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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 4. DEPARTMENT OF CANNABIS CONTROL

DIVISION 19

SUBJECT MATTER OF PROPOSED REGULATIONS: Quick Response (QR) Code Certificate Requirements for Cannabis Licensees

SECTIONS AFFECTED: Title 4, California Code of Regulations, sections 15039, 15311, and 15415.

Notice is hereby given that the Department of Cannabis Control (Department) proposes to adopt the proposed amended regulations, described below, after considering all comments, objections, and recommendations regarding the proposed action. The Department, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for inspection and copying 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

All the proposed text sections are proposed to be added to the California Code of Regulations (CCR), under Division 19 of Title 4.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or the interested person’s authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or the interested person’s authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Written comments, including those sent by mail or e-mail to the addresses listed below.

Comments submitted by must be received by the Department at its office by 5:00 p.m. on September 21, 2021.

Submit comments to:

Department of Cannabis Control, Legal Affairs
 Division
 2920 Kilgore Road
 Rancho Cordova, CA 95670
 E-mail: publiccomment@cannabis.ca.gov

AUTHORITY AND REFERENCE

Business and Professions Code (BPC) section 26013 authorizes the Department to adopt regulations for the licensing of commercial cannabis activity. The proposed regulations implement, interpret, and make specific sections 26012, 26053, 26070, and 26090 of the Business and Professions Code, also known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

Pursuant to BPC section 26010.5, subsection (d), the Department has the power, duty, responsibility, and jurisdiction to regulate commercial cannabis activity as provided in the MAUCRSA. Pursuant to BPC section 26011.5, the protection of the public shall be the highest priority for all licensing authorities in exercising licensing, regulatory, and disciplinary functions under the MAUCRSA. The aim of the proposed regulations is protection of the public by providing cannabis consumers with a method for easily identifying licensed cannabis businesses. Licensed cannabis businesses are only authorized to sell cannabis goods that have passed mandatory laboratory testing requirements prior to sale. Cannabis goods sold by unlicensed businesses do not have the same laboratory testing requirements, thus, having a higher risk of causing harm to consumers. Thus, the ability to easily identify licensed cannabis businesses is critically important to protect cannabis consumers.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action amends the Department’s regulations to add a requirement for licensed retailers and distributors to display a QR Code certificate provided by the Department. Additionally, the

proposed regulations will require employees engaged in the transportation or delivery of cannabis goods to carry the QR Code certificate. The regulations will provide the size and placement requirement for the QR Code certificate to ensure visibility and easy customer access to the QR Codes.

The proposed regulations are necessary to provide members of the public with a method for verifying that a cannabis business is properly licensed. By requiring all storefront retailers to clearly display a QR Code certificate, the public will be able to easily distinguish licensed cannabis retailers from unlicensed retailers through use of the QR Code certificate. Once the QR Code is scanned, it will display information about the license, including if it is an active state license. This will assist in decreasing the risk of harm that may result from the purchase and consumption of untested and unsafe cannabis goods. Additionally, requiring delivery and transportation employees to carry a copy of the QR Code certificate will allow delivery customers, law enforcement, and other members of the public to use the QR Code certificate to verify the licenses of the cannabis businesses for whom the delivery employees work.

In July 2021, the Department was established through the consolidation of the former three cannabis licensing authorities. The Department inherited the authorities and responsibilities of all three licensing entities including the authority to promulgate regulations. The former three licensing authorities filed actions to make changes without regulatory effect, pursuant to 1 CCR 100, to relocate and renumber the existing cannabis regulations within their respective titles to the Department under Title 4. On July 14, OAL approved the actions to renumber and relocate the regulations and filed the actions with the Secretary of State, making the changes effective the same day. Therefore, the section numbers of the regulations as initially noticed in the emergency package have been amended for clarity and accuracy. The changes are as follow: 16 CCR 5039, 5311, and 5415 have been changed to 4 CCR 15039, 15311, and 15415.

Incorporated by Reference

There are no documents incorporated by reference.

Anticipated Benefit of the Proposed Regulations:

The broad objective of these proposed regulations is to provide a mechanism for purchasers of cannabis goods to easily identify whether the retailer they are purchasing cannabis goods from is properly licensed by the Department. The proposed amendments to the regulations will allow consumers to expediently and conveniently determine if a cannabis business is licensed at the specific business location before entering the business to make a purchase. Additionally, consumers purchasing cannabis goods by delivery will also be able to confirm licensure through the QR

Code certificate carried by the delivery driver. Also, those transporting and delivering cannabis will have the license and QR Code certificate in their vehicle, allowing for easier verification of their employer's license.

It is expected that the requirements created by the proposed amendments to the regulations will allow customers to more easily make a determination of the legality of a specific cannabis business and avoid entering unlicensed premises, thereby decreasing purchases from unlicensed businesses. This should aid in preventing illegal cannabis goods from reaching consumers, thereby reducing the potential of harm to the consumer.

The present proposal will also allow easier access to information on legal cannabis businesses and provide consumers with a better means of finding and purchasing safer, laboratory tested, legal cannabis products from licensed businesses in the future. This should better protect the public health and safety, as outlined above.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that these proposed regulations are not inconsistent or incompatible with existing regulations.

Evaluation of Inconsistency/Incompatibility with Existing Federal Regulations:

Under the federal Controlled Substances Act (21 U.S.C. § 801, *et seq.*), cannabis is federally illegal. However, California, through the MAUCRSA, has decriminalized the cultivation, sale, and possession of cannabis goods for persons aged 21 or older, and medicinal patients. After conducting a search and review of any similar regulations on this topic, the Department has determined that these proposed regulations are not inconsistent or incompatible with existing regulations and are the only regulations regarding cannabis retailers and distributors related to the use of QR Codes and a QR Code certificate.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Local mandate: There will be no local mandate.

Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code sections 17500, *et seq.*: None.

Any other non-discretionary cost or savings imposed on local agencies: None.

Cost or savings to any state agency: None.

Cost or savings in federal funding to the state: None.

Economic Impact and Fiscal Impacts

Cost impacts on a representative private person or business: None. The Department is not aware of any cost impacts other than described below that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulations.

Statewide adverse economic impact directly affecting businesses and individuals: The Department has determined that the proposed regulations may have a cost impact on businesses that are licensed by the Department. These businesses may incur a one-time cost of up to \$100 to comply with the requirements of the proposed regulation.

This cost would include the making copies of the QR Code certificate, providing copies to delivery and transport employees, and posting a copy of the certificate in a location on the licensed premises that complies with the proposed requirements. Such costs are anticipated to be minor and absorbable by businesses, and will therefore not have an adverse economic impact statewide.

Small Business Determination: The Department has determined that the proposed regulations will affect small businesses. Small businesses that are licensed by the Department may incur a one-time cost of up to \$100 to comply with the requirements of the proposed regulation.

The proposed regulation will not have a significant adverse economic impact on businesses. As indicated above, some licensees may incur a one-time cost of up to \$100 to comply with the posting requirement found in the proposed regulations.

The Department does not anticipate the creation or elimination of jobs or licensed businesses, or the expansion of existing businesses, as a result of the proposal, although the public's use of the QR Code certificates will likely lead illegally operating cannabis business to lose business to legally operating businesses, which is an anticipated consequence of this regulation for the public safety reasons outlined herein. However, the amount of the shift in business is speculative, at this time, and thus unquantifiable.

This regulatory proposal benefits the health and welfare of California residents by allowing easier access to information on legal cannabis businesses and providing consumers with a means of finding and purchasing safer, laboratory tested, legal cannabis products from licensed businesses.

This regulatory proposal does not affect worker safety.

This regulatory proposal does not benefit or negatively impact the State's environment because the proposed regulatory action does not involve any topic that induces harm or benefit to the environment in the State.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Kaila Fayne
 Department of Cannabis Control
 2920 Kilgore Road
 Rancho Cordova, CA 95670
 916-465-9025
Kaila.Fayne@cannabis.ca.gov

The backup contact person for these inquiries is:

Paul Atienza
 Department of Cannabis Control
 2920 Kilgore Road
 Rancho Cordova, CA 95670
 916-465-9029
Paul.Atienza@cannabis.ca.gov

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to the contact persons listed above.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying, throughout the rulemaking process, at its office at the address above. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies of materials may be obtained by contacting Kaila Fayne at the address, email or phone number listed above.

AVAILABILITY OF CHANGED OR
MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations, substantially, as described in this Notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations, as revised. Please send requests for copies of any modified regulations to the attention of Kaila Fayne at the address, email, or phone number indicated above.

The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL
STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Kaila Fayne at the above address, email, or phone number indicated above.

AVAILABILITY OF
DOCUMENTS ON THE INTERNET

Copies of the notice of proposed action, the initial statement of reasons, and the text of the regulations can be accessed through the Department's website at: <https://cannabis.ca.gov/resources/rulemaking/>.

