

"Wildland-urban interface" in MCA

33-24-110. Risk preventative measures for homeowners — premium reduction — fire, wind, and hail. (1) An insurer may provide a benefit or a premium reduction to a homeowner's insurance policyholder for preventative measures taken by the policyholder. Preventative measures include but are not limited to actions that reduce the risk of damage to property from fire, wind, or hail.

(a) Fire preventative measures include but are not limited to any of the following:

(i) using ignition-resistant, fire-resistive, or noncombustible building materials in construction, including noncombustible roofing or coating, exterior glazing for fire protection, and interior building materials designed to stop flame spread and prevent building collapse upon occupants and emergency service personnel;

(ii) maintaining an adequate outside water source;

(iii) providing annual confirmation, if requested by the insurer, that the insured has employed defensible space landscaping around the insured's structures;

(iv) keeping a border of at least 5 feet of nonflammable landscaping around the insured property;

(v) complying with any local, state, or federal fire prevention or community preparedness programs;

(vi) installing fire alarm or emergency alarm systems;

(vii) complying with the requirements of the **International Wildland-Urban Interface Code** if a building is located in a **wildland-urban interface area**; and

(viii) providing sufficient access to the property for firefighting equipment and authorized emergency vehicles as defined in 61-8-102.

(b) Wind and hail preventative measures include but are not limited to the following:

(i) using an industry-approved resistant roof shingle;

(ii) anchoring outdoor furniture;

(iii) pruning tree branches or otherwise providing landscaping that reduces potential damage to the insured property; and

(iv) installing protective coverings to avoid additional damage to the insured property.

(2) An insurer who provides a benefit or premium reduction as provided in this section must include the benefit or premium reduction in writing to the policyholder. A benefit or premium reduction provided by an insurer under this section does not constitute an illegal rebate under 33-18-210.

(3) For the purposes of this section, the following definitions apply:

(a) "Benefit" means a rebate, discount, abatement, credit, reduction of premium, or other advantage to the policyholder provided under the terms of a preventative measures agreement.

(b) "Policyholder" means a person who is the named insured in a homeowner's insurance policy.

76-1-601. Growth policy — contents. (1) A growth policy may cover all or part of the jurisdictional area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources;

(viii) sand and gravel resources; and

(ix) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

(iii) housing needs;

- (iv) economic conditions;
- (v) local services;
- (vi) natural resources; and
- (vii) other elements proposed by the planning board and adopted by the governing bodies;
- (d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);
- (e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;
- (f) an implementation strategy that includes:
 - (i) a timetable for implementing the growth policy;
 - (ii) a list of conditions that will lead to a revision of the growth policy; and
 - (iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;
- (g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:
 - (i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;
 - (ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;
 - (h) a statement explaining how the governing bodies will:
 - (i) define the criteria in 76-3-608(3)(a); and
 - (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a);
 - (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and
 - (j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:
 - (i) delineate the **wildland-urban interface**; and
 - (ii) adopt regulations requiring:
 - (A) defensible space around structures;
 - (B) adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and
 - (C) adequate water supply for fire protection.
- (4) A growth policy may:
 - (a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.
 - (b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;
 - (c) establish an infrastructure plan that, at a minimum, includes:
 - (i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;
 - (ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;
 - (iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;
 - (iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;
 - (v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;

(vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities, including schools, to safely and efficiently service current residents and future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

(F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel resources, streams, rivers, lakes, wetlands, and ground water; and

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(d) include any elements required by a federal land management agency in order for the governing body to establish coordination or cooperating agency status as provided in 76-1-607.

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter.

76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services or based solely on parcels within the subdivision having been designated as **wildland-urban interface** parcels under 76-13-145.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the specific, documentable, and clearly defined impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety, excluding any consideration of whether the proposed subdivision will result in a loss of agricultural soils;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3) but may not require a set-aside of land or monetary contribution for the loss of agricultural soils. Pursuant to 76-3-620, the governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the impacts of a proposed development may be deemed unmitigable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4) and consistent with 76-3-620, a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) (a) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

(b) Except for proposed subdivisions served by a hauled water cistern, an adequate municipal facility, or an adequate county water and/or sewer district facility, as defined in 76-4-102, or that are determined to not need water, a governing body may require as a condition of subdivision approval that an applicant obtain approval from the department of natural resources and conservation to appropriate water pursuant to Title 85, chapter 2.

(7) A governing body may not require as a condition of subdivision approval that a property owner waive a right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects that does not identify the specific capital improvements for which protest is being waived. A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder.

