Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“Fire Risk Reduction Communities List, 2021”

Title 14 of the California Code of Regulations (14 CCR),

Division 1.5, Chapter 7, Subchapter 1, Article 3.

## Adopt

Article 3 Fire Risk Reduction Communities List

§ 1266.00 Definitions

§ 1268.01 Criteria Local Agencies Which Are Cities, City and County, or Counties

§ 1268.02 Criteria for Local Agencies Which Are Not Cities, City and County, or Counties

§ 1268.03 Submission of Applications for List Eligibility

§ 1268.04 List Updates

## INTRODUCTION INCLUDING PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS (pursuant to GC § 11346.2(b)(1))…NECESSITY (pursuant to GC § 11346.2(b)(1) and 11349(a))….BENEFITS (pursuant to GC § 11346.2(b)(1))

California Public Resources Code Section 4290.1, a provision of Assembly Bill 1823 passed in 2019 (Chapter 399), requires the State Board of Forestry and Fire Protection (Board) to develop criteria for and maintain a list of Local Agencies located in a State Responsibility Area (SRA) or Very High Fire Hazard Severity Zone (VHFHSZ) which meet best practices for local fire planning. Public Resources Code Section 4124.7 requires that the Department of Forestry and Fire Protection (Department) prioritize local assistance grant funding applications from Local Agencies based on this Fire Risk Reduction Communities List (List). Public Resources Code 4290.1 requires the Board to consider criteria relating to the Board’s fire safety standards and recommendations as well as community-based plans or programs that demonstrate dedication to fire planning. By qualifying for the List, a Local Agency demonstrates both compliance with the Board’s requirements and dedication to fire planning that exceeds state minimum standards. To promote equity, the regulations include additional avenues for low-income Local Agencies to qualify for the List and therefore receive priority for local assistance grant funding.

The **problem** is that regulations to establish the criteria that will be used to determine whether a Local Agency meets best practices in local fire planning do not exist.

The **purpose** of the proposed action is to develop a transparent, standardized and equitable process for Local Agencies, the Board, and the Department to recognize dedication to fire planning best practices and to prioritize local assistance grant funding accordingly.

The **effect** of the proposed action is to create a process by which Local Agencies that meet fire planning best practices and show dedication to exceeding minimum standards are prioritized for local assistance grant funding to aid in the achievement of their planning goals. The use of this process to create a list of Local Agencies exceeding minimum standards will incentivize Local Agencies which do not meet fire planning best practices or exceed the Board’s minimum fire safety requirements to do so, as those Local Agencies on this list will be prioritized for grant funding from CAL FIRE. Finally, the rulemaking promotes economic diversity among recipients of local assistance grant funding.

The **primary benefit** of the proposed action is a clear and standardized set of criteria to inform local assistance grant funding prioritization and ultimately incentivize local fire planning, which works to prevent property and life losses in the wildland-urban interface due to fire. This regulatory action will thus have a positive effect on the protection of public health and safety, worker safety, and the environment.

There is a comparable federal statute. Pursuant to the Department of the Interior and Related Agencies Appropriations Act, 2001, the Department of Agriculture and Department of the Interior published in the Federal Register (66 FR 751) a list of wildland-urban interface “Communities at Risk” in the vicinity of federal lands. This list is compiled from information provided by states and tribes. This list identifies communities at risk from wildfires on federal lands, but does not identify any specific land use planning programs or plans undertaken by the communities. This federal “Communities at Risk” list differs significantly from the Fire Risk Reduction Communities List as the Fire Risk Reduction Community list identifies communities not at risk of fire, but those which take steps to reduce their fire risk.

## **SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GOV § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY’S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GOV §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)).** *Note: For each adoption, amendment, or repeal provide the problem, purpose and necessity.*

The Board is proposing action to adopt §§ 1268.00, 1268.01, 1268.02, 1268.03, and 1268.04.

The problem is that there are no regulations implementing or making specific PRC § 4290.1. Without such regulations, the Board would not be equipped with instructions on how to implement PRC § 4290.1 and there would not be a specific process for developing the required Fire Risk Reduction Communities List, which could result in underground regulations. Without regulations implementing PRC § 4290.1, the Department would be prevented from implementing PRC § 4124.7.

