

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“Fire Safety Survey, 2019”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 7, Subchapter 3, Article 4**

Adopt

Article 4

§§ 1267.00; 1267.01; 1267.02; 1267.03

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 (PRC) 4290.5 requires the board, in consultation with the State Fire Marshal, to identify existing subdivisions located in a state responsibility area (SRA) or a very high fire hazard severity zone, identified pursuant to Section 51178 of the Government Code, without a secondary egress route that are at significant fire risk. The board is authorized to contract with technical assistants to perform this work.

The **problem** is that there are no regulations governing the identification and surveying of subdivisions at significant fire risk.

The **purpose** of the proposed action is to establish the criteria for identifying subdivisions to survey under this program.

The **effect** of the proposed action is to create standardized and transparent criteria for identifying subdivisions to survey, resulting in clarity amongst the regulated public.

The **primary benefit** of the proposed action is a clear, direct, and standardized subdivision identification 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 Subchapter 3, Article 4 §§ 1267.00; 1267.01; 1267.02; and 1267.03.

The problem is there are no regulations implementing the new statute, PRC 4290.5, created by the passage of AB 2911 (Friedman, 2018).

The purpose of the proposed action is to provide unambiguous and transparent information about the selection of subdivisions to survey under this program.

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 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 duplicates existing rules because that is the most efficient and clear way to establish consistency between rules.

Adopt § 1267.00 Definitions

It is necessary to adopt definitions for “dwelling unit” and “residential unit” because the various codes and statutes regulating the structures in which people may live in in California define “dwelling unit” differently. The definition of “dwelling unit” for this article is a cross reference to the definition of a “residential unit” later in this section. The definition for “residential unit” in § 1267.00 copies a regulation from the Board’s SRA Fire Safe Regulations (14 CCR § 1271.00). This cross reference is necessary for consistency between the Board’s regulations and to avoid confusion by those that are regulated by both sets of regulations.

It is necessary to adopt definitions for “Local Responsibility Area,” “State Responsibility Area,” and “Very High Fire Hazard Severity Zones” as those are terms that go into the determination that a subdivision is or is not affected by this regulation. Establishing definitions for these terms brings clarity to the regulated public regarding the applicability of these regulations to themselves. These terms refer back to statute so as to avoid conflicting and confusing definitions for these terms.

A definition for “road” was established to provide a consistent, statewide definition for the term. Jurisdictions across the state apply the term “road” differently and so a

common definition for the purpose of these regulations is necessary. The definition established in this proposed rulemaking broadly includes surfaces used for vehicle travel, and specifies that this includes public and private streets and lanes. This definition is specific enough to establish a functional definition for a “road” but broad enough so that it does not exclude a surface that a jurisdiction has approved for vehicle travel that does not meet an arbitrary definition established by the Board here. By proposing this broad definition, the Board does not infringe on a local jurisdiction’s land use controls by imposing a stricter definition of “road” than the jurisdiction has established.

It is necessary to establish a definition for a “subdivision,” as that term has a very specific definition in major land use planning laws in California. Statute established, in PRC 4290.5(d), that a subdivision for the purposes of this program is a development of more than thirty dwelling units, and that definition is restated in these regulations for clarity and consistency. This definition also clarifies that this grouping of thirty units did not have to be subdivided from one plot of land into the thirty via one subdivision map, as defined in Government Code 66424. Because “a subdivision” has such a specific definition in Government Code, these regulations clarify that the thirty residential units did not have to have been subdivided on one map in order to be considered “an existing development of thirty (30) homes.”

Adopt § 1267.01 Fire Safety Survey

The proposed section 1267.01(a) restates statute but reduces redundancy by deleting the reference to the identification of VHFHSZ in Government Code. Restating statute here keeps all of the qualifications for being a subdivision that warrants survey under this program in one place, reducing confusion for the regulated public. The changes to statute are necessary to establish which subdivisions are at “significant fire risk,” as stated in PRC 4290.5(a). This term does not have a definition in existing statutes or rules, and so it is necessary to list the qualifications here.

