

Enrolled
House Bill 2289

Sponsored by Representative CLEM; Representatives CATE, DRAZAN, EVANS, GOMBERG, HAYDEN, LEIF, LEWIS, SMITH DB, WRIGHT, ZIKA, Senators GIROD, KENNEMER, LINTHICUM, PATTERSON (Presession filed.)

CHAPTER

AN ACT

Relating to building in areas affected by wildfires; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 197.

SECTION 2. (1) This section applies only to owners of properties on which structures or uses were destroyed or interrupted by a wildfire that was identified in an executive order issued by the Governor in accordance with the Emergency Conflagration Act under ORS 476.510 to 476.610 between August 1 and September 30, 2020. The local government may alter, restore or replace such a use as provided in this section in lieu of another process.

(2) A property owner may alter, restore or replace a nonresidential use without further application with the local government if:

(a) The use was allowed outright as an accessory use, without regard to whether the primary use was destroyed or was or will be restored;

(b)(A) The use was subject to a land use process; and

(B) A permit, including a conditional permit, was issued for the use notwithstanding any expiration of the permit or any subsequent changes to the law or process; or

(c)(A) The use was established before a requirement that the use be subject to a land use process; and

(B) The replacement use conforms as nearly as practicable to records of the use with the county assessor, building permit information or other reliable records.

(3) The local government shall approve an application to alter, restore or replace a dwelling if the local government determines that the evidence in the record establishes that:

(a) The former dwelling:

(A) Had intact exterior walls and roof structure;

(B) Had indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Had interior wiring for interior lights;

(D) Had a heating system; and

(E)(i) Was authorized by building permits or other regulatory approval process by the appropriate authority; or

(ii) Was assessed as a residential dwelling for purposes of ad valorem taxation for the tax year beginning July 1, 2001, and is not subject to unresolved enforcement proceedings questioning the lawfulness of the dwelling; and

- (b) The proposed dwelling will:
 - (A) Not exceed the floor area of the destroyed dwelling by more than 10 percent;
 - (B) Be adequately served by water, sanitation and roads;
 - (C) Be located wholly or partially within the footprint of the destroyed dwelling unless the applicant chooses a different location within the same lot or parcel to comply with local flood regulations or to avoid a natural hazard area; and
 - (D) Comply with applicable building codes that were in effect on the later of:
 - (i) January 1, 2008; or
 - (ii) The date of the former dwelling's construction.
- (4) A local government may not add conditions to the approval or siting of a dwelling under subsection (3) of this section except as necessary to maintain participation in the National Flood Insurance Program under 42 U.S.C. 4001 et seq.
- (5) A local government may delegate the approval of an application under subsection (3) of this section to:
 - (a) A hearings officer, as defined in ORS 215.402 or 227.160;
 - (b) A planning commission, as described in ORS 215.020; or
 - (c) A building official, as defined in ORS 455.715.
- (6) The findings of the local government or its designee in approving an application under subsection (3) of this section is not a land use decision. The local government may not require an applicant give notice to any nonparty. The findings and conclusions of the local government are entitled to deference if there is any evidence to support the findings and are subject to review only under ORS 34.010 to 34.100.
- (7) If a local government determines based on the evidence in the record that the use legally existed, the local government may, through a land use decision, approve an application to alter, restore or replace a use for which a land use application, building permit or other regulatory approval was required but record of the approval is unavailable for:
 - (a) A dwelling built after January 1, 2001, that complies with subsection (3)(a)(A) to (D) and (b) of this section; or
 - (b) A nonresidential use or structure.
- (8) An application under this section must be filed on or before September 30, 2025.
- (9) An approval of an application under this section expires only if the property owner has not commenced development of the structure or use on or before December 30, 2030.

SECTION 3. Section 4 of this 2021 Act is added to and made a part of ORS 454.605 to 454.755.

SECTION 4. (1) Notwithstanding ORS 454.655 (4), the Department of Environmental Quality shall issue a decision on a permit to repair or replace a subsurface sewage disposal system that serves a dwelling approved under section 2 of this 2021 Act without regard to availability of a community or area-wide sewerage system.

(2) Notwithstanding ORS 197.180, the department shall issue a decision on a permit to repair or replace a subsurface sewage disposal system that serves a dwelling approved under section 2 of this 2021 Act without regard to whether a local government has issued a land use compatibility statement for the dwelling.

(3) The department shall approve a permit to repair or replace a subsurface sewage disposal system that serves a dwelling approved under section 2 of this 2021 Act if:

- (a) A subsurface sewage disposal system served the dwelling on July 30, 2020; and
- (b) Issuance of the permit and operation of the system would not result in pollution of surface waters of the state or result in pollution of ground water that would threaten public health or other beneficial uses of ground water.

(4) This section does not apply to a permit for a dwelling for which the owner received financial assistance from the state or federal government for the repair or replacement of the subsurface sewage disposal system.

(5) This section does not affect the authority of the department or the Environmental Quality Commission to grant a variance or an exemption for a subsurface sewage disposal system for a dwelling or other use.

SECTION 5. Sections 2 and 4 of this 2021 Act are repealed on January 2, 2031.

SECTION 6. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by House May 4, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 27, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State