The purpose of the proposed action is to provide unambiguous criteria and standards for the development and maintenance of the List required in PRC § 4290.1.

The below adoptions are necessary to effectuate this purpose of this action.

### Explanation for why the Proposed Action Duplicates and/or Rephrases Statute and Existing Rules

The proposed action duplicates or rephrases statute because that was the most efficient and clear way to implement the statutory authority given to the Board. The Board found that some changes to further interpret or make specific the statute for equity and feasibility of implementation were necessary to create these regulations.

The proposed action duplicates existing rules so that defined terms are consistent across the Board’s regulations in Chapter 7, Division 1.5, of Title 14, California Code of Regulations. Avoiding inconsistent definitions across the Chapter reduces confusion and improves compliance with the regulations.

### Adopt § 1268.00 Definitions

It is necessary to adopt definitions for this article to promote consistency within and between the regulations and statute. These definitions largely reference existing statute that relates to PRC 4290.1 to promote consistency with and accurate implementation of PRC 4290.1.

The term “Board” was defined to specify which State Board is referred to in these regulations.

The definition for “Fire Risk Reduction Communities List” uses language from PRC §

4290.1. This avoids inconsistencies and ensures accurate implementation of the authorizing statute.

“Local Agency” is defined to encompass each type of government agency which is eligible to receive the Department’s local assistance grants. This is intended to promote consistency and make the List a logical resource for the Department’s Grants Program to use in prioritizing applications when implementing PRC § 4124.7.

Secondly, the Board is required to consider certain criteria when creating this List. Of the four required consideration criteria, 2 are criteria that could only be achieved by governmental agencies such as a city or county (see PRC 4290.1(b)(1) and (b)(3)). It would be impossible for certain local agencies to meet these criteria, so a definition for a Local Agency that most appropriately defines the types of agencies who may qualify for this List.

The definition of “local responsibility area” is derived from the definition of “State Responsibility Area,” and the required mapping of SRA, that exists in PRC § 4125. No specific definition for “local responsibility area” exists in statute, but one can be inferred from the definition of SRA in PRC § 4125. That section of Public Resources Code instructs the Board to “classify all lands within the state, without regard to any classification of lands made by or for any federal agency or purpose, for the purpose of determining areas in which the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state.” It states that “the prevention and suppression of fires in all areas that are not so classified is primarily the responsibility of local or federal agencies, as the case may be.” This definition in § 1268.02 provides needed clarity regarding which lands are “LRA,” as no specific LRA definition exists in statute.

A definition of “Low-Income Local Agency” was needed because there are different criteria for Low-Income Local Agencies to be added to the List. Without a definition and applicable criteria for a Low-Income Local Agency, there would be confusion among the regulated public regarding which Local Agencies qualify as low-income, and how to determine if a given Local Agency qualifies. The inclusion of a clear, data-based income threshold for each agency type eligible for the List allows for certain criteria to be tailored uniformly to “Low-Income Local Agencies” and for this term to have the same meaning across different agency types and parts of the state. The definition of “Low-Income Local Agency” provides three different options for calculating a Low-Income Local Agency depending on the most appropriate data source for different types of local agencies. This is necessary to reduce confusion for Local Agencies and establish clarity regarding the data sources to be used for any given Local Agency.

The first option in subsection (e)(1) uses a city’s median income, as reported in the 2019 American Community Survey (ACS) from the US Census Bureau, as compared to the median income for the county in which the agency is located, as published by the Department of Housing and Community Development in 25 CCR § 6932. The American Community Survey is an annual survey that generates data from across the United States, including income, and publishes the results of that survey at the local, regional, and state levels. 2019 is the most recent year for which data is available. Using the American Community Survey data provides a transparent, consistent data source for determining a city’s median income.

25 CCR § 6932 implements Health and Safety Code (HSC) § 39713, which funds the Department’s local assistance grants from the Greenhouse Gas Reduction Fund. This data source is used here because it is a transparent, consistent data source for determining a county’s median income, and it is already being used by CAL FIRE for determining grant awardees.