It was determined that subdivisions at “significant fire risk” were those located in a VHFHSZ zone in LRA or those located in SRA. “Significant fire risk,” as presented in the enabling statute, is vague and undefined. Fire hazard severity zones are mapped by CAL FIRE through a public process and then put into regulation through the Administrative Procedures Act process (see 14 CCR § 1220 and § 1280). It was determined that using these clearly defined and established VHFHSZs would provide for a transparent process that reduces confusion by limiting the opportunities to interpret “significant fire risk” differently across the state. It was determined that, given that the Department of Forestry and Fire Protection (CAL FIRE) has the financial responsibility for preventing and suppressing wildfires in the entire SRA, and that recent fires have burned in areas of SRA not designated “very high fire hazard severity zone,” all subdivisions in the SRA should be surveyed under this program to ensure fire safety for SRA residents.

The proposed language in § 1267.01(a)(i) and (ii) is necessary because it was determined the phrase “secondary egress route” is open to interpretation. There was

concern that without a clear standard for “secondary egress route,” this section would be interpreted and applied unevenly across the state. This would result in subdivisions that had similar quality of egress routes receiving different sets of recommendations, or a case where one subdivision was surveyed and given recommendations but a similar one wasn’t.

§ 1267.01(a)(i) establishes the qualifications for an adequate “secondary egress route.” In order to effectuate safe and rapid evacuation, it was determined that in order for a road to be considered an adequate “secondary” egress route, it needed to be similar in construction to the primary egress route and should be able to be easily and safely traveled by a class one vehicle, as defined by the Federal Highway Administration. A class one vehicle is 6,000 pounds or less, and includes up to full size pickups, minivans, SUVs, and utility vans. Utilizing this definition brings clarity to what types of vehicles these roads should be constructed to carry, and ensures that small vehicles such as sedans without four wheel drive will be able to safely travel down the road.

During an emergency evacuation, people may be traveling down roads unfamiliar to them that are not maintained as frequently as the primary road, so requiring the secondary egress route be of substantially similar quality ensures people can safely evacuate. For example, the two egress routes should both be of an all-weather surface; both paved; or otherwise of substantially similar quality. This ensures that the secondary egress route is not at greater risk for deterioration, i.e. washing out or similar, than the primary route, and therefor will not be out of service any less frequently than the primary route. It was determined, however, that as a secondary egress route, the road does not necessarily have to carry the same amount of traffic as the primary egress route. Depending on the configuration of the subdivision and other environmental factors, it was determined that requiring a secondary egress road to carry the same amount of traffic as the primary egress road would be overly burdensome.

In contrast, § 1267.01(a)(ii)(a) and (b) establish the particular features that disqualify a route from serving as an adequate “secondary egress route.” A road with a locked gate or other limited access may preclude it from being used during an evacuation. If the secondary route directs traffic to the same outlet road as the primary route or moves traffic in a circular pattern, then both routes may become cut off if the outlet road becomes impassable.

The proposed language in § 1267.01(b) relies on the expert localized knowledge and specialized technical knowledge of government officials involved in fire safety and land use planning to identify to the Board and State Fire Marshal subdivisions within their jurisdiction they feel are at significant fire risk. Working at a statewide level, the Board does not possess hyper-local knowledge about the history of land use development in a particular area, and this regulatory section allows the Board and State Fire Marshal to take advantage of this knowledge embedded in local agencies to identify subdivisions that would benefit from recommendations to improve their fire safety.

Adopt § 1267.02 Fire Safety Recommendations

It is necessary to adopt this language that largely restates statute regarding the development of recommendations to improve a subdivision's fire safety and the distribution of those recommendations. Restating statute here keeps all of the components of this survey process in one place, reducing confusion for the regulated public. Changes to the statutory language were necessary to change cross references to the statute to the proper cross reference in the regulations.