(8) A governing body may not approve a proposed subdivision if any of the features and improvements of the subdivision encroach onto adjoining private property in a manner that is not otherwise provided for under chapter 4 or this chapter or if the well isolation zone of any proposed well to be drilled for the proposed subdivision encroaches onto adjoining private property unless the owner of the private property authorizes the encroachment. For the purposes of this section, "well isolation zone" has the meaning provided in 76-4-102.

(9) If a federal or state governmental entity submits a written or oral comment or an opinion regarding wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of assisting a governing body's review, the comment or opinion may be included in the governing body's written statement under 76-3-620 only if the comment or opinion provides scientific information or a published study that supports the comment or opinion. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity has been involved in that effort prior to submitting a comment, an opinion, or information as provided in this subsection.

(10) Findings of fact by the governing body concerning whether the development of the proposed subdivision meets the requirements of this chapter must be based on the record as a whole. The governing body's findings of fact must be sustained unless they are arbitrary, capricious, or unlawful.

76-13-102. Definitions. Unless the context requires otherwise, in part 2 and this part, the following definitions apply:

(1) "Conservation" means the protection and wise use of forest, range, water, and soil resources in keeping with the common welfare of the people of this state.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "Forest land" means land that has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

(4) (a) "Forest practices" means the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and the management of logging slash.

(b) The term does not include activities for the purpose of:

- (i) the operation of a nursery or Christmas tree farm;
- (ii) the harvest of Christmas trees;
- (iii) the harvest of firewood; or
- (iv) the cutting of trees for personal use by an owner or operator.

(5) "Operator" means a person responsible for conducting forest practices. An operator may be the owner, the owner's agent, or a person who, through contractual agreement with the landowner, is obligated to or entitled to conduct forest practices or to carry out a timber sale.

(6) "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

(7) "Person" means an individual, corporation, partnership, or association of any kind.

(8) "Recognized agency" means an agency organized for the purpose of providing fire protection and recognized by the department as giving adequate fire protection to lands in accordance with rules adopted by the department.

(9) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate trees on a defined land area.

(10) "Unmanned aerial vehicle" means an aircraft that is operated without direct human intervention from, on, or within the aircraft.

(11) "Unmanned aerial vehicle system" means the entire system used to operate an unmanned aerial vehicle, including:

- (a) the unmanned aerial vehicle;
- (b) communications equipment;
- (c) navigation equipment;
- (d) controllers;
- (e) support equipment; and
- (f) autopilot functionality.

(12) "Wildfire" means an unplanned, unwanted fire burning uncontrolled on wildland and consuming vegetative fuels.

(13) "Wildfire season" means the period of each year beginning May 1 and ending September 30, inclusive.

(14) "Wildfire suppression activities" means any action, response, or effort by a recognized agency to contain, extinguish, or suppress a wildfire.

(15) "Wildland" means an area in which development is essentially nonexistent, except for roads, railroads, powerlines, and similar facilities, and in which structures, if any, are widely scattered.

(16) "Wildland fire" means a fire burning uncontrolled on forest lands.

(17) "Wildland fire protection" means the work of prevention, detection, and suppression of wildland fires and includes training required to perform those functions.

(18) "Wildland fire protection district" means a definite land area, the boundaries of which are fixed and in which wildland fire protection is provided through the medium of an agency recognized by the department.

(19) "Wildland-urban interface" means the line, area, or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels.

76-13-104. Functions of department — rulemaking. (1) (a) The department has the duty to ensure the protection of land under state and private ownership and to suppress wildfires on land under state and private ownership. Fees may not be collected for this purpose except fees provided for in 76-13-201.

(b) The department may engage in wildfire initial attack on all lands if the fire threatens to move onto state or private land.

(2) (a) The department shall adopt rules to protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for that purpose, in declared emergencies, may employ personnel and incur other expenses when necessary.

(b) The department may adopt and enforce reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of part 2 and this part.

(3) The duty imposed on the department under this section is not exclusive to the department and does not absolve private property owners or local governmental fire agencies organized under Title 7, chapter 33, from any fire protection or suppression responsibilities.

(4) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and fire protection.

(5) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(6) The department shall establish and maintain wildland fire control training programs.

(7) The department shall appoint firewardens in the number and localities that it considers necessary and shall adopt rules prescribing the qualifications and duties of firewardens that are in addition to those provided in 76-13-116.

