

**Communities vs. Wildfires**  
**Tinder in the Wildland Urban Interface**  
**A Talk with Professor Stephen R. Miller**

- Wildfire crisis in the U.S
  - The American West is experiencing increasingly devastating wildfires.
    - California, for example, experienced 8 of its 10 largest wildfires and 7 of its 10 most expensive in the last decade.
    - Western U.S. is now experiencing 4 times more wildfires than before.
    - Wildfires affect air quality across the U.S. Wildfires are resulting in increases in PM2.5 particles which are harmful to human health.<sup>1</sup>
  - Why wildfire management needs to be more of a local issue
    - Population growth in the West means more development in higher risk areas. More people are settling in wildland urban interface (WUI) zones, areas in transition between unoccupied land and human development. In the west, in particular, WUI zones include areas that have traditionally burned, consisting of undeveloped land and vegetative fuels. Majority of federal firefighting costs today are attributable to protecting private property. Firefighting costs are correlated with homes threatened.
    - Federalism and local land use tension
      - Development is local issue, but the federal government owns the forest lands and (ultimately, the taxpayers) bears the brunt of firefighting costs.
      - Cost to fed & state governments and taxpayers is greater than to local communities and WUI areas where more of these large wildfires are occurring.
- Community wildfire protection plan (CWPP) process
  - Healthy Forests Restoration Act (HFRA) of 2003<sup>2</sup>
    - Purpose was to reduce threat of wildland fires and inviting community participation and input in the wildland fire management process.
    - Among other things, created the CWPP
  - CWPP
    - Permit local communities to meaningfully engage in wildfire management on federal lands that are in the area.

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<sup>1</sup> Allison Hirschlag, *The Long Distance Harm Done by Wildfires*, BBC (Aug. 23, 2020), <https://www.bbc.com/future/article/20200821-how-wildfire-pollution-may-be-harming-your-health>.

<sup>2</sup> Pub. L. No. 108-148 (2003), <https://www.congress.gov/108/plaws/publ148/PLAW-108publ148.pdf>

- CWPP provides a flexible framework for collaboration between different levels of government and communities to establish priorities for wildfire planning.<sup>3</sup>
    - Makes communities eligible for federal funding opportunities.
    - CWPP process can be convened by a community. The definition of community is very flexible; may be an HOA, neighborhood, county, etc. CWPP is scale-able, with one nested inside another.
    - Groups to engage with on CWPP
      - Fire management: federal and state agencies, local fire response teams
      - Local: city council, commissioners, planning and building departments
      - Citizen advisors: developers, businessowners, HOA representatives
  - Example
    - Boulder County, Colorado CWPP completed in 2011<sup>4</sup>
- Cyclical WUI wildfire planning process
  - Draft and adopt CWPPs
  - Regulate and incentivize creating more fire-resistant communities
  - Maintain and enforce regulations and incentives
  - Respond to changes and reevaluate
- Regulatory tools
  - Comprehensive plans that line out development goals of the community
  - Hazard mapping to assess risk
  - Specific plans
  - Land use and zoning codes
  - Neighborhood and subdivision rules
  - Individual site and building requirements
  - Nuisance abatement
- Nonregulatory tools
  - National Fire Protection Association Firewise program<sup>5</sup>
    - Voluntary program teaches homeowners and neighborhoods to adapt properties to reduce risk from wildfire.
    - Generally are through HOAs, but may encompass entire towns or cities

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<sup>3</sup> See *How to Create a Community Wildfire Protection Plan*, U.S. Fire Administration (Jun. 24, 2020), [https://www.usfa.fema.gov/training/coffee\\_break/062420.html](https://www.usfa.fema.gov/training/coffee_break/062420.html).

<sup>4</sup>Boulder County Community Wildfire Protection Plan

<https://www.bouldercounty.org/disasters/wildfires/mitigation/community-wildfire-protection-plan/>

<sup>5</sup> NFPA Firewise, <https://www.nfpa.org/Public-Education/Fire-causes-and-risks/Wildfire/Firewise-USA>

- Helps create treatment zones that increase in fire resistance closer to home and structures.
- Recommends actions like installing non-flammable roofing, removing debris, removing flammable species of trees and plants and replacing with less flammable species, and other vegetation plans to decrease risk.
- Insurance
  - Indirectly regulating wildfire management, internalizing the externalities. Based on theory that where there is high wildfire risk, cost of insuring will be prohibitively high that it will shift development to less wildfire prone areas. Realistically, and politically, letting the market play out seems unpalatable. Development trends show that both insurance costs and development in WUI lands are increasing.
  - Local governments can provide incentives to property owners to mitigate fire risk through rebates and certificates that some insurance companies accept as proof of mitigation to make them eligible for rate reductions.
- HOAs
  - Zoning ordinances and HOA covenants, conditions, and restrictions can set standards for wildfire protection with enforcement mechanisms that need not involve the government.
  - Allows local community to bear primary responsibility of maintenance.
- Tort liability for firefighting costs
  - Imposing liability at community or individual property level
  - Politically challenging issue

#### Additional Resources

- Stephen Miller, *Planning for Wildfire at the Wildland-Urban Interface: A Guide for Western Cities*, 49 URBAN LAWYER 207 (2017).
- *How to Create a Community Wildfire Protection Plan*, FEMA Training & Professional Development Resource (Jun. 24, 2020), [https://www.usfa.fema.gov/training/coffee\\_break/062420.html](https://www.usfa.fema.gov/training/coffee_break/062420.html).