80% was selected as the cutoff for low-income in order to avoid inconsistencies with HSC § 39713. HSC § 39713 defines “Low-Income Communities” as “census tracts with median household incomes at or below 80 percent of the statewide median income or with median household incomes at or below the threshold designated as Low Income by the Department of Housing and Community Development’s List of state income limits adopted pursuant to Section 50093.” That definition is used for a similar purpose and scope as its use in these regulations and so is suitable and appropriate for adoption and implementation here.

Subsection (e)(2) establishes the criteria for a low-income county. A low-income county is one with a median household income equal to or less than $64,352. The 2019 ACS reports a California statewide median income of $80,440, and 80% of that number is $64,352. This creates an analogous calculation to the calculation for a low income city in subsection (e)(1), which reduces inconsistency and improves clarity for implementation.

Subsection (e)(3) is necessary to establish the criteria for a Local Agency which may not be a city or county, but which serves a city or county that might qualify as low-income.

“State Responsibility Area” is defined by reference to PRC § 4102 to reduce confusion and improve clarity by avoiding inconsistencies between statute and regulation.

“Very High Fire Hazard Severity Zone” is defined by reference to GC § 51177(i) to avoid inconsistencies between statute and regulation.

### Adopt § 1268.01 Criteria for Local Agencies Which Are Cities, City and County, or Counties

§ 1268.01 establishes which and how many criteria must be met for Local Agencies which are cities, city and county, or counties to qualify for placement on the List. There are ten criteria in total; the first four are mandatory criteria and the last six are optional criteria. Two of the six optional criteria must be met. This is necessary to ensure that a Local Agency has participated in ongoing, recent fire hazard planning activities and has maintained compliance with all relevant plan update requirements.

The four mandatory criteria include the designation of Fire Hazard Severity Zones via local ordinance, transmission to the Board of findings pursuant to 14 CCR § 1266.02, a progress report on the implementation of Fire Safety Survey recommendations, and adoption of all recommendations following submission to the Board of a general plan safety element updated within the last eight years. These criteria were selected with the intent to ensure that agencies on the List are compliant with existing state minimum standards; the four criteria encompass such minimums as they apply to cities and counties. Because safety elements must be updated every eight years pursuant to Government Code § 65302.15(b), a Local Agency’s safety element must meet this existing requirement in order to satisfy this list criteria.

Subsections (a)(5-10) establish the optional criteria, of which two must be met. The decision to require two criteria was intended to balance rigor with achievability for a variety of agencies with varying resources and who may employ unique combinations of planning mechanisms toward the goal of wildfire prevention. The section allows a Low-Income Local Agency to qualify if two or more of these criteria have not yet been met but are included as policy objectives in the safety element of its general plan. As Low Income Local Agencies have fewer resources with which to perform fire hazard planning work, providing different criteria by which to judge if the Local Agency is meeting best practices for fire hazard planning. By meeting two optional criteria in addition to the mandatory ones in § 1268.01(a)(1-4), Local Agencies demonstrate dedication to best practices by achieving more than the state minimums require.

The first optional criterion (subsection (a)(5)) is any local regulation adopted by the applicant which exceed the minimum regulations in 14 CCR §§ 1270.00-1276.04 (“Fire Safe Regulations”). This recognizes that because state minimum standards are designed to apply to a diversity of landscapes across the state with varying constraints, some local jurisdictions may adopt stricter standards to meet best practices given the particularities of their landscape and risk factors. Adopting stricter fire safety standards at the local level that go beyond the requirements of the state is an indication that the Local Agency is meeting best planning practices for fire safety.

The second criterion (subsection (a)(6)) is the adoption of one or more local defensible space ordinances which exceed state minimums. This recognizes that because state minimums are designed to apply to a diversity of landscapes across the state with varying constraints, some local jurisdictions may adopt stricter standards to meet best practices given the particularities of their landscape and risk factors. Adopting stricter defensible space standards at the local level that go beyond the requirements of the state is an indication that the Local Agency is meeting best planning practices for fire safety.

