Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

"Subdivision Map Findings, 2019"

Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 7, Subchapter 4, Article 2.

Adopt
Subchapter 4 Fire Protection Planning
Article 2 Subdivision Map Findings

§ 1266.00 Definitions
§ 1266.01 Subdivision Map Findings
§ 1266.02 Reporting the Findings

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 66474.02, a provision in the Subdivision Map Act, requires a legislative body of a county to make two findings before approving a tentative map, or a parcel map for which a tentative map is not required, for a subdivision within the State Responsibility Area (SRA) or a Very High Fire Hazard Severity Zone (VHFHSZ). These findings are related to the design of the subdivision for fire protection, including ensuring compliance with Public Resources Code (PRC) 4290 and 4291 and finding that the subdivision has adequate fire protection from a fire agency. By making these findings, the legislative body is asserting that the subdivision is designed and built to meet the state minimum requirements for fire protection, which draws attention to the importance of planning for fire protection and ensuring that in particular, subdivisions in high fire hazard areas have adequate ingress and egress (PRC 4290) and defensible space (PRC 4291). Compliance with those two sections of code provide for the safe evacuation of a community during any kind of disaster, not just wildfires, and also provide a safer environment for firefighters to defend homes from an oncoming wildfire. This statute also requires that the legislative body must send these findings to the Board of Forestry and Fire Protection.

The **problem** is that regulations are necessary to implement and make specific the process by which the legislative body must make these findings and submit them to the Board.

The **purpose** of the proposed action is to develop a transparent, clear, and standardized process for legislative bodies to make the tentative/parcel map findings and transmit them to the Board.

The **effect** of the proposed action is to create a process by where local legislative bodies have no confusion regarding the process to send the Board their tentative/parcel map findings, and by where the Board is receiving standardized, consistent information regarding those findings from jurisdiction to jurisdiction.

The **primary benefit** of the proposed action is a clear, direct, and standardized transmission 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 §§ 1266.00, 1266.01, and 1266.02.

The problem is there are no regulations implementing or making specific GC 66474.02.

The purpose of the proposed action is to provide unambiguous and transparent information about making the fire protection findings required in GC 66474.02 and sending those findings to the Board.

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 does not duplicate or rephrase existing rules.

Adopt § 1266.00 Definitions
It is necessary to adopt definitions for this article to ensure consistency within and between the regulations and statute. These definitions largely reference statutes that relate to the statute being implemented by this regulation (GC 66474.02) to ensure the

Legislature's intent with GC 66474.02 is captured accurately.

The definitions for "local agency," "State Responsibility Area," and "very high fire hazard severity zone" all cross-reference GC 51177, which is also cross-referenced in GC 66474.02. By using the same definitions as statute, these regulations accurately capture the Legislature's intent.

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.

The definitions for "parcel map" and "tentative map" are taken from earlier sections of the Subdivision Map Act. GC 66474.02, which this rulemaking implements, is part of that Act, and so using definitions found earlier in that Act ensures consistency and reduces confusion.

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 findings and 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 § 1266.02.

Adopt § 1266.01 Subdivision Map Findings

This section is copied from statute. It is necessary to copy statute here so that there is no question over the findings that need to be made. If these regulations rephrased or paraphrased this statute, confusion would ensue.

One change has been made to the statute, where "a legislative body of a county" has been revised to read "a legislative body of a local agency." Both the final Senate and Assembly Floor Analyses prepared in August on the bill revising GC 66474.02 (SB 1260, Jackson) refer to a "local agency" making the findings and transmitting them to the Board. Additionally, counties do not have "a very high fire hazard severity zone, as…defined in Section 51177" (GC 66474.02(a)). Taken together, these facts imply that the Legislature intended for these findings to be made by the legislative bodies of agencies that were not strictly "counties." In order to make this distinction clear, it is necessary to change "county" in statute to "local agency" in regulation.

Adopt § 1266.02 Reporting the Findings
This section is necessary to clarify the process by which local legislative bodies send the findings required in § 1266.01 to the Board of Forestry and Fire Protection, as required in GC 66474.02(b).

