

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“Very High Fire Hazard Severity Zone Adoption, 2019”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 7, Subchapter 3, Article 1.**

Adopt

§ 1280.00 Definitions

§ 1280.02 Very High Fire Hazard Severity Zones in the LRA

Amend

§ 1280. Fire Hazard Severity Zones

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 Government Code Section 51179(a) requires a local agency to designate, by ordinance, very high fire hazard severity zones in its jurisdiction within 120 days of receiving recommendations from the director pursuant to subdivisions (b) and (c) of Section 51178. SB 1260 (Jackson, 2018) revised GC 51179(c) to require local agencies to send those ordinances to the Board of Forestry and Fire Protection (Board) within 30 days of adoption.

The **problem** is that there are no further instructions for local agencies in regulation.

The **purpose** of the proposed action is to implement and make specific the Legislature’s requirement in GC 51179(c) that local agencies send their adopted ordinances to the Board.

The **effect** of the proposed action is to provide local agencies a transparent and consistent process for submitting their ordinances to the Board.

The **primary benefit** of the proposed action is a clear, direct, and standardized process that maximizes efficiency, provides transparency to the regulated public, and is utilized effectively to prevent property and life losses in the wildland-urban interface due to fire. As a result, this regulatory action will 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 § 1280.00 and 1280.02 and amend § 1280.

The problem is there are no regulations implementing or making specific the changes to GC 51179(c) as a result of SB 1260 (Jackson, 2018).

The purpose of the proposed action is to provide unambiguous and transparent information for local agencies to send their ordinances adopting the very high fire hazard severity zones (VHFHSZ) in an efficient manner.

The below adoptions, amendments, and repeals 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 in some places, only minor changes to provide flexibility or further interpret or make specific the statutes were necessary to create these regulations.

The proposed action does not duplicate or rephrase existing rules.

Adopt § 1280.00 Definitions

In order to provide clarity and consistency to the Board's regulatory schema, the proposed action establishes the following definitions:

The definitions for "director" and "state responsibility area" were restated from 14 CCR § 1271.00 Definitions, the Board's regulatory program implementing Public Resources Code (PRC) 4290.

The definition for "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 by the definition of SRA in PRC 4125. This 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 goes on to state “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 provides needed clarity regarding which lands are “LRA,” as no specific LRA definition exists in current statute or regulation.

A definition for “portable document format (PDF)” was established because this rule making includes a prescriptive requirement that local agencies utilize this document format when sending their ordinances to the Board, and a definition for the term establishes clarity and reduces agency confusion. Information regarding the necessity for this prescriptive requirement can be found in the necessity section for § 1280.02.

The definition of “very high fire hazard severity zone” is taken directly from the definition of very high fire hazard severity zone that exists in statute. The statute referenced, GC 51177(i), is an earlier statute in the same Chapter of Government Code that establishes the requirements in GC 51179 being implemented in this rulemaking action.

Amend § 1280 Fire Hazard Severity Zones

For clarity within this Article, Section 1280 is renumbered to 1280.01 and the title, although nonregulatory, is changed to Fire Hazard Severity Zones in the SRA.

Adopt § 1280.02 Very High Fire Hazard Severity Zones in the LRA

§ 1280.02(a) rephrases statute because the Board found that only minor revisions were necessary to further clarify this requirement from the Legislature.

§ 1280.02(b) establishes the file format and method of transmission local agencies must utilize when sending their ordinances to the Board. This creates a transparent and consistent process for agencies to follow. By requesting electronic files, the Board is reducing the environmental impact of compliance with these regulations and creating a more efficient and cost-effective process for local agencies. By requiring these files to be in “pdf” format, the Board again establishes a transparent and consistent process for agencies to follow. This also creates efficiencies whereby the Board is maintaining consistent, electronic-based files – this allows the Board to easily search and examine the files when needed.

For the purposes of this rule making, a pdf file format was selected because of its accessibility as an electronic file type for local jurisdictions. According to the company that invented it, Adobe, a pdf file can present and exchange documents reliably, independent of software, hardware, or operating system. PDFs can contain links and buttons, form fields, audio, video, and business logic and can be viewed for free with Acrobat Reader DC software. PDF is an open standard maintained by the International Organization for Standardization (ISO).¹

¹ “What is PDF?” Accessed October 29, 2018. <https://acrobat.adobe.com/us/en/acrobat/about-adobe-pdf.html>

There are a number of ways to turn Microsoft Office files, or other file types, to pdf. In addition to methods within Adobe Acrobat² (a free pdf reader that comes with other pdf functionalities³), there are free converters online that will turn a file into a pdf. The Board has been requesting local ordinances and maps from local agencies for decades in furtherance of their additional fire protection programs, and so far has not encountered the ability to create a pdf file type to be a hindrance for local agencies.

§ 1280.02(c) allows the Board to request additional maps in other file formats. There may be instances where the submitted pdf map is of insufficient quality that the Board may not be able to determine where the local agency adopted the VHFHSZ, or instances where the Board may otherwise prefer to have more information about the adopted VHFHSZ in relation to the geography of the area. Within the local agency's capabilities, the Board may request other file types in order to discern more information about these areas.