The third criterion (subsection (a)(7)) is the adoption of a WUI code, which was chosen to recognize locally imposed stricter standards for development in the Wildland-Urban Interface (WUI) given elevated fire risk in WUI areas. Requiring stricter standards than the state minimums in Title 24, Part 9, Chapter 49 of the California Code of Regulations, or applying those standards to a greater geographic scope than Title 24 requires, is an indication that a Local Agency is meeting best planning practices for fire safety.

The fourth criterion (subsection (a)(8)) is the incorporation of fire hazard mitigation overlay or special district into an adopted zoning ordinance, to establish areas of the Local Agency where fire hazard mitigation requirements that exceed state minimum requirements are applied. This kind of overlay zone or special district, as well as requirements in that zone or district that go above and beyond state minimum requirements, indicates that a Local Agency is meeting best practices for fire safety.

The fifth criterion (subsection (a)(9)) is the adoption of a comprehensive retrofit code or plan for existing homes. These demonstrate local fire planning which goes beyond minimum requirements and reduces risk for existing homes not accounted for in codes which apply only to new construction.

The sixth criterion (subsection (a)(10)) is the identification of wildfire as a high priority hazard in a Local or Multi-Jurisdictional Hazard Mitigation Plan (LHMP or MJHMP), or as a low- or medium priority hazard with the inclusion of one or more mitigation actions, and adoption by reference of the LHMP or MJHMP into the general plan safety element. Identification of a hazard as high priority in an LHMP or MJHMP requires the identification of corresponding mitigation actions. The elevated level of attention to wildfire required in this criterion demonstrates hazard mitigation planning which meets best practices for fire safety. Identifying a wildfire hazard as a low or medium priority in the LHMP or MJHMP does not require identification of mitigation measures, so a local agency that includes mitigation measures for a low or medium priority-rated wildfire hazard also demonstrates a higher level of hazard mitigation planning which meets best practices for fire safety.

### Adopt § 1268.02 Criteria for Local Agencies Which Are Not Cities, City and County, or Counties

§ 1268.02 establishes which and how many criteria must be met for Local Agencies which are not cities, city and county, or counties to qualify for placement on the List. A separate section was established for such agencies because the range of planning mechanisms used differ substantially between those which are cities and counties and those which are not. Dividing the List criteria into separate sections by agency type will make the regulations simpler to interpret for agencies and streamline the List application process. Local Agencies which are not Low-Income must meet two of the six criteria; Low-Income Local Agencies must meet one and include at least one more as a planning objective. The criteria were developed with the intention of at least two being reasonably achievable for each agency type encompassed in the definition of Local Agency. Those agency types include tribal agencies, departments within city or county governments, and special districts such as fire protection districts, water districts, resource conservation districts, and community service districts. This is necessary to ensure that a Local Agency has participated in ongoing, recent fire hazard planning activities and has maintained compliance with all relevant plan update requirements. A Local Agency is also provided the opportunity where, if they are unable to meet two of the criteria because the criteria are inapplicable to the type of Local Agency, the Local Agency may provide the Board will substantial evidence demonstrating they have implemented an equivalent means of local fire planning. This is necessary to provide flexibility to the more than 3,000 special districts and other Local Agencies in the state that are not cities or counties.

The first criterion is the identification of wildfire as a high priority hazard in a Local, Tribal or Multi-Jurisdictional Hazard Mitigation Plan (LHMP, THMP, or MJHMP) updated within the last five years, or as a low- or medium priority hazard with the inclusion of one or more mitigation actions. Identification of a hazard as high priority in an LHMP, THMP or MJHMP requires the identification of corresponding mitigation actions. The elevated level of attention to wildfire required in this criterion demonstrates hazard mitigation planning which meets best practices for fire safety. Identifying a wildfire hazard as a low or medium priority in the LHMP, THMP, or MJHMP does not require identification of mitigation measures, so a local agency that includes mitigation measures for a low or medium priority-rated wildfire hazard also demonstrates a higher level of hazard mitigation planning which meets best practices for fire safety. The requirement that the LHMP, THMP or MJHMP be updated within the last five years was included because existing federal regulations (24 CFR § 201.6 and 201.7) require those plans to be updated every five years. A Local Agency’s HMP must be updated accordingly in order to be an indicator of fire planning best practices.