**TITLE 9. DEPARTMENT OF STATE
HOSPITALS**

ENHANCED TREATMENT PROGRAM

The Department of State Hospitals (Department) hereby gives notice of the proposed regulatory action(s) described in this document. A public hearing regarding this proposal is not currently scheduled. Not later than 15 days prior to the close of the public comment period, any interested person, or their duly authorized representative, may make a written request for a public hearing pursuant to Government Code 11346.8, and a public hearing will be held. Requests for a public hearing should be sent to:

California Department of State Hospitals
Regulations and Policy Unit
RE: Enhanced Treatment Program
1215 O Street, MS-20
Sacramento, CA 95814
Tel: (916) 654-2478, Fax: (916) 651-3090
Email: DSH.Regulations@dsh.ca.gov

WRITTEN COMMENT PERIOD AND
SUBMITTAL OF COMMENTS

Statements or arguments relevant to the proposed regulatory action may be submitted to the Department in writing, email, or facsimile to the address and number listed above. All comments must be received by **September 20, 2021**.

Comments sent to persons or addresses other than that specified or received after the date specified above may be included in the record of this proposed regulatory action but may not be summarized or responded to regardless of the manner of transmission.

AUTHORITY AND REFERENCE

Authority: Welfare and Institutions Code sections 4005.1, 4011, 4027, 4101 and 4144.

Reference: Health and Safety Code section 1265.9, and Welfare and Institutions Code sections 4027, 4101, 4144 and 4312.

INFORMATIVE DIGEST AND POLICY
STATEMENT OVERVIEW

Sections Affected:

The Department proposes to adopt new Chapter 17, Article 1, section 4800; Article 2, sections 4900, 4901, 4902, 4903, 4904, 4905; Article 3, section 5000; Article 4, section 5100; Article 5, section 5200; and Article 6, section 5300, to Title 9 of the California Code of Regulations.

Existing Laws/Regulations:

The Department includes duplicative language provided by Welfare and Institutions Code section 4414, cited as a "reference" for these proposed regulations, to provide clarity on the enumerated aspects of these regulations. This is necessary to differentiate between numerous procedural aspects included in the statute that are specified in the Department's regulations.

Welfare and Institutions Code section 4005.1 provides that the Department may adopt and enforce rules and regulations necessary to carry out its respective duties.

Welfare and Institutions Code section 4011 provides that the Department shall have jurisdiction over the execution of the laws relating to care and treatment

of persons with mental health disorders under the custody of the Department.

Welfare and Institutions Code section 4027 provides that the Department may adopt regulations concerning patients' rights and related procedures applicable to the inpatient treatment of mentally ill offenders committed to the Department pursuant to Penal Code sections 1026, 1026.2, 1364, 1370, 1610, and 2684, pursuant to Welfare and Institutions Code section 1756, mentally disordered sex offenders, and inmates of jail psychiatric units.

Welfare and Institutions Code section 4101 provides that unless specifically authorized by law, all institutions under the jurisdiction of the Department shall be governed by uniform rule and regulation of the Department.

Welfare and Institutions Code section 4312 provides that state hospital director may establish rules and regulations concerning the care and treatment of patients, research, and clinical training and for the government of the hospital buildings and grounds.

Existing law pursuant to Assembly Bill 1340 (2014) authorized the Department to establish and maintain pilot ETPs to treat patients at a high risk of most dangerous behavior when safe treatment is not possible in a standard treatment environment. (Health & Safety Code, section 1265.9; Welfare and Institutions Code, section 4144.) However, the statutes do not provide guidance on logistics and patients' rights issues, which must necessarily be clarified in these proposed regulations to implement the ETP.

Effect of the Proposed Regulatory Action:

This proposed rulemaking clarifies the referral, admissions, and discharge processes of the ETP, and other relevant treatment, security, and patients' rights components necessary to operate the ETP. With these regulations, the Department will be able to implement the ETP and better treat and serve our unique patient population.

Policy Statement Overview/Broad Objectives:

It is the policy of the Department to expand the continuum of care by establishing the ETP to provide safer treatment to patients who are at high risk of most dangerous behavior and who can benefit from concentrated, evidence-based clinical therapy and structured milieu therapy or treatment aimed at reducing the risk of violent behavior, with the goal of returning the patient to a standard treatment environment. The Department is committed to providing treatment in the least restrictive environment.

Anticipated Benefits of the Proposed Regulation:

These regulations clarify referral, admissions, and discharge to the ETP and other relevant treatment, security, and patients' rights components necessary to operate the ETP. With these regulations, the

Department will be able to implement the ETP and better treat and serve our unique patient population. The Department's implementation of the ETP will lead to the beneficial treatment of those most dangerous individuals at the hospitals, thus reducing overall violence in the hospitals.

Evaluation of Inconsistency or Incompatibility with Existing State Regulations:

The Department surveyed for any other regulations on this subject matter and found none. During the development of this proposed regulatory action, the Department reviewed any regulations similar to this topic and concluded that the proposed regulation is neither inconsistent nor incompatible with existing state regulations or statutes. In arriving at this conclusion, the Department reviewed the Welfare and Institutions Code, the Penal Code, and its own regulations in title 9 of the California Code of Regulations.

Substantial Difference from Existing Comparable Federal Regulations or Statute:

None.

FORMS INCORPORATED BY REFERENCE

1. ETP Referral Form, DSH-9220 (Rev. 9/17)
2. ETP Certification Form, DSH 9219 (Rev. 4/18)

It is necessary to incorporate these two forms by reference as it would be unduly burdensome for the Department to publish these forms in the regulation text due to these forms being electronic forms utilized by the Department and the inability to print these forms as they appear in the electronic health record. These documents were incorporated by reference because it would be cumbersome, unduly expensive, and otherwise impractical to publish them in the California Code of Regulations.

LOCAL MANDATE STATEMENT

Mandate on local agencies and school districts: The Department has determined that the proposed regulations would not impose a mandate on any local agency or school district that requires reimbursement by the state under Government Code, Division 4, Part 7 (commencing with Section 17500).

FISCAL IMPACT

Cost to any local agency or school district requiring reimbursement: The Department anticipates no fiscal impact to local agencies or school districts.

Cost or savings to any state agency: The Department anticipates no additional costs, apart from the costs associated with the implementation and operation of the ETP program, authorized by statute.

Other non-discretionary cost or savings imposed upon local agencies: The Department has determined that the proposed regulations would not create other non-discretionary costs or savings to state or local agencies. The Department anticipates no fiscal impact to local agencies.

Cost or savings in federal funding to the state: The Department has determined that the proposed regulation would not create costs or savings in federal funding to the state.

HOUSING COST

Significant effect on housing costs: None.

SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS AND INDIVIDUALS

The Department is not aware of any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Small Business Determination: The Department is not aware of any cost impacts that a small business would necessarily incur due to the proposed regulations. Small businesses are not affected by the regulations.

STATEMENT OF RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Creation or elimination of jobs within California: The Department anticipates no creation or elimination of jobs within California.

Creation of new business or elimination of existing businesses within California: The Department does not anticipate the creation of new businesses or elimination of existing businesses with California.

Expansion of businesses currently doing business within the state: The Department anticipates no expansion of businesses currently doing business within the state.

Benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment: The proposed regulation benefits the health and welfare of California residents because the ETP will provide advanced treatment for patients at high risk of most dangerous behavior. It benefits the health and welfare of California residents because ETP may help a patient become capable of safely reintegrating with the general public upon their release. This regulation will benefit workers, making them safer by removing patients at high risk of most dangerous behavior from the standard treatment environment. The Department does not anticipate

benefits affecting the state's environment because the regulation does not have any relation to environmental issues.

COST IMPACTS TO A REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

STATEMENT OF ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to submit statements or arguments with respect to alternatives to the proposed regulation during the comment period

CONTACT PERSONS

The primary contact for this regulatory action is Tarik Allen, and the backup contact is Sylvester Okeke. They can be reached by telephone at (916) 654-2478.

AVAILABILITY STATEMENTS

The Department has prepared an Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic impacts of the proposal and all the information upon which the proposal is based, and the proposed text (the "express terms") of the regulation. Copies of the proposed regulation text and ISOR may be accessed on the Department's website, listed below, or may be obtained from the Department using the contact information provided in this document.

Further, non-substantive inquiries concerning the proposed regulatory action may be directed to the contact person named in this document at (916) 654-2478. The Department has compiled a record of this rulemaking action, which includes all the information upon which the proposal is based and is available for inspection upon request to the contact persons.

Following the close of the public comment period or date of the public hearing, if one is held, the Department may adopt the proposed regulations substantially as

described in this notice or may modify the proposed regulation if the modifications are sufficiently related to the original text. Except for non-substantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the contact person identified in this document.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons (FSOR) shall be available and copies may be requested from the contact person in this notice or may be accessed on the Department’s website listed below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

This notice, the ISOR, the proposed regulation text, and all subsequent regulatory documents, including the FSOR, when completed, are available on the Department website at <https://www.dsh.ca.gov/Publications/Regulations.html>.

TITLE 10. DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

The Department of Financial Protection and Innovation (“Department”) proposes to amend Title 10 of the California Code of Regulations sections 1602, 1603, 1606, 1613, 1614, 1615, and 1616 to implement revisions to the Pilot Program for Increased Access to Responsible Small Dollar Loans (“RSDL” or “Pilot Program”)¹, whose sunset date has been extended until January 1, 2028.² The Pilot Program is administered by the Department³ and established under the California Financing Law (“CFL”).⁴

The proposed regulations implement Senate Bill 235 (“SB 235”),⁵ which authorizes a finder, defined as an entity that brings together a licensed lender and prospective borrower to negotiate a contract,⁶ to perform additional services on behalf of a lender. SB 235 enables certain finders to perform additional

services such as disbursing loan proceeds to borrowers on behalf of lenders participating in the Pilot Program, receiving loan payments from borrowers, and providing notices and disclosures to borrowers.