(8) The department shall adopt rules addressing development within the **wildland-urban interface**, including but not limited to:

(a) best practices for development within the wildland-urban interface; and

(b) criteria for providing grant and loan assistance to local government entities to encourage adoption of best practices for development within the **wildland-urban interface**.

(9) (a) The department shall establish a good neighbor policy that would allow the department to enter into a cooperating and coordinating agreement or contract that authorizes the state forester to engage in forest management and education activities to:

(i) reduce wildland fire risk and intensity on federal land designated as **wildland-urban interface** under 76-13-145; and

(ii) take advantage of federal authority that promotes sustainable forest management.

(b) Forest management activities to reduce wildland fire risk and intensity included in the good neighbor policy must include the authority to:

(i) treat insect-infested trees;

(ii) reduce hazardous fuels; and

(iii) conduct any other activities to improve the overall diversity and vigor of forested landscapes.

(10) The department has the authority to intervene in litigation or appeals on federal forest management projects that involve reduction of hazardous fuels or other activities to mitigate the risk of wildland fire in the **wildland-urban interface**.

76-13-115. State fire policy. The legislature finds and declares that:

(1) the safety of the public and of firefighters is paramount in all wildfire suppression activities;

(2) it is a priority to minimize property and resource loss resulting from wildfire and to minimize expense to Montana taxpayers, which is generally accomplished through an aggressive and rapid initial attack effort;

(3) interagency cooperation and coordination among local, state, and federal agencies are intended and encouraged, including cooperation when restricting activity or closing areas to access becomes necessary;

(4) fire prevention, hazard reduction, and loss mitigation are fundamental components of this policy;

(5) all property in Montana has wildfire protection from a recognized fire protection entity;

(6) the department has a duty to engage in wildfire suppression activities in the state regardless of land ownership if the department determines that the federal wildfire suppression activities within 5 miles of department or county wildland fire protection are not consistent with 76-13-104. The department may, at its sole discretion, bill the responsible recognized federal protection agency for costs incurred in suppression when appropriate.

(7) all private property owners and federal and state public land management agencies have a responsibility to manage resources, mitigate fire hazards, and otherwise prevent fires on their property;

(8) sound forest management activities to reduce fire risk, such as thinning, prescribed burning, and insect and disease treatments, improve the overall diversity and vigor of forested landscapes and improve the condition of related water, wildlife, recreation, and aesthetic resources;

(9) development of fire protection guidelines for the **wildland-urban interface** is critical to improving public safety and for reducing risk and loss; and

(10) catastrophic wildland fire in **wildland-urban interface** areas resulting from inadequate federal land management activities to reduce fire risk has the potential to jeopardize Montanans' inalienable right to a clean and healthful environment guaranteed in Article II, section 3, of the Montana constitution.

76-13-145. Designation of wildland-urban interface parcels. (1) Subject to the provisions of this section, the department shall identify the parcels of property in the state that are considered to be wildland-urban interface parcels, delineate those parcels on maps, and ensure that the maps and information on the maps are available to the public, local governing bodies, and governmental fire agencies organized under Title 7, chapter 33.

(2) (a) Except as provided in subsection (2)(b), the department shall identify a county's **wildland-urban interface** parcels based on the **wildland-urban interface** designation developed as part of the county's completion of a community wildfire protection plan under 16 U.S.C. 6501, et seq., the Healthy Forests Restoration Act of 2003.

(b) If a community wildfire protection plan has not been adopted, the department shall:

(i) provide notice to the county governing body that the department intends to designate the wildland-urban interface within the county's jurisdictional boundary;

(ii) allow up to 18 months for the county to complete and adopt a community wildfire protection plan if a county had begun the process of developing a plan prior to receiving the notice from the department under subsection (2)(b)(i);

(iii) review and consider the analysis of the potential for fire and wildland fire in the county's growth policy, as required in 76-1-601(3)(j) if a growth policy has been adopted;

(iv) consult with the county governing body and governmental fire agencies organized under Title 7, chapter 33, regarding appropriate parcels to designate as wildland-urban interface parcels; and

(v) clearly identify and make available to the county governing body and governmental fire agencies the criteria the department intends to use in designating parcels.

(3) Location of a property within the **wildland-urban interface** designated under this section may not be the sole reason for assessing additional fire protection fees, impact fees, or other fees against the property.

(4) The department shall review each county's **wildland-urban interface** designation every 5 years, make changes as necessary, and maintain accurate maps and other identifying information.