The second criterion is the adoption of a Community Wildfire Protection Plan (CWPP); critical infrastructure protection plan; evacuation plan; Integrated Resource Management Plan including a Fire Management Plan; or similar plan addressing fire protection within the last five years. CWPPs identify areas for hazardous fuels reduction to prevent wildfire damage to at-risk communities and infrastructure; they are widely recognized as a key tool in local fire planning. Critical infrastructure and evacuation plans, often adopted at the special district level, were chosen as analogous indicators of local fire preparedness for those agencies which do not prepare CWPPs. The requirement that the plans in this criterion be adopted within the last five years ensures that the plans address current hazards and conditions in the community and therefore meet fire planning best practices.

The third criterion is sponsorship, coordination of, or active engagement with a community disaster preparedness group, including but not limited to Firewise USA communities or Fire Safe Councils, with events or meetings at least quarterly. This criterion was chosen to recognize the critical support that local governmental agencies often provide to non-governmental neighborhood-level groups which help their communities achieve wildfire planning best practices. The requirement that such a group have events or meetings at least quarterly was included to ensure that the Local Agency’s relationship with the group is ongoing and active in its efforts to reduce community wildfire risk and meet best practices.

The fourth criterion is a plan adopted within the last five years or ongoing program to conduct a hazardous fuels reduction project or projects, including but not limited to California Vegetation Treatment Program (CalVTP) projects, Forest Management and Fuels Reduction Plans (FMRFP), Program Timberland Environmental Reports (PTEIR), prescribed or cultural burns, and community fuels reduction work days. These types of plans and programs were selected because they are often employed by special districts and other governmental agencies which are not cities and counties to plan for and mitigate wildfire risk, and such projects are eligible to receive local assistance grant funding. These plans and programs demonstrate proactive fire planning that goes beyond minimum requirements. The requirement that plans be adopted within the last five years and programs be ongoing was included to ensure that they are based on current information and their effects in reducing community wildfire risk are ongoing.

The fifth criterion is a plan adopted within the last five years or ongoing program to conduct public outreach and education about water conservation, wildfire prevention, vegetation management and fuels reduction, home hardening, evacuation preparedness, defensible space, fire risk reduction, Traditional Ecological Knowledge pertaining to fire, or similar topics. Such public outreach programs are eligible for local assistance grant funding; recognizing them as List criteria promotes consistency since grant funding will be prioritized based on the List. The requirement that plans be adopted within the last five years and programs be ongoing was included to ensure that they are based on current information and their effects in reducing community wildfire risk are ongoing.

The sixth criterion is the adoption of a special benefit assessment or tax measure or fee that addresses wildfire prevention; these are tools used by special districts and other local agencies to fund wildfire prevention and protection in areas of elevated risk, and indicate a commitment to fire hazard planning that meets best practices.

### Adopt § 1268.03 Submission of Applications for List Eligibility

§ 1268.03(a) outlines the application process for Local Agencies wishing to be added to the List. Such agencies shall report which criteria they meet using a form provided by the Board and submitted electronically via email, along with appropriate supporting or substantial evidence. The purpose of this section is to establish a transparent and standardized process for the submission and review of list applications; electronic submission is necessary to avoid creating a process that is overly burdensome for both the Board and Local Agencies.

§ 1268.03(b) states which information shall be requested on the form provided by the Board. This is necessary for the development of a form that accurately reflects the purpose and requirements of the regulation. It also allows the regulated public to access what information is required to apply for List eligibility in Title 14, rather than needing to access the form on the Board’s website in addition to Title 14.

§ 1268.03(b)(1) allows the application form to request a Local Agency’s name and a point of contact, including address, email, and phone and fax numbers. This is necessary to ensure clarity of which Local Agency is applying and to ensure a consistent point of contact for communications with the Board. The purpose of this is to facilitate clear and efficient communications between the Board and Local Agencies during the application review process and in keeping the List updated.

§ 1268.03(b)(2) allows the application form to request specification of which criteria in have been met. This information is necessary to determine List eligibility and, along with supporting evidence, will comprise the main substance of List applications.

