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 4??, Article 3??.**

**Adopt**

Subchapter 4 Fire Protection Planning

Article 3 Fire Risk Reduction Communities List

§ 1268.00 Authority

§ 1266.01 Intent

§ 1266.02 Definitions

§ 1268.03 Criteria

§ 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, 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 the 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 are necessary to develop the criteria that will be used to determine if a local agency meets best practices in local fire planning so that they may be prioritized for local assistance grant funding.

The **purpose** of the proposed action is to develop a transparent, clear, and standardized 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 which 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 proposed action also incentivizes local agencies which do not meet the Board’s minimum fire safety requirements to do so. 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 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 no comparable federal regulation or statute.

**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, 1268.04, 1268.05 and 1268.06.

The problem is there are no regulations implementing or making specific PRC § 4290.1.

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 Title 14, Division 1.5, Chapter 7. Consistent definitions across the Chapter reduces confusion and improves compliance with the regulations.

**Adopt § 1266.00 Authority**

This section is necessary to establish the authority for the creation and purpose of this list. This reduces confusion, as the regulated public can access the authority for these regulations in Title 14, rather than needing to access PRC 4290.1 in addition to Title 14.

This section is copied from statute nearly verbatim with no substantive changes to the meaning of the statutory text. The only changes from statute were to include the Board’s full name and to specify “Local Responsibility Area” before “Very High Fire Hazard Severity Zone” (with no change to statutory meaning therein). These changes provide clarity regarding which State Board is being referred to, as well as where these regulations apply.

**Adopt § 1266.01 Intent**

§ 1266.01 (a) restates the intent of the regulations as authorized in PRC § 4290.1 and PRC § 4124.7.

§ 1266.01 (b) explains the reasoning informing the decision to include additional avenues for low-income local agencies to qualify for placement on the Fire Risk Reduction Communities List.

**Adopt § 1268.02 Definitions**

It is necessary to adopt definitions for this article to ensure consistency within and between the regulations and statute. These definitions largely reference existing statute that relates to PRC 4290.1 to promote consistency and ensure the Legislature’s intent with PRC 4290.1 is captured accurately.

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

4290.1. This ensures consistency,

“Local Agency” is defined to encompass each type of government agency which is eligible to receive the Department’s local assistance grants.

“State Responsibility Area” is defined by reference to PRC § 4102.

“Very High Fire Hazard Severity Zone” is defined by reference to GC § 51177.

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 current statute or regulation.

The definition of “Low-Income Local Agency” is based on the definition of “Low-Income Community” in HSC § 39713 and the median income data by county (published in 25 CCR § 6932) relied upon in that definition. This definition was chosen as a basis in part to promote consistency because HSC § 39713 relates to the Greenhouse Gas Reduction Fund, which also funds the Department’s local assistance grants. 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.” The definition of “Low-Income Local Agency” in 1268.02 adapts the HSC § 39713 definition for applicability to each type of local agency eligible to qualify for the List.

**Adopt § 1268.03 List Criteria**

§ 1268.03 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. The section is divided into four mandatory criteria and five optional criteria, the latter of which two must be met.

§ 1268.03(a) establishes four mandatory criteria, which require a local agency to be compliant with the Board’s relevant existing regulations. These include the designation of Fire Hazard Severity Zones, 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 of a general plan safety element to the Board.

§ 1268.03(b) establishes five optional criteria, of which two must be met. 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. The criteria include adoption of a local ordinance which equals or exceeds the State Fire Safe Development Regulations, defensible space standards exceeding state minimums, adoption of a WUI code, incorporation of fire hazard mitigation into a zoning ordinance, and a comprehensive retrofit code or plan for existing homes. These demonstrate local fire planning which goes beyond minimum requirements.

§ 1268.04 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. 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.

The criteria are: recognition as a Firewise USA community; adoption of a Community Wildfire Protection Plan, critical infrastructure protection plan, evacuation plan or similar plan; sponsorship or coordination of an active community disaster preparedness group, including Firewise USA communities or Fire Safe Councils; a plan or program to conduct hazardous fuels reduction; a plan or program to conduct public outreach and education about wildfire prevention or related topics; and adoption of a special benefit assessment or tax measure or fee that addresses wildfire prevention.

§ 1268.05 outlines the application process for local agencies wishing to be added to the List. Such agencies shall report which criteria they meet and provide supporting evidence using a form provided by the Board and submitted electronically in PDF format.

§ 1268.06(a) states that the list shall be published on the Board’s website on or before July 1, 2022.

§ 1268.06(b) states that the list shall be updated no less frequently than biennially, 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.

**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 equitable prioritization of local assistance grant funding and incentivization of 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. Because the regulation relies heavily on requirements in existing statute, it is not anticipated to sustain changes in the job market. The work of qualifying and applying for the List by local agencies, using the List by the Department and maintaining the List by the Board can all be completed by existing staff positions. 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. Because the regulation relies heavily on requirements in existing statute, 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 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. Because the regulation relies heavily on requirements in existing statute, it is not anticipated 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 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.

**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. 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 adopted ordinances and land use planning materials such as those in the list criteria from local agencies for other fire protection programs the Board implements.
* Discussions with Department of Forestry and Fire Protection staff on the scope and requirements of recommendations made in Fire Safety Surveys.

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. Excerpts from Government Code (GC), 2018: §§ 51177-78, and 65302.5.
2. Excerpts from Public Resources Code (PRC), 2020: §§ 4125, 4124.7, 4126-27 and 4290-4290.1.
3. Excerpt from Title 14 of the California Code of Regulations (14 CCR), 2019: §§ 1266.02, 1267.1, 1270-76, 1280.2, 1299.3 and 6932.
4. Excerpt from Health and Safety Code (HSC), 2018: § 39713.

**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: Copying Statute Verbatim**

The Board considered copying statute verbatim into regulation. However, 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 mandate to be implementable without further regulatory interpretation. Furthermore, two of the criteria provided for consideration would have made list maintenance overly burdensome without proportionately contributing to the goals of the List. The other suggested criteria required further development to provide clear information to local agencies on what information must be provided to qualify for the List. The Board therefore found it necessary to make certain changes and additions instead of copying statutory language verbatim.

**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 course of 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 the findings and maps are submitted to the Board in a recognizable file format and are accompanied with appropriate amounts of explanatory or background information. This creates a process that is transparent. Performance based standards were not reasonably expected to be as effective and less burdensome in achieving the purpose of the proposed action.

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 within the regulations is necessary in order to facilitate file processing and improve efficiency of both transmission and receipt of files. The proposed action also requires these files be sent in a particular file format. This requirement establishes consistency between the hundreds of findings and maps the Board expects to receive, allowing the Board to easily sort, search, and review those files. Understanding that this requirement may be potentially burdensome, the proposed action requires a file format that is free and easily accessible. 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. There are no comparable Federal regulations for prioritizing local assistance grants from local agencies that meet best practices for fire planning.

**POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS**

The California Environmental Quality Act (CEQA) requires review, evaluation and environmental documentation of potentially significant environmental impacts from a qualified project. This proposed rulemaking establishes a process by which local agencies email documents to the Board and the Board maintains a list published on its website. It has no potential to result in either a direct physical change to the environment or reasonably foreseeable indirect change to the environment (14 CCR § 15378(a)) and is not subject to CEQA.