§ 1266.02(a) requires the local agency to transmit the findings and tentative or parcel map(s) to the Board within 30 calendar days. This establishes a clear deadline for the local agency to send the findings and maps to the Board, while giving them enough time to perform any work to gather the information required by § 1266.02(b), (c), or (d). Without a deadline to send the maps to the Board, local agencies may decide to collect and send their findings to the Board at irregular intervals. Depending on how frequently they do this, that could result in a significant, unexpected workload for Board staff as they try to sort the findings and maps and determine that the findings were made appropriately. Having the findings and maps sent to the Board shortly after they are made allows the Board to determine if any local agencies are interpreting or applying PRC 4290 or 4291 incorrectly, and the Board can reach out to them to correct missteps before the incorrect interpretation is applied largely across the agency.

§ 1266.02(b) establishes the file format and method of transmission local agencies must utilize when sending their findings and maps 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.

§ 1266.02(c) allows the Board to request additional subdivision 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 how the subdivision’s design is compliant with PRC 4290 and 4291, or the Board may be interested in more information about the approved tentative or parcel map in relation to the geography of the area, other nearby developments, appropriate fire protection (i.e., station location). Within the local agency’s capabilities, the Board may request other file types in order to discern more information about these areas.

§ 1266.02(d) allows the Board to establish a form to collect consistent information about each subdivision and its set of findings. This is necessary for the Board to be able to efficiently file, search, and analyze the submitted findings. Without consistent identifying information about each subdivision, a significant amount of Board staff time would be spent transferring inconsistent information received from each agency into an easily searchable and coherent database.

§ 1266.02(d)(1) requests the name of the jurisdiction submitting the findings and contact information. This allows the Board to follow up with the jurisdiction and is necessary to allow the Board the keep accurate records regarding the location of each subdivision.

§ 1266.02(d)(2) requests information about the meeting where the legislative body made the tentative or parcel map findings. This information is necessary in the event there is a legal question about whether the findings were officially made by the agency or other questions about the veracity of the findings. Establishing a background fact pattern allows the Board to gather additional information about the findings if a part of that process is ever called into question.

§ 1266.02(d)(3) requests information about where the subdivision is located in relation to the rest of the jurisdiction or the name of the subdivision. Asking for this information is necessary for the Board to be able to spatially analyze where new development is being approved. It is necessary the Board have this information so they can analyze the development growth in California, especially in the SRA and VHFHSZs, and ensure that all new subdivisions are being approved having made these findings. Knowing where these subdivisions that have made these findings are located allows the Board to search for development that perhaps had not had these findings made, and take remedy action as allowable.

§ 1266.02(d)(4) requests more specific information about how the local agency's legislative body came to determine there was substantial evidence in the record for them to determine the subdivision meets the requirements in § 1266.01(a). "Substantial evidence in the record" is left undefined by statute, and so it is necessary to provide instructions to local agencies as to how to determine that substantial evidence exists in order to make the two findings in § 1266.01(a).

§ 1266.02(d)(4)(A) would provide a way for the local agency to directly provide evidence for each requirement in the regulations that implement PRC 4290 (Title 14 of the California Code of Regulations (14 CCR), Division 1.5, Chapter 7, Subchapter 2, Articles 1-5, the SRA Fire Safe Regulations) and PRC 4291 (14 CCR Division 1.5, Chapter 7, Subchapter 3, Article 3 Fire Hazard Reduction Around Buildings and Structures). This method is a very straightforward way to collect proof from the local agency that the subdivision "consistent with regulations adopted by the State Board of Forestry and Fire Protection pursuant to Sections 4290 and 4291 of the Public Resources Code," as required in GC 66474.02.

§ 1266.02(d)(4)(B) would offer an alternative to § 1266.02(d)(4)(A) whereby local agencies who have had their local ordinances certified as meeting or exceeding the SRA Fire Safe Regulations could sign off that the subdivision meets all the requirements of those local ordinances. This option in § 1266.02(d)(4)B) relies on the good faith of local agencies to report on the compliance of the subdivision with their own local rules. Because the agency has made an extra effort to get their local ordinances certified as meeting or exceeding the state minimum standards (see 14 CCR § 1270.03 Local Ordinances), there is greater assurance that any subdivision built to those local

standards still meet the state requirements. Since the Board has reviewed those local ordinances and has them on file, the Board has the ability to discern when a local agency is allowing subdivisions that do not comply with the local ordinances and take corrective action. This option, to sign off on the subdivision instead of filling out the checklist in § 1266.02(d)(4)(A), would only be applicable to the compliance with PRC 4290. PRC 4291 and its associated regulations have no comparable process.