Adopt § 1267.03 Implementation Monitoring

It is necessary to adopt this language that largely restates statute regarding the monitoring of the implementation of the Board and State Fire Marshal's recommendations to improve subdivision fire safety. Restating statute here keeps all of the components of this survey process in one place, reducing confusion for the regulated public. Changes to the statutory language were necessary to change cross references to the statute to the proper cross reference in the regulations.

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 why a subdivision was selected to be surveyed pursuant to PRC 4290.5.

Creation or Elimination of Jobs within the State of California

The proposed action makes specific the Board and State Fire Marshal's survey of subdivisions at significant fire risk in the state. PRC 4290.5(c) allows the Board to enter into contracts with independent groups to conduct this survey, but this program is of limited scope and duration and not anticipated to sustain changes in the job market. 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 Board and State Fire Marshal's survey of subdivisions at significant fire risk in the state pursuant to PRC 4290.5. PRC 4290.5(c) allows the Board to enter into contracts with independent groups to conduct this survey, but this program is of limited scope and duration 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 Board and State Fire Marshal's survey of subdivisions at significant fire risk in the state pursuant to PRC 4290.5. PRC 4290.5(c) allows the Board to enter into contracts with independent groups to conduct this survey, but this program is of limited scope and duration and not anticipated to sustain the expansion of businesses. 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 the SRA and VHFHSZ, specifically those subdivisions identified as being at significant fire risk. By surveying subdivisions to determine how best to mitigate the wildfire risk to their communities, jurisdictions are reducing the potential for a catastrophic wildfire that would otherwise result in losses of life and property and would impact smoke-sensitive populations. The proposed action benefits worker safety because the regulations repeat or rephrase statute that require the Board and State Fire Marshal to provide recommendations to the subdivisions that improve its fire safety, improving the ability of firefighters to safely defend homes and other structures. In addition, 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:

- (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 executing similar contracts with independent groups in the recent past.

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 Public Resources Code: 4102, 4125, 4201, 4202, 4203, 4204, 4290, 4290.5, 4291
2. Excerpts from Government Code: 51178, 66424
3. Excerpts from Title 14, California Code of Regulations: 1271.00
4. Schoonover, Steve. "Upper Ridge Escape Route Handles First Test." *Chico Enterprise-Record*. N.p., 12 Nov. 2018. Web. 17 Dec. 2018. <<https://www.chicoer.com/2018/11/12/upper-ridge-escape-route-handles-first-test/>>.
5. U.S. Department of Energy, Alternative Fuels Data Center. "Vehicle Weight Classes and Categories." <https://afdc.energy.gov/data/10380>. Accessed February 11, 2019.
6. U.S. Department of Energy, Alternative Fuels Data Center. "Types of Vehicles by Weight Class." <https://afdc.energy.gov/data/10381>. Accessed February 11, 2019.

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 in PRC 4920.5 is rather prescriptive in nature and requires little to no interpretation or clarification. However, the Board was concerned about creating confusion among the regulated public regarding which subdivisions would be surveyed and what qualified as a “secondary egress route,” and felt that clarifying regulations were necessary.

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 and alignment with existing Board rules.

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 PRC 4290.5 enough to provide clear guidance to the Board, State Fire Marshal, subdivisions, and any technical consultants regarding the subdivision access survey, but does not establish overly burdensome requirements for such surveys.

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 does not mandate the use of specific technologies or equipment, but does prescribe specific actions or procedures. The proposed action is only as prescriptive as necessary to ensure the subdivision survey process 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 does not mandate the use of specific technologies or equipment.

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 does not mandate the use of specific technologies or equipment, but does prescribe specific actions or procedures. Neither Alternatives 1 and 2 considered by the Board require fewer 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 egress routes for subdivisions.

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 makes specific a data collection program required by statute, and as such is a Class 6 categorical exemption (14 CCR 15306).