§ 1268.03(b)(3) allows the application form to request supporting evidence submitted electronically demonstrating compliance with the requirements in §§ 1268.00-1268.04. This is intended to ensure that Local Agencies substantiate their claims of compliance and that the List is based on current and accurate information.

§ 1268.03(b)(4) allows the application form to provide additional space for Local Agencies to provide additional evidence to support their inclusion on the List. § 1268.04 states that if a Local Agency is unable to meet the necessary criteria because the criteria are inapplicable to that agency type, then it may submit substantial evidence demonstrating an equivalent means of local fire planning. It is thus necessary for the form to provide space for Local Agencies to contextualize such evidence if this is the case, and to provide any pertinent information not included elsewhere in the form.

§ 1268.03(c) specifies that the Board shall review applications to determine if the information provided satisfies the criteria for List eligibility. This provision is necessary to provide clarity to the regulated public regarding how it will be determined if an application for placement on the list satisfies the criteria for placement on the list.

### Adopt § 1268.04 List Updates

§ 1268.04(a) states that the List shall be published on the Board’s website on or before July 1, 2022. This language is copied from statute as the Legislature has proscribed a specific deadline for the publication of this List.

§ 1268.04(b) states that the List shall be updated every two years, to be effective July 1. It was determined that biennial updates would be frequent enough to allow Local Agencies regular opportunity to qualify for the List upon satisfying the criteria, while not creating unreasonable workload or budget demands for the Board in maintaining the List. Establishing a July 1 effective date sets a specific date for when Local Agencies will officially be added to or taken off the list, which provides clarity to the Department and Local Agencies when the Department uses the list to implement PRC § 4124.7.

## **ECONOMIC IMPACT ANALYSIS** (pursuant to GOV § 11346.3(b)(1)(A)-(D) and provided pursuant to 11346.3(a)(3))

The **effect** of the proposed action is unambiguous criteria for the creation of a list of local agencies that that meet best practices for local fire planning.

### Creation or Elimination of Jobs within the State of California

The proposed action makes specific the criteria and maintenance schedule for the List mandated in PRC 4290.1, it is not expected to sustain changes in the job market. The work of qualifying and applying for the List is only undertaken by Local Agencies, is not mandatory, and can all be completed by existing staff positions, as can using the List by CAL FIRE and maintaining the List by the Board. The proposed action will not result in the creation or elimination of jobs within the state.

### Creation of New or Elimination of Existing Businesses Within the State of California

The proposed action makes specific the criteria and maintenance schedule for the List mandated in PRC 4290.1, which only applies to Local Agencies. It is not expected to sustain changes in the job market. Because the regulation relies heavily on requirements in existing statute, it does not create or eliminate businesses within the state. Where the proposed action makes specific statute (such as by determining specific List criteria), it is of limited scope, applicable only to government agencies, and not anticipated to sustain business enterprises over the long term or result in the elimination of businesses. The proposed action will not result in the creation or elimination of businesses within the state.

### Expansion of Businesses Currently Doing Business Within the State of California

The proposed action makes specific the criteria and maintenance schedule for the List mandated in PRC 4290.1, which only applies to Local Agencies. It is not anticipated to sustain changes in the job market. Where the proposed action makes specific statute (such as by determining specific List criteria), it is of limited scope, only applicable to governmental agencies, and not anticipated to sustain the expansion of business enterprises over the long term. The proposed action will not result in the expansion of businesses within the state.

### Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment

The proposed action will benefit the health and welfare of California residents, worker safety, and the State's environment by reducing the risk of wildfire to residents in the SRA and VHFHSZ. The potential for placement on this List incentivizes local fire planning processes or programs that go beyond the minimum requirements, encouraging more Local Agencies to engage in these processes and programs which mitigate risks to health, safety and the environment. By meeting the List criteria which require local fire planning to meet and exceed state minimum standards, jurisdictions are reducing the potential for a catastrophic wildfire that would otherwise result in losses of life and property and impact smoke-sensitive populations. By reducing the likelihood that wildfires might become urban conflagrations, the proposed action may improve the ecological health of the SRA and VHFHSZ landscape, leading to a more natural fire regime and an improved environment.

