



SB 5972 / HB 2103

Specifying Recovery for Fire Damages to Public or Private Forested Lands

Issue The State of Washington seeks to clarify the reasonable damages resulting from wildfires that start on, or spread from, public or private forest land.

Damages from those fires that may be recovered by forest land owners should be either:

- The difference in the fair market value of the property before and after a wildfire, or
- The cost of restoring the property to the general condition the property was in before the wildfire occurred.



Property damages also may include other objectively verifiable monetary loss such as fire suppression and other out-of-pocket expenses, loss of earnings, loss of use of property, and loss of business or employment opportunities resulting from the fire also may be recovered. All categories of eligible damages include awards for environmental attributes when they can be empirically calculated. Damages cannot be speculative or duplicative.

Clarifying reasonable damages will provide a more certain framework for forest land owners whose property sustained damages from forest fires and for persons who are at fault for such fires. Clarification of the damages recoverable from fire damage to forested lands will provide more certainty and efficiency, allow for faster processing and prosecution of such claims, and make the resolution of legitimate claims for compensation less costly and burdensome for all litigants.

Background In 2013, our neighboring states of Oregon, Idaho and Montana recognized an urgent need to clarify reasonable damages that can be claimed for forest land when a forest fire occurs. Washington law is unclear and relatively undeveloped regarding the types and amounts of damages that can be recovered when forest fires damage public and private forest lands.

CONTACT: Jon Noski | 360-902-1015 | jon.noski@dnr.wa.gov

Washington State Department of Natural Resources | 1111 Washington St. SE | PO Box 47001 | Olympia, WA 98504-7001

Subject to revision | 1 of 2 | Rev. 1/27/14

Recent litigation related to forest fires in California exhibits an alarming trend toward excessive claims for property damage that far exceed the fair market value of the property damaged by the forest fire. These claims include theories of compensation for damage to property attributes that are not recognized in market-based transactions or in government guidelines for compensation paid when property is taken for a public purpose. Without an statutory framework for determining property damages from wildfire on public and private forest land, courts and litigants may expend time and resources on claims and theories of damage that are without precedent under Washington law and expose the parties alleged to have caused the fire to incalculable, unmanageable, and uninsurable risks.

Proposal

- ▶ Provide a single, clear, and efficient standard for reasonable compensation when damage to forest land is caused by fire and is the fault of another forest land owner or other third party.
- ▶ Ensure consistent treatment of all public and private forest land owners as plaintiffs whose land was damaged by forest fires, and consistent treatment of all defendants, including public and private forest land owners, when they are at fault for forest fires that damage forest land.
- ▶ Provide compensation based on the reduction in fair market value of forest land or the reasonable cost of restoration.
- ▶ Compensation also includes any other objective, verifiable, monetary losses from fire such as such as fire suppression and other out-of-pocket expenses, loss of earnings, loss of use of property, and loss of business or employment opportunities.
- ▶ Allow environmental attributes to be recognized as market value, restoration, or loss-of-use damages.
- ▶ Make no change to state law on the duty of forest land owners to prevent or mitigate the spread of forest fires or criminal sanctions for starting forest fires.
- ▶ Will not affect causes of action and compensation available for damage to forest land where the damage results from unauthorized entry accompanied by intentional, wrongful actions or when fire is not the cause of property damage.
- ▶ Will not affect causes of action and compensation available for damage to property other than public and private forest lands.
- ▶ Will not affect current law that applies to damages to cultural resources.