Board of Forestry and Fire Protection

FINAL STATEMENT OF REASONS

“Fire Risk Reduction Communities List”

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

Division 1.5, Chapter 7, Subchapter 1, Article 3

# UPDATE OF INFORMATION CONTAINED IN ISOR or SSOR (pursuant to GOV §11346.9(a)(1))

No information contained in the Initial or Supplemental Statement of Reasons (SSOR) requires an

update. All material relied upon was identified in the ISOR and SSOR and made available for

public review prior to the close of the public comment periods.

# SUMMARY OF BOARD’S MODIFICATIONS TO 15-DAY NOTICED RULE TEXT AND INFORMATION REQUIRED PURSUANT TO GOV §11346.2(b)(1)) (pursuant to GOV

**§11346.9(a)(1))**

The rule text was adopted as noticed for 15 days.

# MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS (pursuant to GOV

**§11346.9(a)(2)):**

The adopted regulation does not impose a mandate on local agencies or school

districts.

# COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH THE APPLICABLE GOVERNMENT CODE SECTIONS COMMENCING WITH GOV §17500 (pursuant to GOV §11346.9(a)(2)):

The adopted regulation does not impose a reimbursable cost to any local agency or

school district.

# ALTERNATIVES DETERMINATION (pursuant to GOV §11346.9(a)(4) and (5))

No other alternatives have been proposed or otherwise brought to the Board's

attention, except as set forth in the ISOR and provided herein in the summary and

responses to comments. Based upon the findings below and a review of alternatives

the Board has determined the following:

• No alternative considered would be more effective in carrying out the purpose for

which the regulation was intended.

• No alternative would be as effective and less burdensome to affected private

persons than the adopted regulation.

• No alternative would be more cost effective to affected private persons and equally

effective in implementing the statutory policy or other provision of law.

• No alternative considered would lessen any adverse economic impact on small

business.

# ALTERNATIVE 3, BOARD’S ADOPTED ALTERNATIVE (update, pursuant to GOV §11346.9(a)(1)), of information pursuant to GOV §11346.2(b)(4)): Adopt Rulemaking Proposal as Modified Through Formal Public Review and Comment Process

The Board selected Alternative #3 as proposed and modified through the formal public

review and comment process. On September 22, 2021, the Board adopted the rule text published with the 15-Day Notice.

The proposed action is the most cost-efficient, equally or more effective, and least burdensome alternative. Alternatives 1 and 2 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action. Specifically, alternatives 1 and 2 would not be 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 than the proposed action. Additionally, alternatives 1 and 2 would not be more effective in carrying out the purpose for which the action is proposed and would not be as effective and less burdensome to affected private persons than the proposed action, or would not be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action. Further, none of the alternatives would have any adverse impact on small business. Small business means independently owned and operated, not dominant in their field of operations and having annual gross receipts less than $1,000,000.

# BRIEF SYNOPSIS OF ADDITIONAL ALTERNATIVES CONSIDERED AND REJECTED (update, pursuant to GOV §11346.9(a)(1)), of information pursuant to GOV §11346.2(b)(4))

## Alternative 1: No Action

The Board considered taking no action, but the “No Action” alternative was rejected because it would not achieve 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.

# FINDINGS (BASED ON INFORMATION, FACTS, EVIDENCE AND EXPERT OPINION) TO SUPPORT THE ALTERNATIVES DETERMINATION

* The Board finds that the adoption of regulations establishing criteria for a Fire Risk Reduction Communities List is necessary in order to adequately implement the authorizing statute and remain compliant with the Administrative Procedures Act.
* The Board finds that it is the responsibility of the Board to adopt regulations that establish criteria for a Fire Risk Reduction Communities List, and that it is the responsibility of CAL FIRE to prioritize applications based on the List in the administration of its Grants Program pursuant to Public Resources Code § 4124.7.
* The Board finds that there were no pre-existing criteria determining fire planning best practices, and that it was necessary for the Board to determine such criteria in developing the adopted alternative.
* The Board finds that the adopted criteria to determine whether a local agency meets fire planning best practices balance rigorous standards for fire risk reduction with achievability for California’s diversity of local agencies.
* The Board finds that the adopted alternative strikes a balance between performance-based and prescriptive standards.
* The Board finds that a minimum level of prescriptive standards was needed to implement the statute.
* The Board finds the adopted alternative fulfills the obligations of the Board specified in statute, and represents a product based upon compromise and the greatest degree of consensus achievable at the time the Board authorized noticing of these amendments.
* The Board finds agency representatives reviewed and provided input into these proposed regulations and subsequent amendments.