### **Business Reporting Requirement** (pursuant to GOV § 11346.5(a)(11) and GOV § 11346.3(d))

The proposed regulation does not impose a business reporting requirement.

### Summary

In summary, the proposed action:

1. will not create jobs within California;

(A) will not eliminate jobs within California;

(B) will not create new businesses,

(B) will not eliminate existing businesses within California

(C) will not affect the expansion or contraction of businesses currently doing business within California.

(D) will yield nonmonetary benefits. For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the “Introduction Including Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address.”

## SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (pursuant to GOV §§ 11346.3(a), 11346.5(a)(7) and 11346.5(a)(8))

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, by making it costlier to produce goods or services in California.

## FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5) and GOV § 11346.5(a)(8))

* Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of experience receiving, reviewing, and making recommendations to adopted ordinances and land use planning materials such as those in the List criteria from Local Agencies and for other fire protection programs the Board implements.
* Discussions with Department of Forestry and Fire Protection staff as well as Local Agency and Tribal representatives on the feasibility of meeting the requirements in the regulation without adverse economic impacts.

## TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON (pursuant to GOV SECTION 11346.2(b)(3))

The Board relied on the following list of technical, theoretical, and/or empirical studies, reports or similar documents to develop the proposed action:

1. American Community Survey, US Census Bureau. <https://www.census.gov/programs-surveys/acs>. Accessed April 16, 2021.
2. California Median Household Income in the Past 12 Months (in 2019 inflation-adjusted dollars). 2019: ACS 1-Year Estimates Subject Tables. US Census Bureau. <https://data.census.gov/cedsci/table?q=california%20median%20income&tid=ACSST1Y2019.S1901&hidePreview=false>. Accessed April 16, 2021.
3. Email from Bakyt Djaparov, CAL FIRE Budget Analyst, to Edith Hannigan, Board

Land Use Planning Program Manager, “Costs for Associate Environmental Planner,” November 25, 2020.

1. Email from Deepti Sharma, CAL FIRE Grants Program Staff Services Manager, to Claire McCoy, Board Wildfire Planning Specialist, “Board Rulemaking & Grants Program,” January 25, 2021.
2. Email from Crystal Sujeski, Deputy State Fire Marshall III, Specialist, to Claire McCoy, Board Wildfire Planning Specialist, “Question re: WUI Code Sections,” February 3, 2021.
3. Email from Eric Horntvedt, North Tahoe Fire Protection District Forest Fuels Coordinator
4. Application form for Federal Communities At Risk List, accessed February 17, 2021.
5. Email from Dr. Theresa Gregor, Inter-Tribal Long-Term Recovery Foundation Executive Director, to Claire McCoy, Board Wildfire Planning Specialist, “Tribal Wildfire Planning Metrics,” March 19, 2021.
6. Email from Dr. Theresa Gregor, Inter-Tribal Long-Term Recovery Foundation Executive Director, to Claire McCoy, Board Wildfire Planning Specialist, “Tribal Wildfire Planning Metrics,” March 23, 2021.

## REASONABLE ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED BY THE BOARD, IF ANY, INCLUDING THE FOLLOWING AND THE BOARD’S REASONS FOR REJECTING THOSE ALTERNATIVES (pursuant to GOV § 11346.2(b)(4)(A) and (B)):

* **ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACTS ON SMALL BUSINESS AND/OR**
* **ALTERNATIVES THAT ARE LESS BURDENSOME AND EQUALLY EFFECTIVE IN ACHIEVING THE PURPOSES OF THE REGULATION IN A MANNER THAT ENSURES FULL COMPLIANCE WITH THE AUTHORIZING STATUTE OR OTHER LAW BEING IMPLEMENTED OR MADE SPECIFIC BY THE PROPOSED REGULATION**

Pursuant to 14 CCR § 15252 (a)(2)(B), alternatives are not required because these regulations will not have any significant or potentially significant effects on the environment. Additionally, pursuant to 14 CCR § 1142(c), the discussion (of alternatives) may be limited to alternatives which would avoid the significant adverse environmental effects of the proposal. Consequently, the alternatives provided herein are provided pursuant to the APA (**GOV § 11346.2(b)(4)**) exclusively.