§ 1280.02(d) allows the Board to create a form to collect consistent information from local agencies. In the Board's previous experience requiring local agencies to submit ordinances and maps to them, they have noted local agencies each have their own templates for adopting ordinances and developing maps. Requesting information on a form allows the Board to collect consistent information across the state.

§ 1280.02(d)(1)(A) requests basic information about the agency's name and a point of contact so that the Board or Board staff may file the ordinance and maps correctly and have an established person at the agency they may contact with any questions.

§ 1280.02(d)(1)(B) requests information about the meeting where the agency adopted the VHFHSZ. This information is necessary in the event there is a legal question about whether the zones were officially adopted by the agency, in what code section, etc. Establishing a background fact pattern allows the Board to find additional information about the adoption if a part of that process is ever called into question.

§ 1280.02(d)(1)(C) requests basic information about the ordinance so that the Board has clarity regarding specifically which ordinance adopted the VHFHSZ and who approved it. In the Board's experience requiring local agencies to submit ordinances and maps to them, they have noted the documents that are submitted are not always clear regarding the ordinance number and/or name. Requesting this information on a form establishes greater clarity in this regard.

§ 1280.02(d)(1)(D) requests basic information about the sections of city or county code that are adopted or amended by the local ordinance in order to adopt the VHFHSZ. In the Board's experience requiring local agencies to submit ordinances and maps to them, they have noted the documents that are submitted are not always clear regarding

² "Create PDFs from Microsoft Office." Accessed October 29, 2018.

<https://helpx.adobe.com/acrobat/how-to/create-pdf-files-word-excel-website.html>

³ Some of these functions require a paid subscription. Adobe offers a free 7-day trial.

the sections of local code that are impacted. Requesting this information on a form establishes greater clarity in this regard.

§ 1280.02(d)(2) allows the Board to ask local agencies for information regarding their decision to include areas as VHFHSZ that were not designated so by the director. GC 51179(b) allows a local agency to do this where they determine that “requirements of Government Code Section 51182 are necessary for effective fire protection in the area.” The Board may ask for the information that led to this decision, in whatever format that took for the local agency (maps, staff reports, data analysis, etc), in order to continue improving fire protection and fire risk mapping in the state. The Board may not rebut the changes to VHFHSZ made by the agency (GC 51179(d)), but is interested in collecting localized knowledge about fire threats to improve their fire prevention programs. There is no penalty for noncompliance with this section by local agencies.

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 and transparent information about the process to submit local ordinances establishing VHFHSZs to the Board.

Creation or Elimination of Jobs within the State of California

The proposed action makes specific the means and methods by which a local agency shall submit their local ordinances establishing VHFHSZs to the Board, as required by GC 51179(c). Because the regulation requires minimal action by local governments, it does not create or eliminate jobs within the state. 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 means and methods by which a local agency shall submit their local ordinances establishing VHFHSZs to the Board, as required by GC 51179(c). The proposed action 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 process by which local agencies must submit their adoption of VHFHSZ maps to the Board. The proposed action is of limited scope and not anticipated to result in the expansion of business. 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 and businesses in VHFHSZs. The designation of VHFHSZ, and the adoption of that

designation by local agencies, is an action that places statutory and regulatory requirements regarding housing construction, defensible space, and other fire safety measures on that area. This proposed action will keep track of those agencies that have adopted those zones, providing greater opportunities to engage with local agencies on the implementation of fire protection projects. These projects will lead to a more natural fire regime in California, in addition to structures built to be more defensible against a wildfire, which will lead to an improved ecological environment and greater firefighter safety.

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:

- (A) 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 maps from local agencies for other fire protection programs the Board implements.

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 (GOV), 2019: 51177, 51178, 51179, 51182
2. Excerpts from Public Resources Code (PRC), 2016: 4101, 4102, 4203, 4204, 4111, 4112, 4113, 4114, 4125, 4126, 4127, 4740, 4741, 4290, and 4291
3. Excerpts from the California Code of Regulations: Title 14, division 1.5, chapter 7, article 1, sections 1220-1220.5.
4. Excerpts from Adobe.com: “What is PDF?” <https://acrobat.adobe.com/us/en/acrobat/about-adobe-pdf.html>; “Create PDFs from Microsoft Office,” <https://helpx.adobe.com/acrobat/how-to/create-pdf-files-word-excel-website.html>

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, since the statutory language added to GC 51179 is rather prescriptive in nature. However, as the Board can expect to receive hundreds of these ordinances over the lifetime of this statute, the Board wanted to create a consistent process by which the documents were received and the information a local agency must provide the Board. The Board was concerned that placing these requirements in another document would result in an underground regulation.

Alternative 2: Copying Statute Verbatim

The Board considered copying statute verbatim into regulation. However, the Board noted a few places that could use further clarification. The statute did not prescribe any specific means or methods by which local agencies shall transmit their VHFHSZ ordinances and maps to the Board, and the Board established that efficiencies would be achieved by doing so.

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 specific GC 51179(c) enough to provide clear guidance to the Board and local agencies regarding the requirements for submitting VHFHSZ ordinances and maps, 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 ordinances 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. 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 paper waste as well. The use of 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 ordinances 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 the adoption of fire hazard severity zones.

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 rule making establishes a process by which local agencies email particular documents to the Board. 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.