



Executive Summary

Montana Land Use Planning Strategies to Reduce Wildfire Risk

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Across Montana—like most of the West—wildfires are getting bigger, lasting longer, and causing more damage to homes and property. This trend can only be expected to continue under a warmer, drier climate and as more homes are built in at-risk locations (known as the wildland-urban interface, or WUI).

Land use planning is an important tool to reducing risk, but few Montana counties have fully integrated wildfire into their land use planning programs. This report synthesizes the opportunities, challenges, and options for county governments, fire districts and fire service areas, and landowners to reduce risk to life and property in Montana.



A smoke column from the 2012 Pine Creek Fire rises over the Yellowstone River in Park County, Montana. Photo courtesy of Greg Coleman, Park County.

Strategies Available to Montana Communities

Under Montana law, four general approaches are possible. Table 1 summarizes the role of each in helping manage development in the WUI. While every Montana jurisdiction must make its own determinations of how (and whether) to proactively address development in the WUI, protecting lives and property requires proactive, thoughtful integration of all four approaches, including:

- **Plans**, such as growth policies and neighborhood plans;
- **Land use regulations**, including subdivision regulations, zoning, building codes;
- **Revenue-generating strategies** such as impact fees and rural improvement districts; and
- **Voluntary measures**, including education, outreach, and incentives.

Montana can also learn from strategies being adopted by other states in the West, such as authorizing counties with the discretion to develop WUI codes, developing statewide risk mapping, and incentivizing regulations through funding strategies. Arizona, Colorado, and Utah have all adopted regulations that provide local governments with more authority and flexibility to manage land use challenges in the WUI.

Examples from local jurisdictions in Wyoming, Idaho, Colorado, Arizona, and other states can also provide guidance to Montana communities, demonstrating how to take proactive steps such as WUI codes, building codes, steep slope ordinances, landscaping plans, and risk assessments.

Challenges with Montana's Planning Framework

While many options exist for Montana communities, the state also faces several challenges in addressing development in the WUI with unnecessarily complex and confusing issues in statute and

administrative rule. Artificial distinctions and overlap between subdivision regulations, zoning ordinances, and building codes can create challenges for local governments in creating and enforcing measures to protect life and property.

One of the main challenges with Montana’s planning framework is the artificial distinction and overlap between what subdivision regulations, zoning ordinances, and building codes can address by statute and administrative rule. For example:

- Subdivision regulations can address the initial division of land, but can also include ongoing construction requirements and mitigation measures;
- Zoning regulations can address lot development, including vegetation maintenance over time; and
- Building codes address the design and construction of structures, but may also include the International Wildland-Urban Interface Code that addresses vegetation and other site conditions.

This framework is unnecessarily confusing, legally hazardous for local governments, and fails to consider the multi-faceted or holistic nature of addressing WUI development.

Ideally the Montana Legislature would grant wider-ranging legal authority to counties to address WUI development, like other Rocky Mountain states, where counties have broader authority to address WUI development and fire safety issues. That way, local governments could address WUI development in light of local circumstances.

Another option is for the legislature to permit local governments to include fire-protection-related building codes within county zoning statutes so structural fire protection issues don’t have to be addressed through subdivision regulations and covenants where building codes are not in effect. However, the legislature has historically been reluctant to provide local governments with innovative options or tools to address land development issues, presumably because of distrust of government regulation. One hopes it will not take a disaster to alert our elected officials to the need for counties to develop a simpler and more comprehensive approach to addressing WUI development issues.

Conclusion

With less development in the WUI than some neighboring states, but enormous potential for future development, Montana has a rare opportunity to get ahead of growth before disaster strikes, and proactively apply land use planning strategies to manage development in our fire-prone landscapes. Cooperation and collaboration between the Legislature and Counties could help broaden the tools available and clarify ambiguities in current law to reduce wildfire risk in Montana.

Notes

The full report, “Montana Land Use Planning Strategies to Reduce Risk in the Wildland Urban Interface” is available at: <https://headwaterseconomics.org/wildfire/solutions/montana-wildfire-planning>. This report was prepared as part of [Community Planning Assistance for Wildfire](#) (CPAW), which works with communities to reduce wildfire risks through improved land use planning.

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About Headwaters Economics

Headwaters Economics is an independent, nonprofit research group that assists the public and elected officials in making informed choices about land management and community development decisions in the West, <http://headwaterseconomics.org/>.

**TABLE 1: MONTANA LAND USE PLANNING STRATEGIES TO REDUCE WILDFIRE RISK—
Plans, Land Use Regulations, Revenue Generating Strategies, and Voluntary Measures**