# SUMMARY AND RESPONSE TO COMMENTS (pursuant to GOV 11346.9(a)(3))

The comments below are identified in the following format: The letter S or W followed by a series of numbers separated by a hyphen, followed by the name and affiliation (if any) of the commenter (e.g. W1-8: John Doe, Resilience Planning Association).

S: Indicates the comment was received from a speaker during the Board hearing associated with the Notices of Proposed Action.

W: Indicates the comment was received in a written format.

1st number: Identifies the comments in the order in which it was received.

2nd number: Identifies which portion of the comment the response is addressing.

## WRITTEN COMMENTS AND RESPONSES RESULTING FROM 45-DAY NOTICE OF PROPOSED RULEMAKING PUBLISHED APRIL 30, 2021

### Comment W1-1: El Dorado County Fire Prevention Officer’s Association

“The fire agencies represented by this organization hereby submit the following comments regarding the proposed regulations described as 14 CCR Division 1.5, Chapter 7, Subchapter 1, Article 3 (Fire Risk Reduction Communities List):

§1268.00 (c) - Page 1, Line 13 should be revised as follows

"or other public funded entity serving either a city or ~~and~~ county."

§1268.00 (d) - Page 1, Line 15 should be revised as follows

~~“where the~~ financial responsibility .... " This language is duplicative.

§1268.01 - Page 2, Line 8 should be revised as follows

"Fire Risk Reduction Community List if it meets ~~has met~~ all of the criteria .... " This language is duplicative.

Please feel free to contact me at 916-933-6623 x1017 with any questions pertaining to this request.”

**Board response:** The Board appreciates the comment’s suggested edits to improve the clarity and grammatical correctness of the rule text. The Board has accommodated each of the three proposed changes.

**Rule text edit:** Yes

### Comment W2-1: National Fire Protection Association

“The National Fire Protection Association (NFPA) is an independent, self-funded non-profit organization dedicated to reducing loss from fire and related life safety hazards. In response to the growing wildfire crisis nationwide, we have launched Outthink Wildfire, an initiative to promote policies like increased rates of home retrofits in the wildland urban interface and greater use of sound land use planning practices including the use of applicable codes and standards. Policies to incentivize mitigation, like the Fire Risk Reduction Communities List, are integral to lowering risk to communities in California. With the following comments, NFPA is highly supportive of the Board’s efforts here to help communities develop and implement risk reduction measures.”

**Board response:** The Board appreciates NFPA participation in this rulemaking. As this paragraph does not offer an objection or recommendation regarding the proposed action or to the procedures followed by the agency in proposing or adopting the action, the Board has no further response.

**Rule text edit:** No

**Comment W2-2: National Fire Protection Association**

“All of the criteria proposed for the local agencies, both those that are local governing jurisdictions and those that are other agencies, are strong indicators of a community’s readiness to confront the wildfire hazard and pursue mitigation. Number (4) of § 1268.01 in particular provides a means of accountability and an impetus to engage in continual risk reduction efforts. To strengthen that further, the language could be changed to require that communities applying for the list provide “a progress report on implementation of detailing the progress made toward implementing the most recent fire safety recommendations from the Board . . .” This minor change indicates that such progress is an expected requirement for inclusion on the list.”

**Board response:** Regarding the suggested edit to § 1268.01(a)(4), the Board believes the proposed language conveys substantially the same meaning as the original language in the rule text, and that the original language does so more concisely.

