

Wildfires Spark Renewed Interest In Development Regulations: What The Proposed Rules Could Mean For Your Project

As the State's natural beauty lures more development into woodland areas, Colorado forest fires grow increasingly destructive. Damages – once limited to the loss of natural landscapes, a few stray structures and firefighting costs – now encompass the devastation of entire communities. Losses can be staggering, and governments struggle to find ways to cope with the added financial burden. In response, State and local governments are currently considering prevention measures that could have serious consequences for development in fire-prone areas.

Development in the Wildland-Urban Interface

In Colorado, an estimated one million people live in "wildland-urban interface" zones – or those areas where human development borders undeveloped wildland. These zones include the areas consumed by both the 2012 Waldo Canyon and this year's Black Forest fires which collectively destroyed over 850 homes. They comprise approximately one million acres of residential development in the State, and that acreage is projected to double by 2030. As development increases, so do the fire risks to structures in these areas. Meanwhile, State and local governments cannot bear the rising costs of interface zone fire suppression measures. Costs to contain the Black Forest fire are estimated to exceed \$10 million. By contrast, designated fire funds comprised of State and county contributions total less than \$ 4 million. Colorado's growth trends coupled with these skyrocketing costs have forced governments to examine their approach to fire mitigation.

State Efforts

In January of this year, Governor Hickenlooper convened a task force to identify ways to limit wildfire damages. The eighteen-member panel ramped up their efforts when the Black Forest fire broke out in June, and reconvened to consider a broad range of fire mitigation and cost saving measures. They will deliver their recommendations to the Governor and members of the State Legislature by the end of summer, but some potential recommendations are already drawing attention. These recommendations include the creation of a State-run insurance program and the institution of a mandatory fire protection fee for homeowners who live in wildland-urban interface zones. Though

less talked-about, the task force will likely recommend new building regulations that establish tougher building codes in designated interface areas.

International Wildland-Urban Interface Code (IWUIC)

Lawmakers will not start from scratch when developing new building regulations for the wildland-urban interface. There is a model code, the International Wildland Urban Interface Code (IWUIC), which was first developed in 2003 for precisely this purpose. Existing codes do not always adequately address fire mitigation in wildland-urban interface areas. The IWUIC bridges the gap between the International Building Code and the International Fire Code with building regulations designed to specifically to address the hazards of wildfires in wildland-urban interface areas. Local governments across the country have already adopted this (or similar) codes.

The IWUIC is intended to be a supplement to existing building and fire codes, but exactly how State and local governments might implement it is unclear. Utah could provide an interesting model: in 2005 Utah enacted legislation tying state financial assistance for fire protection to performance criteria for a county's wildfire preparedness. Governor Hickenlooper recently stated that he is "not committed at all" to adopting mandatory statewide building codes; however, he has not ruled out an incentive program. Moreover, he strongly encourages local governments to adopt stricter code requirements in wildland interface zones. At the recent annual conference of the Colorado Municipal League, the Governor stressed the importance of adopting local controls, and county and municipal leaders are listening. As of 2007, fewer than ten percent of Colorado counties and municipalities had adopted the IWUIC, but that number is expected to grow. For example, Pueblo County adopted most of the IWUIC in 2011, and many other local governments are currently considering similar actions. Most recently, the Boulder City Council will consider the adoption of a wildland-urban interface code later this summer.



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Requirements and Considerations

Technical

Technical requirements will vary by jurisdiction. They will depend entirely on how much of the model code a local government chooses to adopt or whether their requirements exceed those of the IWUIC. However, we can look to the IWUIC for a preview of likely requirements. IWUIC includes mandatory permitting for certain activities involving flame, such as welding and cutting, improved site plans expanding the building permit application study area, vegetation management plans, increased water capacity requirements, enhanced site ingress and egress, enhanced fire protection systems, and more stringent requirements for ignition resistant construction and materials.

Legal

If adopted, the IWUIC (or a similar regulatory scheme) could have profound impacts on development in wildland-urban interface zones. Not only could it limit the type and scope of growth, it could mean significant increases to design and construction costs. For this reason, developers should have a careful understanding of what the additional layers of regulatory oversight mean to each project. Decision-makers should understand the specific requirements of the newly implemented code, such as whether a site is in a designated zone and how that determination is made. Other specific requirements may address whether or how new building regulations will apply to improvements and repairs to existing projects, not just new construction. Second, the lack of precedent or familiarity with the new rules necessitate that county and municipal planning staff make decisions based on interpretation of the code rather than past practice. In that regard, interpretations founded in law and backed by legal analysis may be critical to ensuring a project's success. Other legal considerations include knowing where State regulations stop, county and/or municipal regulations begin, and any overlap between them. If not, developers could conceivably find themselves out of compliance in one area or over-compliant in another.

Lastly, as both the State and local governments consider the adoption of wildland-urban interface codes and/or regulations, there may be an opportunity for developers to engage and participate in the process to ensure that their concerns and issues are considered. Developers can follow the progress of the State Task Force on Wildfire Insurance and Forest Health by attending meetings and keeping abreast of the Task Force progress and recommendations. Information on upcoming meetings and Task Force developments is available on the Task Force website at: <http://www.dora.state.co.us/taskforce/>. We also advise

developers to monitor relevant local jurisdictions. As communities like Boulder consider adopting the IWUIC or similar language, interested developers can participate in public hearings and submit comments on draft language. Information on the steps each community is taking, and opportunities for public participation, are generally available on City Council or Planning Board websites.

Conclusion

Developers of commercial and residential projects in wildland-urban interface zones should be alert to the advent of new building regulations in the wake of Colorado forest fires, and opportunities to shape the requirements ultimately adopted. For further information about the topic discussed in this article, please contact Catherine van Heuven at CvanHeuven@kaplankirsch.com.



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