The proposed regulations also implement Assembly Bill 237 (“AB 237”)⁷ which, among other things, increases the upper dollar limit for a permissible Pilot Program loan from \$2,500 to \$7,500 and requires participating lenders to conduct reasonable background checks on finders.

AUTHORITY⁸

Financial Code section 22150.

REFERENCE⁹

Financial Code sections 22365, 22370, 22371, 22372, 22373, 22374, 22375, 22377, 22379, 22602, and 22380.

PUBLIC HEARING¹⁰

The Department has not scheduled a public hearing on this proposed action but will hold one if any interested person or authorized representative makes a written request for a hearing within 15 days of the close of the written comment period.

WRITTEN COMMENT PERIOD¹¹

Any interested person or authorized representative may submit written comments regarding this proposed regulatory action to the Department, addressed as follows, by postal or electronic mail:

By Postal Mail
 Department of Financial Protection and Innovation
 Attn: Sandra Sandoval
 300 South Spring Street, Suite 15513
 Los Angeles, California 90013

By Electronic Mail
 Comments may be submitted electronically to regulations@dfpi.ca.gov with a copy to David.Bae@dfpi.ca.gov. Please identify the comments as PRO 04/21 in the subject line.

Written comments may be submitted until September 20, 2021.

¹ Fin. Code, §§ 22365 to 22381.

² Assem. Bill No. 2196 (2019–2020 Reg. Sess.).

³ Fin. Code, § 22701, subdivision (a).

⁴ Fin. Code, § 22000 et seq. Assem. Bill No. 1284 (2017–2018 Reg. Sess.) renamed the “California Finance Lenders Law” the “California Financing Law.”

⁵ Sen. Bill No. 235 (2015–2016 Reg. Sess.).

⁶ Fin. Code, § 22371, subdivision (b).

⁷ Assem. Bill No. 237 (2018–2019 Reg. Sess.).

⁸ Gov. Code, § 11346.5, subdivision (a)(2).

⁹ *Id.*

¹⁰ Gov. Code, § 11346.5, subdivision (a)(17).

¹¹ Gov. Code, §§ 11346.4, subdivision (a), 11346.5, subdivision (a)(15).

Comments Relating to the Proposed Rulemaking Action: Economic and Cost Impact to Business and Individuals

Please send the Department comments addressing the economic and cost impact of the proposed rulemaking to businesses, investors, finders, and other individuals and whether there are less burdensome alternatives to achieve the regulatory objectives.

INFORMATIVE DIGEST¹²

Policy Statement and Specific Benefits Anticipated from Regulatory Action¹³

The main purpose of the proposed regulations is to revise and update the Pilot Program rules to reflect changes to California law, specifically SB 235 and AB 237.

In 2010, the Legislature created an earlier pilot program for Affordable Credit–Building Opportunities¹⁴ (“ACBO”) under the CFL to make affordable short–term credit more available to consumers. However, the Legislature soon recognized the ACBO’s ineffectiveness and replaced it with the Pilot Program for Increased Access to Responsible Small Dollar Loans, initially effective from January 1, 2014 to January 1, 2018, and later extended to January 1, 2028.¹⁵

As part of the Pilot Program, the Legislature envisioned using finders to connect potential borrowers with lenders as an inexpensive way for lenders to attract customers, grow their small dollar lending business, and increase market share. However, finders were rarely used because the law did not allow them to provide certain important functions. The Legislature responded by enacting SB 235, which revised the Pilot Program’s finder provisions to expand the scope of their permitted activities. Finders, if licensed as a financial service provider under at least one of thirteen specified federal or state laws, could now disburse loan proceeds on behalf of lenders, collect loan payments from borrowers, and issue notices and disclosures to borrowers.

To further incentivize lender participation and expand consumer access to loans under the Pilot Program, the Legislature enacted AB 237 which, among other things, increased the upper dollar limit for a permissible loan from \$2,500 to \$7,500 while requiring participating lenders to perform reasonable background checks on the finders they use.

Anticipated Benefits of the Proposed Regulations:

The Commissioner has determined the anticipated benefits of this regulatory action mirror the goals of the RSDL authorizing statute: to encourage more lenders to participate in the Pilot Program and increase Californians’ access to small dollar loans. The proposed regulations implement AB 237 and SB 235 by increasing the upper dollar limit for RSDL Program loans and expanding the scope of finder activities while ensuring the legitimacy of finders.

This regulatory action will also produce nonmonetary benefits. The increased lender participation and availability of affordable consumer credit should generally benefit California’s economy and help consumers build or rebuild their credit histories. The adoption of these regulations, in compliance with California’s rulemaking requirements, should also increase transparency in government and provide a meaningful opportunity for stakeholders to participate.

Summary of Existing Laws and Regulations, and Effect of Proposed Action¹⁶

Prior to SB 235, a finder in the Pilot Program could only distribute informational materials about a licensee’s loans, take credit applications, and act as a communications link between the lender and the prospective or actual borrower. SB 235 and this proposed rulemaking expand finder activities to include disbursing loan proceeds to borrowers, collecting loan payments from borrowers, and providing required notices and disclosures to borrowers and prospective borrowers.

Prior to AB 237, a lender could only offer consumer loans through the Pilot Program with a principal balance of at least \$300 and less than \$2,500. AB 237 and this proposed rulemaking increase the upper limit on the amount of a permissible loan from \$2,500 to \$7,500.

To implement SB 235 and AB 237, this proposed regulatory action:

- Replaces “Department of Business Oversight” with its new name, “Department of Financial Protection and Innovation”¹⁷;
- Replaces “California Finance Lenders Law” with its new name, “California Financing Law”¹⁸;
- Revises general information and instructions to forms;
- Updates the upper dollar limit for RSDL Program loans from \$2,500 to \$7,500;
- Requires Pilot Program applicants to submit the policies and procedures they must maintain

¹² Gov. Code, § 11346.5, subdivision (a)(3).

¹³ Gov. Code, § 11346.5, subdivision (a)(3)(C).

¹⁴ Sen. Bill No. 1146 (2009–2010 Reg. Sess.).

¹⁵ Assem. Bill No. 2196 (2019–2020 Reg. Sess.) § 2.

¹⁶ Gov. Code, § 11346.5, subdivision (a)(3)(A).

¹⁷ Assem. Bill No. 107 (2019–2020 Reg. Sess.) § 6, Assem. Bill No. 1864 (2019–2020 Reg. Sess.) § 3.

¹⁸ Assem. Bill No. 1284 (2017–2018 Reg. Sess.) § 4.

to address customer complaints and respond to questions raised by loan applicants and borrowers, including questions about finders;

- Requires lenders participating in the Pilot Program to report additional information about the finders they use with the Department;
- Allows a finder, if licensed as a financial service provider under one of thirteen specified federal or state laws, to disburse loan proceeds to the borrower, receive loan payments from the borrower, and provide notices or disclosures to the borrower;
- Deletes an existing provision prohibiting a finder from discussing marketing materials or loan documents with a borrower or prospective borrower (these finder services were previously prohibited but are now authorized by SB 235);
- Revises incorrect statutory references;
- Restates the statutory requirement for finders who disburse or receive loan payments to maintain records for at least two years or until one month following the Department’s examination of licensee, whichever is later; and
- Restates the regulatory requirement for participating lenders to maintain, for at least three years, a record of notices and disclosures provided by finders to borrowers.

Existing Federal Regulation or Statute¹⁹

There are no existing comparable federal regulations or statutes because finance lending is mainly subject to state law.

Existing State Regulations²⁰

The Department evaluated the proposed regulations for consistency and compatibility with existing state regulations and concluded these are the only regulations pertaining to, and modifying, small-dollar lending rules.

Forms Incorporated by Reference²¹

This proposed regulatory action does not incorporate any forms by reference.

DISCLOSURES REGARDING THE PROPOSED ACTION²²

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

¹⁹ Gov. Code, § 11346.5, subdivision (a)(3)(B).

²⁰ Gov. Code, § 11346.5, subdivision (a)(3)(D).

²¹ Cal. Code Regs., title 1, § 20, subdivision (c)(3).

²² Gov. Code, § 11346.5, subdivision (a)(5), (6), and (12)(A).

Cost or savings to any state agency: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

ADVERSE ECONOMIC IMPACT ON BUSINESS²³

The Department has determined this proposed regulatory 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.

EFFECT ON SMALL BUSINESS²⁴

The Department has determined the proposed regulations will not affect small business because finance lenders are not small businesses as defined in Government Code section 11342.610 and Pilot Program loans are consumer loans.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS²⁵

The Department has determined any cost impacts by the proposed rulemaking to representative private persons or business will be negligible. Lenders are not required to participate, and the use of finders is voluntary. A participating lender, when using a finder, will incur absorbable costs in providing required finder information on the application, preparing and submitting an application or revised application, preparing and submitting finder registration forms, ensuring compliance with program requirements, developing, revising and providing notices and loan disclosures, developing and implementing required policies and procedures to respond to applicant and borrower questions, and collecting data for annual reports to the Department.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS²⁶

The Department has determined:

- The proposed action will not create or eliminate jobs within California;
- The proposed action will not create new businesses or eliminate existing businesses within California;

²³ Gov. Code, § 11346.5, subdivision (a)(8).

