the concept of a similar **workgroup at the statewide level** comprised of **legislators** from the districts with the highest number of tax lots classified as high and extreme and representatives from the **tribes** in those areas, along with representatives of ODF executive leadership and the Wildfire Programs Director.

ODF leadership will be reaching out to legislators and tribes in the districts described above to gauge interest in participation.

3. Clear communications related to wildfire hazards, vulnerability, risk & mitigation

There is a clear need to increase Oregonians' awareness and understanding of key foundational concepts related to wildfire, including:

- » Local wildfire hazards and how those hazards influence fire behavior.
- » The differences between hazards and risk and what that means for them in relation to wildfire preparedness.
- » Community and property-level risk factors, best practices for mitigating those risks, and resources available to assist with mitigation efforts.

4. Technical refinements

The department and Oregon State University are identifying verified, statewide data sets that accurately reflect irrigation and can be integrated into the risk modeling. Additionally, while concerns about fluctuations in risk classifications across adjacent parcels and "speckling"—one tax lot showing up as a different classification than all others around them— weren't among the top categories of concerns or issues expressed, ODF and OSU will be looking into both of those as well.

5. Policy changes

The initial map rollout surfaced a few considerations where law and/or rule changes would improve the accuracy, understanding and acceptance of the map. ODF continues to work closely with the Wildfire Programs Director in the Governor's Office on identifying opportunities for improvements or enhancements to the laws governing the map specifically, and for advancing wildfire protection in Oregon generally.