76-13-702. Duties — authority. To implement the policy of 76-13-701, the department of natural resources and conservation:

(1) shall support sustainable forest management practices, including forest restoration, on public forests in Montana consistent with all applicable laws and administrative requirements;

(2) shall provide technical information and educational assistance to nonindustrial, private forest landowners;

(3) shall promote forest management activities within and adjacent to the **wildland-urban interface** and promote the implementation of community wildfire protection plans;

(4) shall promote a viable forest and wood products industry and other businesses and individual activities that rely on public forest lands;

(5) shall represent the state's interest in the federal forest management planning and policy process, including establishing cooperative agency status and coordination with federal agencies;

(6) shall advocate that Montana be included in federal legislation to establish a good neighbor policy that would allow the secretary of the interior or the secretary of agriculture to enter into a cooperative agreement or contract that would authorize the state forester to provide watershed restoration and protection services on federal land. Watershed restoration and protection services included in the good neighbor policy must include the authority to:

(a) treat insect-infested trees;

(b) reduce hazardous fuels; and

(c) conduct any other activities to restore or improve forest, rangeland, and watershed health, including fish and wildlife habitat.

(7) may assist local government entities in establishing cooperative agency status and coordination with federal agencies;

(8) shall promote the development of an independent, long-term sustained yield calculation on Montana's federal forests;

(9) has the authority to intervene in litigation or appeals on federal forest management projects that:

(a) comply with the policy in 76-13-701 and in which local and state interests are clearly involved; or
(b) involve fuel-loading conditions that the department considers to be a significant threat to public health and safety or to hamper watershed restoration and protection;

(10) has the authority to enter into agreements with federal agencies to participate in forest management activities on federal lands; and

(11) shall participate in and facilitate collaboration between traditional forest interests in reaching consensus-based solutions on federal land management issues.

77-5-215. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Contract harvesting" means a timber harvest or timber sale occurring on state trust lands by which:

(a) the department solicits bids and contracts with a firm or individual awarded the bid to:

(i) perform all necessary work to harvest and process trees into merchantable forest products;

(ii) sort trees pursuant to contract specifications and department use standards; and

(iii) transport and deliver the products to forest product purchasers; and

(b) the department sells the forest products to one or more forest product purchasers through the competitive bidding process pursuant to 77-5-201(1) and (2).

(2) "Contract harvesting costs" means expenses related to the production of log sorts or other merchantable products from a stand of timber and the transportation of the products to point-of-sale locations. These expenses may include but are not limited to:

(a) sale preparation and development costs;

(b) marketing of forest products and administration of contract harvesting contracts;

(c) road building and maintenance;

(d) labor for felling, bucking, yarding, and loading;

(e) scaling of forest products; and

(f) the transportation of sorted logs and other merchantable products from the harvest site to a point of sale.

(3) "Decked" means a pile of logs or other merchantable forest products that have been prepared for sale or shipment and placed upon a landing.

(4) "Forest health concerns" means issues that can be addressed through management or harvest of merchantable or nonmerchantable trees and includes:

(a) forested lands that are overcrowded or stagnant and that are showing declining annual growth;

(b) **wildland-urban interface** areas where timber harvest or forest management is necessary to prevent catastrophic or other damage to forested lands, livestock, buildings, or other infrastructure;

(c) fire fuel buildup and treatment on forested lands;

(d) forested lands susceptible to imminent or repeated insect or disease attack and timber degradation;

(e) forested lands that are in a high state of decline or decay or are rapidly deteriorating;

(f) forested lands with high recreational use and high degradation risk; and

(g) forested lands under drought stress.

(5) "Forest products" means any product produced from the forest that the department can sell through competitive bid or direct negotiation.

(6) "Log sorts" means trees or portions of trees that are grouped and sorted into various product categories, including but not limited to pulp logs, sawlogs, and house logs.

(7) "Sawlogs" means merchantable timber prepared and sorted as decked, scaled logs and sold f.o.b., as defined in 30-2-319, at a designated location, expressed in terms of dollars per thousand board feet or dollars per ton.

(8) "Scaled" means the measured volume, weight, or other measurement of a log, load of logs, or other products.

(9) "Stumpage" means the value of timber as it exists, uncut, within a harvest unit, expressed in terms of dollars per thousand board feet, dollars per ton, or other appropriate value per-unit designation.

(10) (a) "Timber" means any wood growth on state trust land, mature or immature, alive or dead, standing or down, that is capable of furnishing merchantable raw material used in the manufacture of lumber or other forest products.

(b) The term does not include cultivated Christmas trees.