²⁴ Cal. Code Regs., title 1, § 4.

²⁵ Gov. Code, § 11346.5, subdivision (a)(9).

²⁶ Gov. Code, § 11346.5, subdivision (a)(10).

- The proposed action may positively affect the expansion of businesses currently doing business within California;
- The proposed action may benefit the health and welfare of California residents; and
- The proposed action will not benefit or adversely impact worker safety or the state’s environment.

BUSINESS REPORTING REQUIREMENT²⁷

The Department has determined it is necessary for the health, safety, or welfare of the people of this state that the reports required in this regulatory action apply to businesses.

CONSIDERATION OF ALTERNATIVES²⁸

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF THE NOTICE, STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE²⁹

The Department will make the entire rulemaking file, including this notice, the initial statement of reasons, and the proposed text of the regulations, available for inspection and copying throughout the rulemaking process at the address provided, and from the persons identified, in the “Contact Persons” section of this notice.

AVAILABILITY OF THE DOCUMENTS ON THE INTERNET³⁰

The notice, initial statement of reasons, and proposed text are also available on the Department’s Web site at www.dfpi.ca.gov. To access the documents from the Department’s Web site, click on “Laws and Regulations” under the “Licensees” tab at the top of the home page, then on the “Regulations / Rulemaking” link, and then on the “California Financing Law and Commercial Financing Disclosures” link.

²⁷ Gov. Code, § 11346.5, subdivision (a)(11).
²⁸ Gov. Code, § 11346.5, subdivision (a)(13).
²⁹ Gov. Code, § 11346.5, subdivision (a)(16) and (b).
³⁰ Gov. Code, § 11346.5, subdivision (a)(20).

AVAILABILITY OF CHANGED OR MODIFIED TEXT³¹

After holding the hearing, if scheduled, and considering all timely and relevant comments, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days prior to adopting the revised regulations. Requests for a copy of any modified regulation(s) must be addressed to the contact persons named in this notice. The Department will accept written comments on the modified regulations for at least 15 days after the date they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS³²

The Final Statement of Reasons will be available when completed. Copies may be requested from the contact person named in this notice or accessed on the website listed above.

CONTACT PERSONS³³

Please direct all inquiries concerning the proposed rulemaking action (including requests for copies of the proposed text of the regulations, the initial statement of reasons, or the modified text of the regulation, and questions regarding the timelines or rulemaking status) to:

Sandra Sandoval
Department of Financial Protection and Innovation
300 South Spring Street, Suite 15513
Los Angeles, CA 90013
Telephone: (213) 897-3432
e-mail: regulations@dfpi.ca.gov

The backup contact person for these inquiries is:

David Bae
Department of Financial Protection and Innovation
300 South Spring Street, Suite 15513
Los Angeles, CA 90013
Telephone: (213) 576-7554
e-mail: David.Bae@dfpi.ca.gov

³¹ Gov. Code, § 11346.5, subdivision (a)(18).
³² Gov. Code, § 11346.5, subdivision (a)(19).
³³ Gov. Code, § 11346.5, subdivision (a)(14).

TITLE 11. CALIFORNIA PRIVACY PROTECTION AGENCY

NOTICE OF INTENTION TO
ADOPT THE CONFLICT-OF-INTEREST
CODE OF THE CALIFORNIA
PRIVACY PROTECTION AGENCY

NOTICE IS HEREBY GIVEN that the California Privacy Protection Agency, pursuant to the authority vested in it by section 87300 of the Government Code, proposes adoption of its conflict-of-interest code. A comment period has been established commencing on **August 6, 2021** and closing on **September 20, 2021**. All inquiries should be directed to the contact listed below.

The California Privacy Protection Agency (CPPA or Agency) proposes to adopt its conflict-of-interest code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code. The adoption carries out the purposes of the law and no other alternative would do so and be less burdensome to affected persons.

The conflict-of-interest code includes: incorporation by reference of the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission; provisions requiring the CPPA's Board Members and Executive Director to file their statements of economic interests electronically with the Fair Political Practices Commission; provisions requiring all other designated positions to file their statements of economic interests directly with the Agency; incorporation of the Appendix which identifies designated positions as the Board Members (Categories 1 and 2), Executive Director (Categories 1 and 2), Chief Privacy Officer (Categories 1 and 2), Attorneys (all levels) (Categories 1 and 2), and the Deputy Director of Administration (Category 2), and establishes two disclosure categories: Category 1, which requires reporting of all investments, business positions in business entities and income, (including receipt of gifts, loans and travel payments) and real property in the state of California, and Category 2, which requires reporting of all investments and business positions in business entities and sources of income (including receipt of gifts, loans and travel payments) if the business entity or source provides leased facilities, products, equipment, vehicles, machinery or services (including training or consulting services) of the type utilized by the Agency. The proposed conflict-of-interest code and explanation of the reasons can be obtained from the Agency's contact set forth below.

Any interested person may submit written comments relating to the proposed adoption by submitting them no later than **September 20, 2021** or at the conclusion of the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than **September 5, 2021**.

The California Privacy Protection Agency has determined that the proposed adoption:

1. Imposes no mandate on local agencies or school districts.
2. Imposes no costs or savings on any state agency.
3. Imposes no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

All inquiries concerning this proposed adoption and any communication required by this notice should be directed to:

Jennifer M. Urban, CPPA Board Chair
(916) 653-4090
info@cppa.ca.gov

TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or Department), proposes to amend sections 2449.1, 2449.4, 2449.5, 2449.30, and 2449.32 of Division 2, and sections 3490, 3491, 3492, 3493, 3495, 3496, and 3497 of Division 3, of Title 15 of the California Code of Regulations regarding nonviolent offender parole process eligibility pursuant to the Gadlin ruling.

PUBLIC COMMENT PERIOD

The public comment period begins **August 6, 2021** and closes on **September 21, 2021**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rpmb@cdcr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

No public hearing is scheduled for these proposed regulations; however, pursuant to Government Code Section 11346.8, any interested person or their duly authorized representative may request a public hearing, no later than 15 days prior to the close of the written comment period.

CONTACT PERSONS

Primary Contact

Josh Jugum
Telephone: (916) 445-2266
Regulation and Policy
Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001

Back-Up

Y. Sun
Telephone: (916) 445-2269
Regulation and Policy
Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001

Program Contact

Mina Choi
(916) 838-4937
Board of Parole Hearings

AUTHORITY AND REFERENCE

California Constitution, Article I, section 32, subdivision (a)(1) provides that CDCR shall adopt regulations in furtherance of the nonviolent offender parole consideration program.

Government Code Section 12838.5 provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as: Department of Corrections, Department of the Youth Authority, and Board of Corrections.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations. **PC Section 5050** provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and

employment of persons confined therein are vested in the Secretary of the CDCR. **PC Section 5055** provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. **PC Section 5058** authorizes the Director to prescribe and amend rules and regulations for the administration of prisons and for the administration of the parole of persons.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

In November 2016, voters approved the passage of Proposition 57, also known as The Public Safety and Rehabilitation Act of 2016. Proposition 57 established a parole consideration process for determinately-sentenced and indeterminately-sentenced nonviolent offenders who have served the full term of their primary offense and who demonstrated they no longer pose a current, unreasonable risk to the public. In accordance with Proposition 57, the Department promulgated regulations governing the nonviolent offender parole review process (NVPP), which were then amended several times to comply with court decisions. Current regulations exclude from NVPP consideration those inmates convicted of a sexual offense that currently requires or will require registration as a sex offender under the Sex Offender Registration Act.

On December 28, 2020, the California Supreme Court issued its ruling in *In re Gadlin* (2020) 10 Cal.5th 915. The Court held that eligibility for NVPP consideration must be based on an inmate's current conviction and that an inmate may not be excluded from NVPP consideration based on a current conviction for a nonviolent registerable sex offense. The Court also ordered the Department to treat as void and repeal California Code of Regulations, Title 15, section 3491, subsection (b)(3), and section 3496, subsection (b), and to make any further conforming changes necessary to comply with the Court's decision.

Accordingly, the Department and the Board submitted an emergency rulemaking removing language that excluded inmates from NVPP consideration based on a conviction for a nonviolent registerable sex offense. The emergency rulemaking also provided timelines for the referral and parole consideration of those inmates now eligible for NVPP consideration under the *Gadlin* decision. This rulemaking will make permanent the changes implemented by the emergency regulations.

This action will:

- Eliminate regulatory provisions that exclude from NVPP consideration those inmates convicted of a nonviolent registerable sex offense. Specifically, this rulemaking action eliminates Title 15,

section 3491, subsection (b)(3), and section 3496, subsection (b), as ordered by the *Gadlin* court.