§ 1266.02(d)(4)(C) asks for information regarding the presence of adequate structural fire protection and suppression as required in GC 66474.02(a)(2). A short narrative description of how those services would be provided, and the signature of the relevant fire official confirming these services, would provide enough information to the Board to satisfactorily meet the "substantial evidence in the record" requirement without being overly burdensome to local agencies.

§ 1266.02(d)(4)(D) allows local agencies to provide to the Board additional information that informed their ability to make the findings in § 1266.01(a). In the event the agency relied on information to make their findings that is not apparent by responding to the requests in § 1266.02(d)(4)(A-C), this subsection provides them the opportunity to present that information to the Board as "substantial evidence in the record."

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 findings required in GC 66474.02.

Creation or Elimination of Jobs within the State of California

The proposed action makes specific how a local agency establishes "substantial evidence in the record" to make the two findings in GC 66474.02(a) and how to transmit those findings to the Board as required in GC 66474.02(b). Because the regulation relies heavily on rephrasing or restating existing statute, it does not create or eliminate jobs within the state. Where the proposed action makes specific statute (such as by determining how to establish "substantial evidence in the record"), it is of limited scope 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 how a local agency establishes "substantial evidence in the record" to make the two findings in GC 66474.02(a) and how to transmit those findings to the Board as required in GC 66474.02(b). Because the regulation relies heavily on rephrasing or restating existing statute, it does not create or eliminate jobs within the state. Where the proposed action makes specific statute (such as by determining how to establish "substantial evidence in the record"), 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 how a local agency establishes “substantial evidence in the record” to make the two findings in GC 66474.02(a), and how to transmit those findings to the Board as required in GC 66474.02(b). Because the regulation relies heavily on rephrasing or restating existing statute, it does not create or eliminate jobs within the state. Where the proposed action makes specific statute (such as by determining how to establish “substantial evidence in the record”), it 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 in the SRA and VHFHSZ. By finding substantial evidence in the record that a subdivision complies with PRC 4290 and 4291 and has adequate structural fire protection services, jurisdictions are reducing the potential for a catastrophic wildfire that would otherwise result in losses of life and property and impact smoke-sensitive populations. PRC 4290 and 4291 place statutory and regulatory requirements regarding housing construction, defensible space, and other fire safety measures on development in the SRA and VHFHSZ, which leads to greater civilian safety during evacuations and a greater likelihood that firefighters can safely defend a home from an oncoming wildfire. 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:

(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.
- Staff participation in the certification of local ordinances in meeting or exceeding the SRA Fire Safe Regulations.
- Discussions with Department of Forestry and Fire Protection staff on implementation of the enabling statute, GC 66474.02.

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: 51179, 66411.1, 66424.5, 66474.02

2. Excerpts from Public Resources Code (PRC), 2019: 4102, 4111, 4112, 4113, 4114, 4125, 4290, and 4291

3. Excerpt from Title 14 of the California Code of Regulations, 2019: 14 CCR § 1270.03

4. Senate Bill 1260 (Jackson, 2018)

5. California State Assembly Final Floor Analysis – SB 1260, Jackson

6. California State Senate Final Floor Analysis – SB 1260, Jackson

7. 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 66474.02 is somewhat prescriptive in nature and requires little to no interpretation or clarification. However, as the Board can expect to receive hundreds to thousands of these findings 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 to demonstrate "substantial evidence in the record." 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.

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 GC 66474.02 specific enough to provide clear guidance to the Board and local agencies in determining there is enough substantial evidence in the record to support the two findings and guidance regarding the requirements for submitting those findings and the relevant maps to the Board, 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 subdivision maps.

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 thAnoe environment or reasonably foreseeable indirect change to the environment (14 CCR § 15378(a)) and is not subject to CEQA.