PLANS			
Plans are non-regulatory and non-binding, although sometimes required under state and federal law. Plans often help generate collaboration and create access to funding sources, in addition to helping set foundational goals and objectives for WUI development.			
Type	Description & Examples	Advantages	Disadvantages
Growth Policies	Provide the legal basis and rationale to create rules for WUI, but is not a regulatory document. <i>Examples: Lewis & Clark County and Missoula County</i>	<ul style="list-style-type: none"> • State law lays out a clear path for what a growth policy must contain, including an assessment of WUI issues and needs • Can be general or specific, as determined by the community • Provides an opportunity to discuss risks and improvement projects with federal and state officials, fire districts, and landowners • Provides the legal foundation for land use decisions and regulations 	<ul style="list-style-type: none"> • Does not have the weight of law (i.e., is not a regulatory document), but must be “substantially complied with”
Neighborhood Plans	Provides basis for planning development in specific areas, including WUI. <i>Example: Lewis & Clark County’s Helena Valley Neighborhood Plan</i>	<ul style="list-style-type: none"> • Can focus on specific geographic areas such as the WUI, and can focus on specific issues such as development in the WUI 	<ul style="list-style-type: none"> • Does not have the weight of law (i.e., is not a regulatory document), but must be “substantially complied with”
Community Wildfire Protection Plan (CWPP)	Collaborative plan for fuels mitigation and reducing structural ignitability; opens federal funding opportunities. <i>Example: Lincoln County</i>	<ul style="list-style-type: none"> • Developed collaboratively between local governments, fire districts, and state and federal agencies • Identifies fuels reduction priorities on federal and non-federal lands and helps decide how additional federal funds may be distributed • Expedited federal environmental and legal review 	<ul style="list-style-type: none"> • Must be updated regularly • It is a plan, not a regulation, so no consequences if the plan is not implemented
Pre-Disaster Mitigation Plan	Addresses wildfire alongside other hazards; helps maintain federal funding.	<ul style="list-style-type: none"> • Focuses on several hazards such as flood, fire, earthquake, hazardous materials, etc.—more “bang for the buck” • Maintains funding eligibility for federal disaster relief 	<ul style="list-style-type: none"> • Because of the widespread nature of the plan, it could focus less on WUI issues • It is a plan, not a regulation, so no consequences if the plan is not implemented

LAND USE REGULATIONS			
Montana law explicitly authorizes three types of regulations for WUI development. Regulations can be difficult to adopt in some Montana communities and can require additional capacity for permitting and enforcement, but are guaranteed ways to manage WUI development.			
Type	Description & Examples	Advantages	Disadvantages
Subdivision Regulations	<p>Cities and counties are required to have subdivision regulations, and are required to address hazards to health and safety, including wildfire. Construction techniques and mitigation measures can be required.</p> <p><i>Example: Lewis & Clark County</i></p>	<ul style="list-style-type: none"> • Can be used to set up new subdivisions in a fire-safe manner, with initial fuels mitigation, a safe road network, street signs, water supplies, etc. • Can include certain construction techniques to ensure homes are built in a fire-safe manner • Because every jurisdiction is required to adopt subdivision regulations, WUI issues in new subdivisions will be addressed to some degree 	<ul style="list-style-type: none"> • There is no regulatory mechanism to ensure water supplies and vegetation are maintained over time • Covenants, which may not be adhered to, are necessary to ensure the construction techniques are implemented • Not comprehensive—the requirements only apply to new subdivisions while WUI development issues also include existing lots and structures
Zoning	<p>Can be adopted by local governments, with great flexibility for how much detail to include. Can be designed to address specific areas of WUI.</p>	<ul style="list-style-type: none"> • Can be very detailed or relatively simple, as determined by local decision-makers • Equal treatment—the requirements could apply to all new development the WUI • The use of zoning to address public health and safety issues is well supported by state law and case law 	<ul style="list-style-type: none"> • Can be politically difficult to adopt zoning in rural Montana • Requires permit processes, staffing, and ongoing administration • County zoning cannot include items that are included in building codes (e.g., roofing materials, windows, vents, etc.)
Building Codes	<p>Can be adopted by local governments to regulate ignitability of structures. Administered through a permitting process.</p> <p><i>Example: Missoula County</i></p>	<ul style="list-style-type: none"> • Equal treatment—the requirements could apply to all new development • Address construction techniques such as roofing materials, windows, vents, etc. 	<ul style="list-style-type: none"> • Can be politically difficult to adopt building codes in rural Montana • Requires permit processes, staffing, and ongoing administration

REVENUE GENERATING STRATEGIES			
Local governments have authority to develop funding to serve growth and generate public improvements. These can offset or supplement funding for wildfire protection and risk mitigation.			
Type	Description & Examples	Advantages	Disadvantages
Impact Fees	Charged by local governments to offset costs of capital improvements made necessary by new development. Can be used to support fire protection.	<ul style="list-style-type: none"> New development pays its portion of the costs of necessary capital improvements up front 	<ul style="list-style-type: none"> Can only be used for capital facilities with a life of 10 years or more; cannot be used for personnel or operations and maintenance costs Complex to develop and administer Fees can only be used to address impacts of new development, not to pay for existing needs
Rural Improvement Districts	Identifies public infrastructure improvements within a geographic area, with costs assessed on property taxes. Can be used for roads and water supplies. <i>Example: Lewis & Clark County</i>	<ul style="list-style-type: none"> Can be used to improve and maintain roads, water supplies, fire stations, etc., in a geographic area or district Apportions the costs among those who benefit Charges are collected with property taxes 	<ul style="list-style-type: none"> Can be complex to administer, especially if there are many ongoing RIDs Not comprehensive—only one district or improvement at a time
VOLUNTARY MEASURES			
Providing educational and cost-share (or other incentive) measures to private landowners can help reduce risk, but relies on willing landowner participation. Also requires capacity and dedicated resources.			
Type	Description & Examples	Advantages	Disadvantages
Education and Outreach	Providing educational opportunities to landowners, such as free property assessments and seminars can help landowners understand and mitigate risk. <i>Example: Lincoln County</i>	<ul style="list-style-type: none"> Landowners who participate are likely to take action to protect their properties WUI education information is readily available 	<ul style="list-style-type: none"> Not comprehensive—only a portion of WUI landowners may participate Labor intensive—vegetation must be managed on a regular basis to reduce risk
Incentives	Cost-sharing programs for reduction of hazardous fuels on private land can help educate landowners and fund mitigation strategies on private land.	<ul style="list-style-type: none"> Financial assistance to landowners Contains an education component 	<ul style="list-style-type: none"> Tax dollars to pay for incentives must come from grants or other programs