- Establish timelines for the Department to review determinately-sentenced and indeterminately-sentenced inmates who were not referred to the board for NVPP consideration due to a nonviolent registerable sex offense conviction.
- Establish timelines for the board to schedule the initial parole consideration hearings for those indeterminately-sentenced inmates who are now eligible under *Gadlin*. No new timelines have been proposed for the board to review determinately-sentenced inmates now eligible under *Gadlin* because the board is able to absorb the additional reviews into its current workload without disrupting the review of other eligible nonviolent offenders. Therefore, the current regulatory provisions governing the board's timelines for reviewing determinately-sentenced nonviolent offenders will apply to those now eligible under *Gadlin*.
- Make additional changes that were not addressed by the *Gadlin* decision but are necessary to clarify ambiguities regarding inmates' NVPP eligibility and consideration.
- Eliminate the use of gender pronouns to promote diversity, equity, and inclusion.

DOCUMENTS INCORPORATED BY REFERENCE

None.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The Department proposes these regulations with the goal of treating all nonviolent offenders in a fair and equitable manner, and providing them with the opportunity for parole consideration under the board's nonviolent offender parole review process. The inclusion of more inmates in nonviolent parole eligibility and consideration will also make prisons and communities safer by encouraging inmates to participate in rehabilitative programs and service opportunities that enhance skills and employability, thus improving inmate behavior and creating a safer prison environment for inmates and staff. In addition, the proposed regulations will bring the Department into compliance with the *In re Gadlin* court ruling.

EVALUATION OF INCONSISTENCY/ INCOMPATIBILITY WITH EXISTING LAWS AND REGULATIONS

Pursuant to Government Code 11346.5(a)(3) (D), the Department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations affecting the nonviolent offender parole eligibility process affected by the *Gadlin* ruling.

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500-17630.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: *None*.
- Cost to any local agency or school district that is required to be reimbursed: *None*.
- Other nondiscretionary cost or savings imposed on local agencies: *None*.
- Cost or savings in federal funding to the state: *None*.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has made an initial determination that the proposed regulations 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, because the proposed regulations place no obligations or requirements on any business.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small business because they place no obligations or requirements on any business.

RESULTS OF THE ECONOMIC
IMPACT ASSESSMENT

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or effect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulations will have no effect on worker safety or the state's environment, as the regulations only affect parole eligibility for specific inmates.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed during the written comment period or at a public hearing should one be scheduled.

AVAILABILITY OF PROPOSED TEXT AND
INITIAL STATEMENT OF REASONS

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Regulations will also be made available on the Department's website: www.cdcr.ca.gov.

AVAILABILITY OF THE FINAL
STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO
PROPOSED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the Department adopts, amends or repeals the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

**TITLE 16. DENTAL HYGIENE BOARD
OF CALIFORNIA**

NOTICE OF PROPOSED RULEMAKING
CONCERNING REQUIREMENTS FOR
RDH EDUCATIONAL PROGRAMS

NOTICE IS HEREBY GIVEN that the Dental Hygiene Board of California (Board) is proposing to take the rulemaking action described below under the heading Informative Digest/Policy Statement Overview. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office by **5:00 p.m., Tuesday, September 21, 2021**.

The board has not scheduled a public hearing on this proposed action. The board will, however, hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period.

The Board may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the

full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Business and Professions Code (BPC) sections 1905, 1906, and 1941, and to implement, interpret or make specific BPC section 1941, the Board is considering changes to Division 11 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

BPC sections 1905 and 1906 authorize the Board to adopt, amend, and revoke regulations to implement the statutory requirements of Article 9 of Chapter 4, BPC sections 1900 through 1966.6, regarding dental hygienists. The Board, a constituent agency within the Department of Consumer Affairs (DCA), regulates registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions (collectively RDHs). The Board's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The Board's core functions are issuing licenses to qualified applicants, investigating consumer complaints filed against licensees, disciplining licensees for sustained violations of the BPC and Title 16 of the CCR, regulating and approving RDH educational programs, and monitoring licensees placed on disciplinary probation by the Board.

This proposal would amend the language and requirements for RDH Educational Programs. The proposal is as follows:

- **Amend Section 1105 to Title 16 of the CCR.**

BPC section 1941 requires an RDH educational program to continuously maintain a high-quality standard of instruction and, where appropriate, meet the minimum standards set by the Commission on Dental Accreditation of the American Dental Association or an equivalent body, as determined by the Board.

Existing law sets forth the criteria for the Board's approval of RDH educational programs. Section 1105 prescribes the requirements for RDH educational program by which to secure and maintain approval by the Board.

The Board proposes to amend section 1105: (1) to clarify the prerequisite course requirements for admission to an RDH educational program;

(2) to update the regulation to be consistent with current educational terminology; (3) to clarify the requirements for supervising dentists within RDH educational programs; (4) to allow approved, alternative coursework for prerequisite biomedical science during a declared state of emergency; (5) to add clarifying explanations referenced within the regulation (6) to renumber amendments for clarity; and (7) to replace the term "Committee" with "Board" as the Board is now the Dental Hygiene Board of California as a result of Senate Bill (SB) 1482 (Hill, Chapter 858, Statutes of 2018).

Anticipated Benefits of the Proposed Amended Regulation:

The anticipated benefits of the proposed amendments to section 1105 would accomplish the following:

- First, by clarifying the prerequisite course requirements for admission to an RDH educational program, the reader is advised of current acceptable courses for acceptance into an RDH educational program.
- Second, by updating the regulation to be consistent with current educational terminology, the amendments will enhance clarity for the reader who may not be aware of the amended, outdated terms.
- Third, by clarifying the requirements for supervising dentists within RDH educational programs, it will enhance public safety by directing that only qualified dentists are hired as faculty for RDH educational programs.
- Fourth, adding explanations to references within the regulation will enhance clarity for the reader.
- Fifth, by allowing approved alternative coursework for prerequisite biomedical science coursework necessary for acceptance into DH educational programs, the Board will eliminate an unnecessary barrier to education and licensure.
- Sixth, by replacing the term "Committee" with "Board" will clarify that the Board is now the Dental Hygiene Board of California as a result of SB 1482.

Determination of Inconsistency and Incompatibility with Existing State Regulations:

During the process of developing this regulatory proposal, the Board has conducted a search of any similar regulations on this topic and has concluded that the proposed regulatory action is not inconsistent or incompatible with existing state regulations.

DISCLOSURES REGARDING THE
PROPOSED ACTION

FISCAL IMPACT ESTIMATES

The Board has made the following initial determinations:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The Board indicates any workload and costs to ensure compliance will be minor and absorbable within existing resources.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to any Local Agency or School District for which Government Code Sections 17500 through 17630 Require Reimbursement: None.

Business Impact

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

There is no business impact because the proposed amendments to the regulation clarify the title of the Board, provide consistency of language within the regulation, advise of referenced agencies within the regulation, and reflect changes to prerequisite courses currently available to an applicant for admission to an RDH educational program.

Cost impacts on a Representative Private Person or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant Effect on Housing Costs: None

Business Reporting Requirement

The regulatory action does not require businesses to file a report with the Board. The change in regulatory language will only affect the educational requirements that RDH educational programs and courses will be required to maintain as a part of their approval by the Board.

Results of the Economic Impact Analysis/Assessment

Impact on Jobs/Businesses: The Board has determined that this regulatory action will not create or eliminate jobs, will not create new business or eliminate existing businesses, and will not affect the expansion of businesses currently doing business within the State of California because the proposed amendments to the regulation only clarifies the title of the Board within the regulation, provides consistency

of language within the regulation, advises of referenced agencies within the regulation, and reflects changes to prerequisite courses currently available to an applicant for admission to an RDH educational program.

Benefits of the Proposed Action: This regulatory proposal will benefit the health and safety of California residents because the proposed amendments would ensure all RDHs educational programs are advised to follow all standards by regulatory agencies applicable to the practice of dental hygiene. This will ensure that California residents are treated safely.

The Board anticipates that this regulatory action will not have any monetary effect because the proposed amendments to the regulation only clarifies the title of the Board, provides consistency of language within the regulation, advises of referenced agencies within the regulation, and reflects changes to prerequisite courses currently available to an applicant for admission to an RDH educational program.

This regulatory proposal would not affect worker safety or the state's environment because the proposed amendments to the regulation only clarify the title of the Board, provide consistency of language within the regulation, advise of referenced agencies within the regulation, and reflect changes to prerequisite courses currently available to an applicant for admission to an RDH educational program.

Effect on Small Business: The Board has determined that this regulatory action would not affect small businesses because the proposed amendments to the regulation only clarifies the title of the Board, provides consistency of language within the regulation, advises of referenced agencies within the regulation, and reflects changes to prerequisite courses currently available to an applicant for admission to an RDH educational program.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action or would be more cost-effective to the affected private persons and equally effective in implementing the statutory policy or other provision of the law.

Interested persons are invited to present statements or arguments orally or in writing relevant to the above determinations at the above scheduled hearing or during the written comment period.

AVAILABILITY OF STATEMENT
OF REASONS, TEXT OF PROPOSED
REGULATIONS, AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

AVAILABILITY OF CHANGED OR
MODIFIED TEXT

After holding any requested hearing and considering all timely and relevant comments received, the Board may adopt the amendments as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that was noticed to the public. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for review and or written comment at least 15 days before it is adopted. The public may request a copy of the modified regulatory text by contacting Dr. Pineschi-Petty at the address above.