**Rule text edit:** No

**Comment W2-4: National Fire Protection Association**

“Similarly, local agencies that seek inclusion on the list through defensible space requirements that exceed state minimums (criterion (6) of § 1268.01) should be encouraged to demonstrate their means of promoting compliance and the rate of success those efforts enjoy. In addition, only one criterion specifically addresses the issue of existing homes. Ensuring new development avoids adding risk to a community is critical, but the vast majority of the risk in the wildland urban interface (WUI) is to homes that already exist. And, while the number of homes built to the state’s WUI building code increases each year, such homes still likely only account for less than ten percent of California’s homes. Given both the urgency of the threat facing communities and the informational resources available to help guide homeowners1 on retrofitting to reduce ignition risk, we would urge the Board to consider making criterion (9) mandatory.”

**Board response:** While the Board appreciates the importance of retrofits to existing homes, it believes making § 1268.01(a)(9) mandatory instead of optional would impose overly burdensome requirements on local agencies. Furthermore, this change would be inconsistent with the regulatory direction of required compliance with existing state minimums coupled with a combination of optional requirements that exceed state minimums.

**Rule text edit:** No

**Comment W2-5: National Fire Protection Association**

“Finally, while § 1268.04 notes that this list must be updated every other year, the proposed language does not clarify whether communities must renew their list status every 24 months. Because this list stands to be a tool to incentivize risk reduction activities, communities should be required to demonstrate not only continued adherence to the criteria but also progress toward wildfire risk reduction.”

**Board response:** Section 1268.03(b)(7)(iv) was added to the rule text in the 15-day noticed text to specify that when the Board accepts an applicant for the List, they shall communicate to the local agency when their placement on the List expires. This provides the needed specificity and clarity requested by the letter writer.

**Rule text edit:** Yes

**Comment W2-5: National Fire Protection Association**

“NFPA commends the state’s efforts to encourage its communities to confront the wildfire risks facing so many Californians. If there is any assistance NFPA can provide as the Board moves forward with this or other wildfire risk reduction actions, we would be honored to provide any support we can. Please do not hesitate to reach out to Raymond Bizal, Director of Regional Operations, in California at (562) 201-4509 (rbizal@nfpa.org).”

**Board response:** The Board appreciates NFPA participation in this rulemaking. As this paragraph does not offer an objection or recommendation regarding the proposed action or to the procedures followed by the agency in proposing or adopting the action, the Board has no further response.

**Rule text edit:** No

## WRITTEN COMMENTS AND RESPONSES RESULTING FROM 15-DAY NOTICE OF PROPOSED RULEMAKING PUBLISHED APRIL 30, 2021

## Comment W1-1: Butte County Fire Chief & Department of Development

“Butte County has been following the proposed Fire Regulations and the proposed Fire Risk Reduction Communities List 2021 (FRRCL) closely over the past several months. Butte is a rural county, strongly influenced by agriculture, recreation and forestry operations. The County has been affected by a number of large wildfire disasters over the past few years, and has been very active in wildfire preparedness educational outreach, compliance with current BOF regulations for development and enforcement of fire resistant building standards. Additionally, the County has a well-developed and effective county-wide Fire Safe Council, along with many local area Fire Safe Councils, established Firewise communities, and an active Wildfire Safety Task Force. We understand the desire of the Board of Forestry to establish standards to help communities take action to mitigate the consequences of wildfire activity, and appreciate the opportunity to comment on the proposed regulations.”

**Board response:** The Board appreciates Butte County’s participation in this rulemaking. As this paragraph does not offer an objection or recommendation regarding the proposed action or to the procedures followed by the agency in proposing or adopting the action, the Board has no further response.

**Rule text edit:** No

## Comment W1-2: Butte County Fire Chief & Department of Development

“As the Butte County Fire Chief overseeing fire protection operations throughout Butte County, including the Town of Paradise, and the Development Services Director covering all communities in the unincorporated area, we have strong reservations about the proposed FRRCL.

Importantly, we unequivocally believe that the State standards should be "MET" and not required to be exceeded, in order to be prioritized for grant funding through the State. Many of the standards listed may be achievable over the course of the next few years, and many may have already been met, but it is highly unlikely that all standards have been met, much less exceeded. Surely the goal of grant funding is to assist counties and agencies to update general plans and ordinances and implement programs to meet standards set by the state, and provide funding and assistance to those entities struggling to come into compliance.”