The Board has considered the following alternatives and rejected all but the “Proposed Action” alternative.

### Alternative 1: No Action Alternative

The Board considered taking no action, however, this alternative would fail to meet the statutory mandate of PRC 4290.1 for the Board to “develop criteria for and maintain a Fire Risk Reduction Communities List (List)” no later than July 1, 2022. While the statute specifies several factors the Board must *consider* in developing criteria for the List, it does not provide prescriptive enough criteria for the statutory mandate to be implementable without further regulatory interpretation.

### Alternative 2: Performance-based standards only

The Board considered developing the regulations to include only performance-based standards. It was necessary, however, to use a prescriptive standard in specifying how list applications shall be submitted to the Board. The consistency provided by a prescriptive standard promotes government transparency and resource efficiency, and avoids establishing overly burdensome requirements on Local Agencies. Prescriptive standards were also needed to determine a timeframe in which a Local Agency must have met the eligibility criteria to qualify for the List. Requiring criteria to be met within the last five years or the required update frequency for a given criterion ensures that Local Agencies are currently meeting best practices for local fire planning and therefore that the list reflects the intent of PRC 4290.1. An alternative performance-based standard would thus have diminished the regulation’s ability to meet statutory intent. These standards are only as prescriptive as necessary to achieve a transparent and effective process that achieves the purpose of the proposed action.

### Alternative 3: Proposed Action

The Board has chosen to adopt the proposed action presented in this Initial Statement of Reasons because the Board believes the proposed action is the most cost-efficient, equally or more effective, and less burdensome alternative. The proposed action makes PRC 4290.1 specific enough to provide clear guidance to the Board and Local Agencies in determining qualification for the List, but does not establish overly burdensome requirements.

There is no alternative that would be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action.

## Prescriptive Standards versus Performance Based Standards (pursuant to GOV §§11340.1(a), 11346.2(b)(1) and 11346.2(b)(4)(A)):

Pursuant to **GOV §11340.1(a)**, agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the agency rulemaking process.

The proposed action mandates the use of specific technologies or equipment and prescribes specific actions or procedures. The proposed action is only as prescriptive as necessary to ensure that list eligibility applications are submitted to the Board in a consistent format and are accompanied with appropriate supporting evidence. This creates an application and review process that is standardized and transparent. Performance based standards were not reasonably expected to be as effective and less burdensome in achieving the purpose of the proposed action.

Prescriptive standards were also needed to determine a timeframe in which a Local Agency must have met the eligibility criteria to qualify for the List. Requiring criteria to be met within the last five years or the required update frequency for a given criterion ensures that Local Agencies are currently meeting best practices for local fire planning and therefore that the list reflects the intent of PRC 4290.1. An alternative performance-based standard would thus have diminished the regulation’s ability to meet statutory intent.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action mandates the use of specific technologies or equipment. Requiring electronic file submissions reduces costs to Local Agencies regarding paper and ink; postage; and miscellaneous office supplies, and reduces paper waste. Upon receipt of paper files in the postal mail, the Board often scans them into their electronic files, and so requiring electronic files upfront reduces that waste of staff time and paper as well. The use of an electronic file submission requirement within the regulations is necessary to facilitate file processing and improve efficiency of both transmission and receipt of files. This requirement establishes consistency across all submissions of List application materials, allowing the Board to easily sort, search, and review those files. The requirement to use specific technology creates government efficiencies, protects the environment, and reduces compliance costs.

Pursuant to **GOV § 11346.2(b)(4)(A)**, Alternatives 1 and 2 were considered and ultimately rejected by the Board in favor of the proposed action. The proposed action mandates the use of specific technologies or equipment and prescribes specific actions or procedures.

## DESCRIPTION OF EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATION (pursuant to GOV § 11346.2(b)(6)

The Code of Federal Regulations has been reviewed and based on this review, the Board found that the proposed action neither conflicts with, nor duplicates, Federal regulations.