AVAILABILITY OF FINAL
STATEMENT OF REASONS

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting Dr. Pineschi-Petty at the address below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to Dr. Pineschi-Petty at the address below or by accessing the website listed below.

TEXT OF THE PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the ISOR, and all of the information on which the proposal is based, may be obtained upon request from the Board at 2005 Evergreen Street, Suite 1350, Sacramento, California 95815, or by accessing the Board's website at <https://www.dhbc.ca.gov/lawsregs/index.shtml>.

AVAILABILITY OF
DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Actions the Initial Statement of Reasons, and the text of the regulations can be accessed through the Board's website at <https://www.dhbc.ca.gov/lawsregs/index.shtml>.

CONTACT PERSONS

Inquiries or comments concerning the proposed regulatory action may be directed to the following designated agency contact persons:

Dental Hygiene Board of California
Attn: Adina A. Pineschi-Petty DDS
2005 Evergreen Street, Suite 1350
Sacramento, CA 95815
Phone: (916) 576-5002
Email: adina.petty@dca.ca.gov

Backup Contact Person:

Attn: Anthony Lum
2005 Evergreen Street, Suite 1350
Sacramento, CA 95815
Phone: (916) 576-5004
Email: anthony.lum@dca.ca.gov

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Dr. Pineschi-Petty at the above address. In her absence, please contact the designated back-up contact person.

**TITLE 22. DEPARTMENT OF SOCIAL
SERVICES**

**EMERGENCY INTERVENTION IN ADULT
DAY PROGRAMS**

California Department of Social Services (CDSS) hereby gives notice of the proposed regulatory action described below. Any person interested may present statements or arguments relating to the proposed regulations in writing, e-mail, or by facsimile to the address, e-mail address, or numbers listed below. All comments must be received by September 22, 2021.

Following the close of the public notice, CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. Except for nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who submit written comments

during the public comment period and all persons who request notification on this proposal. Please address requests for regulations as modified to the agency contact identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on CDSS' public hearing page (<http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/CDSS-Regulation-Changes-In-Process-and-Completed-Regulations/Public-Hearing-Information>). Additionally, all the information which CDSS considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading at the address listed below. Following the public notice period, copies of the Final Statement of Reasons will also be available at the following address:

CONTACT

California Department of Social Services
Office of Regulations Development
744 P Street, MS 8-4-192
Sacramento, CA 95814
Tel: (916) 657-2586, Fax: (916) 654-3286
Email: ord@dss.ca.gov

Contact Person: Kenneth Jennings (916) 657-2586
Backup: Oliver Chu (916) 657-2586

CDSS has not scheduled a public hearing on this proposed action. However, CDSS will hold a public hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period. Any request should be made to the contact information provided above.

CHAPTERS

Title 22, Division 6, Chapter 3 (Adult Day Programs), Article 1, Section 82000 (General); Article 6, Sections 82061 (Reporting Requirements) and 82068.2 (Needs and Services Plan); Subchapter 1 (Emergency Intervention), Article 1 (General Requirements), Sections 82100 (General Provisions), and 82101 (Definitions), Article 2 (Prohibitions), Section 82102 (Emergency Intervention Prohibitions); Article 3 (Application and Licensing Procedure), Section 82122 (Emergency Intervention Plan); Article 6 (Continuing Requirements) Sections 82161 (Emergency Intervention Documentation

and Reporting Requirements), 82165 (Emergency Intervention Staff Training), 82168 (Admission Agreements), 82168.2 (Needs and Services Plan), 82168.3 (Manual Restraint or Seclusion Review), and 82169 (Medical Examination); and Article 7 (Physical Environment), Section 82175 (Seclusion Room).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current statutes and regulations establish the provisions necessary for CDSS licensure and oversight of Adult Day Programs (ADP), as well as for the care and protection of the individuals who are clients of those programs. The regulations in this package involve one primary area where CDSS will now be enforcing several types of services for its clients. These clients will have behavioral challenges which go beyond the typical ones currently overseen by the programs currently regulated by CDSS, as there is a strong possibility that ADPs will serve some of the same clients as Adult Residential Facilities, Enhanced Behavioral Supports Homes, and Community Crisis Homes that have chosen to provide Emergency Intervention services. These Title 22 regulations are needed to provide the appropriate framework for the management and utilization of emergency intervention in ADPs.

Senate Bill (SB) 130 (Chapter 750, Statutes of 2003) contains direction regarding the Legislature's intent to reduce the incidence of the use of manual restraints and seclusions in our programs. ADPs (California Code of Regulations, Title 22, Division 6, Chapter 3) currently do not explicitly address the use of behavior management techniques in emergency situations.

Consistency/Non-Duplication

The CDSS finds that these proposed regulations are compatible and consistent with the intent of the Legislature in adopting SB 130, as well as with existing state regulations.

During the process of developing these regulations and amendments, CDSS has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations. The CDSS has endeavored to ensure that these regulatory amendments comply with the non-duplication standard found in Title 1, California Code of Regulations. In some instances, the amended regulations duplicate California statute in part where the statute is cited as "authority" or "reference" for the proposed regulation and the duplication or overlap is necessary to satisfy the "clarity" standard of GC section 11349.1(a)(3).

Benefits

This regulatory action which adopts ADP regulations as authorized by SB 130 (Chapter 750,

Statutes of 2003), will help support the health and safety of ADP clients and be consistent with their assessments which will help protect clients as well as other people involved in an emergency intervention.

Forms/Incorporation by Reference

There are no forms or other items incorporated by reference.

COST ESTIMATE

1. Costs or Savings to State Agencies: None.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500–17630: None.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: None.

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate upon local agencies. The mandate is not required to be reimbursed pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code or Section 6 of Article XIII B of the California Constitution because implementation of the regulations only impact licensees that make the business decision to admit the clients which would require these regulatory provisions. There is no requirement for licensees to work with clients that present behavioral issues.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the proposed regulatory action, which was designed to impact only the licensees that make the business decision to serve clients that present behavioral issues. There is no requirement for licensees to work with clients that present behavioral issues.

The provisions for the use of emergency intervention does not have an associated cost as the focus is on client protections, ensuring safe practices, requiring specific details in emergency intervention documentation and reports to the standard record keeping processes, and training specific to emergency intervention. The emergency intervention training provisions are an existing requirement for all ADPs per Section 1180 of the Health and Safety Code (HSC). The proposed regulations simply centralize and makes more specific

the existing requirements for ADPs into the Title 22 regulations, which create ease of use for CDSS and the public, but do not create any new costs to licensees who may choose to implement emergency intervention plans.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that the proposed regulations will affect ADPs, which the state considers small businesses. The regulations will be adopted to implement SB 130 (2003) and SB 82 (2015).

These regulations do not have an adverse economic impact on small businesses.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

No economic impact is anticipated for CDSS or for ADP licensees by this regulatory activity as determined by the economic impact assessment.

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. This regulatory action will benefit the health and welfare of California residents by supporting the health and safety of clients in programs and be consistent with their assessments. In addition, it benefits the on-site worker’s safety by requiring an established training protocol, routine, and documentation for emergency interventions that is consistent with existing requirements for Adult Residential Facilities. It is not expected that the regulation will affect the state’s environment.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

In developing the regulatory action, CDSS did not consider any other alternatives because the Legislature, through the above–mentioned bills, mandate the

oversight of these programs and no alternatives were proposed.

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Sections 1530, 1567.64 and 1567.82, HSC; Sections 4684.80, 4684.81, 4684.82, 4684.83, and 4684.86, Welfare and Institutions Code (WIC). Subject regulations implement and make specific Sections 1180, 1180.1, 1180.2, 1180.3, 1180.4, 1180.5, 1501, 1502, 1507, 1509, 1530, 1531, 1562 and 1562.3, HSC; Sections 4684.80, 4684.81, 4684.82, 4684.83 and 4684.86, WIC; Sections 2700, 2834, 2838, 4996-4998.5 and 4980-4984.7, Business and Professions Code; Section 54342, California Code of Regulations, Title 17.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE

CESA CONSISTENCY DETERMINATION
REQUEST FOR
Stony Oaks Residential Development Project
2080-2021-010-03
Sonoma County

The California Department of Fish and Wildlife (CDFW) received a notice on July 22, 2021 that Stony Oaks, L.P. proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed project involves the construction of housing on a 4.39-acre project site and off-site improvements on an additional 0.10 acre. Proposed activities will include, but are not limited to, grading and ground disturbing activities, the construction of a 142-unit apartment complex including additional amenity spaces, and improvement to adjacent properties such as a new curb, gutter, and sidewalk and the widening of an apron for a drive aisle. The proposed project on

the 4.39-acre site will occur at 2542 Old Stony Point Road, Santa Rosa, Sonoma County, California. The additional 0.10-acres of the project will occur on adjacent properties, not owned by the applicant.

The U.S. Fish and Wildlife Service (Service) issued a federal biological opinion (BO)(Service Ref. No. 08ESMF00-2021-F-1198) in a memorandum to the U.S. Army Corps of Engineers on July 20, 2021, which considered the effects of the proposed project on state threatened and federally endangered Santa Barbara county distinct population segment of California tiger salamander (*Ambystoma californiense*), the state and federally endangered Sebastopol meadowfoam (*Limnanthes vinculans*), and the state and federally endangered Sonoma sunshine (*Blennosperma bakeri*).