**Board response:** The Board understands the comment’s stated desire for removal of the list criterion which requires state minimum standards to be exceeded rather than simply met. However, the Board would like to point out that this criterion is one of five optional criteria, of which a local agency may choose any two to meet. Of the four required criteria for local agencies which are cities and/or counties, none require a local agency to exceed statewide minimum standards. The optional criterion which requires a local agency to exceed state minimums was developed with the recognition 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.

The implementation of this list in distributing grant funding is the responsibility of the Department of Forestry and Fire Protection pursuant to PRC 4124.7. As such, the Board has no further comment on the goals of any particular grant funding mechanism.

**Rule text edit:** No

## Comment W1-3: Butte County Fire Chief & Department of Development

“Capacity for implementation of plans and projects such as wildfire mitigation and prevention is an issue for most counties, particularly those counties concurrently facing wildfire disasters and related recovery efforts. Additionally, the notion that only counties and local agencies having low income populations are struggling to implement all of the standards listed is simply not true - capacity and regulations remain an issue.”

**Board response:** The Board appreciates Butte County’s input. As this paragraph does not offer an objection or recommendation regarding the proposed action or to the procedures followed by the agency in proposing or adopting the action, the Board has no further response.

**Rule text edit:** No

## Comment W1-4: Butte County Fire Chief & Department of Development

“Setting an arbitrary 2019 demographic date for determining low-income status is another issue, as disasters and other events (such as COVID) affect county, city and other local agency revenues, employment opportunities, wages, and other critical demographics. Furthermore, instead of establishing new criteria in the proposed regulations, it would be more appropriate to refer to something like the Department of Finance annual estimates that are already widely in use to establish income status on an annual basis.”

**Board response:** The Board recognizes the benefits of using existing data and definitions where possible to avoid creating definitions that are confusing or duplicative. Accordingly,

2019 was chosen not arbitrarily but because it was the most recent demographic data available from the US Census Bureau’s American Community Survey; the Board plans to update the date in the regulations as new data becomes available into the future. Furthermore, the Board did rely on existing annual income thresholds as the comment suggests it should – the proposed definition for Low-Income Local Agency relies on income thresholds published annually by the State Department of Housing and Community Development.

**Rule text edit:** No

## Comment W1-5: Butte County Fire Chief & Department of Development

“We strongly object to the grant selection basis of this proposed FRRCL. The grant vetting processes utilized by state agencies such as Cal Fire and the Sierra Nevada Conservancy already have stringent guidelines for approval. They are in a position to determine which applications have the most merit, and which applicants have favorable track records for effective implementation. To legislate who will receive grant funding instead of relying on the publicly posted requirements and internal review process of the grant programs is arbitrary and counter-productive. Why not establish a list as a recognition program for those entities who are compliant, and implementing beneficial programs, on a "meeting standards" basis? And encourage sharing of best practices through such recognition. Surely, that would be a favorably received and more effective means of achieving the goal of wildfire resilient communities in the State of California.”

**Board response:** The Board appreciates Butte County’s suggestions for alternative recognition programs. However, PRC 4290.1 requires the Board to “develop criteria for and maintain” a list of “local agencies….that meet best practices for local fire planning.” To create another kind of list or recognition program does not fall within the authorities granted to the Board by the Legislature.

**Rule text edit:** No

## Comment W1-6: Butte County Fire Chief & Department of Development

“We respectfully request that the Board of Forestry reconsider the proposed FRRCL standards, remove arbitrary requirements that may well be counter-productive, and re-draft standards that complement existing State funded grant programs while encouraging proactive and timely compliance with state regulations.”

**Board response:** The Board appreciates Butte County’s participation in this rulemaking. As this paragraph does not offer a specific objection or recommendation regarding the proposed action or to the procedures followed by the agency in proposing or adopting the action, the Board has no further response.

**Rule text edit:** No