Pursuant to California Fish and Game Code section 2080.1, Stony Oaks, L.P. is requesting a determination that the BO and its associated Incidental Take Statement (ITS) are consistent with CESA for purposes of the proposed project. If CDFW determines the BO and its associated ITS are consistent with CESA for the proposed project, Stony Oaks, L.P. will not be required to obtain an incidental take permit under Fish and Game Code section 2081 subdivision (b) for the proposed project.

DEPARTMENT OF FISH AND WILDLIFE

CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION
NO. 2080-2021-008-05

Project: The Solomon Canyon Shoulder
Widening and Rumble Stripe Project
Location: Santa Barbara County
Applicant: California Department of
Transportation

Background

The California Department of Transportation (Caltrans) proposes to widen road shoulders and conduct additional improvement work within the clear recovery zone on State Route (SR) 1 between Solomon Road postmile (PM) 36.3, near the town of Orcutt and its intersection with SR-166, to PM 49.2 in the city of Guadalupe in northern Santa Barbara County (Figure 1). The Project will include:

- *Road Widening.* Caltrans proposes to widen the existing roadway shoulders along SR-1 between Solomon Road PM R36.3 to PM 49.2. Shoulder widening would occur on both sides of the road and range from approximately 5 ft to 8 ft. Caltrans would construct approximately 17 acres of new

impervious surface and disturb approximately 20 acres of soil as a result of project implementation.

- *Guardrail with Dike Installation.* Guardrail transitions and extension would occur at 13 select locations (Table 1). Eight of the 13 guardrail features would include an associated dike, totaling 1,970 linear ft. Caltrans proposes to install Type A or Type E dike at each location.
- *Raise Road Profile.* Caltrans proposes to raise the road profile approximately 5 ft in 2 locations that are susceptible to flooding. These 2 features are located in the southern portion of the proposed project area between PM 36.3 and 42 (Table 2) and cumulatively total 2,760 linear ft in length.
- *Culvert Replacement.* Caltrans proposes to replace or extend 25 culverts, and improve an additional 12 culverts, as needed. Culvert work includes clearing or replacing culverts that are partially filled with sediment or completely impounded. Caltrans would implement improvement work to restore culvert functionality to convey water, associated with storm events, under the existing roadway to prevent flooding and associated roadway erosion. Improvements would occur whenever practical without the need for major retaining walls or structural work. Structural components of the project include the construction of headwalls for a drainage and extension of a box culvert. Caltrans anticipates permanent and temporary impacts to result from the proposed culvert replacement and/or extension repair. Caltrans has not yet conducted hydrological analyses of proposed culvert work but has indicated this analysis will be conducted in the second phase of project planning.
- *Riparian Restoration.* The proposed project would temporarily impact approximately 0.56 acre of riparian vegetation and permanently remove approximately 0.02 acre of riparian vegetation. Following construction, Caltrans proposes to restore all riparian areas temporarily impacted during project activities by recontouring and revegetating these areas to pre-project conditions. Caltrans will restore an additional 0.06 acre of riparian vegetation to offset permanent impacts.

Table 1. *Guardrail and Dike Locations.* See narrative description, post

Table 2. *Raised Road Profile Locations.* See narrative description, post

Figure 1. Project location map. See narrative description, post

Figure 1. Map of Project Area from United States Fish and Wildlife Service Biological Opinion Dated June 4, 2021.

The Project activities described above are expected to incidentally take¹ California tiger salamander (*Ambystoma californiense*) within the West Santa Maria/Orcutt Distinct Population Segment of Santa Barbara County. The project is partially located within designated critical habitat Unit 1 (Western Santa Maria/Orcutt) for the California tiger salamander. Unit 1 consists of 4,135 acres west and southwest of the city of Santa Maria, mostly in unincorporated areas of Santa Barbara County and the community of Orcutt (Service 2009). Unit 1 encompasses the known California tiger salamander breeding sites extending from the Casmalia Hills on the south to the Santa Maria Airport on the north and from west of Black Road eastward to Highway 135.

The United States Fish and Wildlife Service (Service) recognizes 1 potential breeding pond feature (GUAD-7) immediately adjacent to the proposed project footprint and 1 known breeding pond feature (SAMA-21) within 0.04 mile. An additional 11 known ponds and 24 potential ponds are located within 1.3 miles of the Project. With the exception of the developed roadway, the entirety of the Project area, approximately 2,144 acres, contains suitable upland habitat. Portions of the proposed project footprint are subjected to routine disturbance due to farming practices such as disking and herbicide application.

Caltrans anticipates that 0.85 acre of permanent impact and 7.25 acres of temporary impact to designated California tiger salamander critical habitat will occur.

California tiger salamander could be incidentally taken as ground disturbing activities could affect the California tiger salamander by crushing or burying individuals during grading, compaction, or construction debris. Burrow excavation may result in the injury or mortality of California tiger salamander sheltering in burrows. Equipment access and worker foot traffic may result in mortality or injury to California tiger salamander individuals by vehicle

¹Pursuant to Fish and Game Code section 86, “‘Take’ means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 CAL.4th 459,507 (for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), “‘take’ . . . means to catch, capture or kill”).

strikes or trampling. Noise or vibration generated by construction equipment may result in disruption of normal sheltering and feeding behavioral patterns of the California tiger salamander. This disruption could cause individuals to leave or avoid suitable habitat and may increase the potential for predation, desiccation, competition for food and shelter, or strike by vehicles. Capture and relocation of California tiger salamander may cause injury or mortality during capture and relocation activities because of improper handling, containment, transport, or release into unsuitable habitat.

California tiger salamander is designated as an endangered species pursuant to the Federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and a threatened species pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). (See Cal. Code Regs., title 14, § 670.5, subdivision (b)(3)(G).)

California tiger salamander individuals are documented as present at the Project site and there is suitable/occupied California tiger salamander habitat within and adjacent to the Project site. Because the proposed Project has the potential to result in a reduction in reproduction and has a potential to contribute to the loss of individual California tiger salamanders, the Service determined that California tiger salamander is reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of California tiger salamander.

Because the Project is expected to result in take of a species designated as endangered under the federal ESA, Caltrans consulted with the Service as required by the ESA. On June 04, 2021, the Service issued a Biological and Conference Opinion (Service file No. 08EVEN00-2021-F-0001) (BO) to Caltrans. The BO describes the Project, requires Caltrans to comply with terms of the BO and its incidental take statement (ITS), and incorporates additional measures.

The Service anticipates that some California tiger salamanders could be taken as a result of the proposed action. The Service cannot quantify the precise number of California tiger salamanders that may be taken as a result of the action that Caltrans has proposed because California tiger salamanders move over time; for example, animals may have entered or departed the action area since the time of preconstruction surveys. Other individuals may not be detected due to their cryptic nature, small size, and low mobility. The Environmental Baseline and Effects Analysis sections of the Biological Opinion indicates that adverse effects to California tiger salamanders would likely be low given the nature of the proposed activities, and, therefore, the Service anticipates that take of California tiger salamanders would also be low. The

Service also recognizes that for every California tiger salamander found dead or injured, other individuals may be killed or injured that are not detected.

For estimating the number of California tiger salamanders that would be taken by capture, the Service did not predict how many may be encountered for reasons including individuals may not be detected due to their cryptic nature, small size, and low mobility. The Service anticipates that California tiger salamander presence may increase over time as the mitigation ponds are constructed and become populated with the species. For this reason, the Service anticipates that the number of California tiger salamander captured and relocated may increase over time, and this would be a positive indication of the local population health. While the benefits of relocation (i.e., minimizing mortality) outweigh the risk of capture, the Service must provide a limit for take to ensure injury or death from these activities is commensurate with what was analyzed in the effects analysis of the Biological Opinion. For take due to capture, the Service anticipates that all California tiger salamanders found within the construction footprint will be captured, and that some injury or mortality will occur because of unpredictable circumstances. Because the Service is unable to reasonably anticipate the actual number of California tiger salamanders that would be captured, the Service is using injury or mortality during capture as a measure of anticipated take.

Therefore, the Biological and Conference Opinion states:

- If 3 adult or juvenile California tiger salamander are found dead or wounded or if 15 are captured, Caltrans must contact our office immediately to reinstate formal consultation.

On June 23, 2021, the Director of the Department of Fish and Wildlife (CDFW) received a notice from Caltrans requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITS and its associated BO are consistent with CESA for purposes of the Project and California tiger salamander.

Determination

CDFW has determined that the ITS and its associated BO are consistent with CESA as to the Project and California tiger salamander because the mitigation measures contained in the BO and ITS meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of California tiger salamander will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the BO and ITS will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance, minimization,

and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of California tiger salamander. The mitigation measures in the BO and ITS include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

1) *Habitat Mitigation.* Caltrans will offset impacts with compensatory mitigation through the purchase of 17.4 credits through La Purisima Conservation Bank or a determined equivalent amount at a Service and CDFW approved mitigation option local to the West Santa Maria/Orcutt metapopulation (Table 3). Although the La Purisima Conservation Bank is within the Santa Barbara County distinct population segment (DPS) of the California tiger salamander, it is located outside of the West Santa Maria/Orcutt metapopulation. Consequently, compensatory mitigation through the La Purisima Conservation Bank does not contribute to West Santa Maria/Orcutt metapopulation recovery goals. However, the La Purisima Conservation Bank is located within the range of the Santa Barbara County California tiger salamander DPS and the compensatory mitigation would overall benefit the species as a whole.

Table 3. *Habitat Mitigation Calculations from Service BO* — See narrative description, post

2) *GUAD-7 and SAMA-21 Ponds.* To minimize impacts to breeding California tiger salamander individuals, eggs, and larvae, Caltrans must condition any contracts to require work adjacent to breeding pond feature GUAD-7 when the feature is completely dry.

Caltrans must locate staging areas a minimum of 0.25 miles away from breeding ponds GUAD-7 and SAMA-21. Caltrans must submit staging area locations to the Service and CDFW prior to project implementation and utilize existing paved areas to the extent feasible.

To avoid impacting California tiger salamander individuals and breeding populations, Caltrans must conduct a hydrological effects analysis of all culvert locations within 0.25 miles of breeding pond features (GUAD-7 and SAMA-21). Using the results of this analysis, culverts must be designed in such a way that they do not alter the hydrology of existing pond features nor newly enable movement of California tiger salamander into degraded habitat on the north side of the roadway.

3) *Designated Biologist(s).* Caltrans will obtain Service and CDFW approval of Designated Biologist(s) and Designated Monitor(s) prior

to project-related activities that may result in impacts to the California tiger salamander. The Designated Biologist(s) will serve as a representative responsible for communications with State and Federal authority and hold all applicable and current State and Federal Permits, including an active Scientific Collecting Permit from CDFW that specifically names California tiger salamander surveys as an authorized activity. Any proposed Biologist(s) that do not have the required permits must work under the supervision of one who does have the required permits. These individuals will be referred to as Designated Monitors. The role of the Designated Biologists(s) and Designated Monitor(s) includes the following:

- a. The Designated Biologist or Designated Monitor with the appropriate permits will be present to conduct surveys prior to and monitor all initial ground or vegetation disturbing activities in areas of potential California tiger salamander habitat to help minimize or avoid impacts. Daily written observations and inspection records summarizing oversight activity, compliance inspection, observations of California tiger salamander and their sign, survey results, and monitoring activities will be kept. Designated Monitors may monitor project activities after initial ground disturbing activities have been completed provided the permitted Designated Biologist is readily available should the need arise to relocate a California tiger salamander.
- b. Caltrans will submit a relocation plan to the Service and CDFW for approval prior to construction. The Designated Biologist will follow the approved plan which will utilize best available scientific evidence and specifically follow guidance provided in Shaffer et al. 2008. Designated Biologists who handle California tiger salamander will ensure that their activities do not transmit diseases or pathogens harmful to amphibians, such as chytrid fungus (*Batrachochytrium dendrobatidis*), by following the fieldwork code of practice developed by the Declining Amphibians Task Force. The Designated Biologist will photograph and measure (snout-vent) individuals prior to relocation and provide this documentation to the Service and CDFW within 24 hours.
- c. Work activities that could potentially harm the California tiger salamander will be required to stop until the Designated

Biologist arrives to relocate the California tiger salamander to the pre-approved location. If the Designated Biologist or Designated Monitor recommends that work stop, they will notify the resident engineer immediately. The resident engineer will resolve the situation by requiring that all actions that are causing these effects stop immediately. The Designated Biologist will record any project related non-compliance of measures outlined in this biological opinion and will notify the Service and CDFW in writing within 24 hours.

- 4) *Initial Ground Disturbing and Vegetation Clearing.* Caltrans will not initiate ground disturbing activities until they have received written approval of Designated Biologists from the Service and CDFW. Initial ground disturbance or vegetation clearing activities between PM 36.3 and 46.0 will be restricted to occur between June 1 to October 1 unless prior Service and CDFW approval is obtained. Caltrans will minimize the area of ground disturbance and vegetation clearing to the extent practicable and clearly delineate this area for all contractors and equipment operators.
- 5) *Education Program.* Before work activities begin, the Designated Biologist will conduct an education program for all persons employed or otherwise working on the project site prior to performing any work on-site. The program will include a discussion of the biology of the California tiger salamander and project-specific avoidance and minimization measures. Upon completion of the program, employees will sign a form stating they attended the program and understand all protection measures.
- 6) *Burrow Avoidance.* Before work activities begin, the Designated Biologist will identify and flag all burrow features that they determine may serve as suitable refuge habitat for California tiger salamander between PM 36.3 and PM 46.0 within project areas subject to ground disturbance. The Designated Biologist will excavate the flagged burrows that cannot be avoided using hand tools or via gentle excavation using construction equipment under their direct supervision. Caltrans will not conduct excavation between October 1 to June 1 to avoid work during California tiger salamander breeding season and most juvenile dispersal movements.
- 7) *Work Limitations.* Caltrans will not conduct work activities within the potential California tiger salamander habitat at night between October 1 and June 1. Caltrans will restrict work activities to daylight hours between October 1 and June 1, and within periods of low rainfall (less than 0.5-inch of precipitation per 24-hour period), unless California tiger salamander exclusion fencing has been installed. Therefore, project activities may continue during a low rainfall event only if work areas contain California tiger salamander exclusionary fencing and have also been cleared by the Designated Biologist. Work within the potential California tiger salamander habitat will not occur when there is over a 70 percent chance of greater than 0.5-inch precipitation (high rainfall) during a 24-hour period. Caltrans will consult the National Weather Service 24-hour forecast daily. If any precipitation is forecasted, the Designated Biologist will survey the project site to minimize effects to California tiger salamander. If an unpredicted rainfall event commences while construction activities are in progress and an exclusion fence is not installed in the work area, Caltrans will suspend all work activities within the potential California tiger salamander habitat and equipment and personnel will be demobilized. Caltrans may move equipment to a designated staging area until work within the potential California tiger salamander habitat can resume.
- 8) *Records and Compliance.* Caltrans will maintain copies of the biological opinion and a list of all personnel who have successfully completed the education program at the worksite. Caltrans will provide the Service and CDFW reasonable access to work areas to verify compliance with all outlined mitigation measures.
- 9) *Trash.* During project activities, Caltrans will properly contain all trash that may attract predators. Caltrans will remove and dispose trash from the work site weekly. Following construction, Caltrans will remove all trash and construction debris from work areas. No hazardous materials will be stored or handled within the project area. All construction related vegetative debris (e.g., larger brush, tree limbs, tree trunks) will be stored inside a designated stockpile and hauled offsite for disposal weekly.
- 10) *Equipment and Vehicle Maintenance.* All refueling, maintenance and staging of equipment and vehicles will occur at least 60 ft from riparian habitat or water bodies and not in a location from where a spill would drain directly toward aquatic habitat, unless otherwise preapproved by the necessary agencies. The Designated Biologist will ensure contamination of habitat does not occur during operations. Prior to the onset of work, Caltrans will develop a plan that addresses the prompt and effective response to any accidental

spills. The Designated Biologist will inform all workers of the importance of preventing spills and of the appropriate measures to take should a spill occur. Contractors will utilize drip pans under staged equipment and check all vehicles and equipment daily for leaks. Contractors will not leave equipment outside of designated staging areas overnight.

- 11) *Entrapment Prevention.* The Designated Biologist will inspect all open trenches, holes, or other excavations for California tiger salamander and other wildlife prior to reinitiating work each day and before any open features are backfilled. Contractors will cover trenches or provide adequate means of escape (earthen ramps not more than 2:1 slope or wooden boards).
- 12) *Erosion and Dust Control.* Caltrans will install erosion control materials adjacent to riparian features following the recommendations of the Designated Biologist. Caltrans will not use any materials potentially harmful to California tiger salamander. Areas of soil stockpiles will be located over 60 ft from all riparian and pond habitat. Contractors will cover soil stockpiles one day prior to any rain event to prevent soil erosion. During project activities, Caltrans will implement dust control measures when warranted. Caltrans will use the minimal amount of water necessary to avoid puddle formation.
- 13) *Exclusionary Fencing.* Prior to commencing work related activities within the potential California tiger salamander habitat occurring in the rainy season (October 1 to June 1), temporary exclusionary fencing will be installed between PM 40.1 and PM 43 to protect California tiger salamander habitat as well as to prevent individuals from dispersing into work areas. Caltrans will submit the design for fencing to the Service and CDFW for approval no less than 30 days prior to commencing the work. Caltrans will continue to maintain the barrier throughout construction. The Designated Biologist will conduct pre-ground disturbance surveys in conjunction with exclusion fence installation. The Designated Biologist or Monitor will inspect the area daily, ensure it is in working condition, and ensure that workers avoid entering designated habitat. During dry conditions, contractors will bury fencing 6 inches into the ground and extended 3 ft above the ground. Caltrans will not use plastic monofilament netting to avoid potential entanglement of California tiger salamander.
- 14) *Staging Areas.* Caltrans will limit all project-related vehicle and pedestrian access to established roads and staging areas. Caltrans will

locate staging areas within previously disturbed areas to the extent possible, clearly delineate them, and they will contain all project-related parking and storage needs. Caltrans will limit the number of access routes, size of staging areas, and the total area of activity to the maximum extent feasible to achieve the project.

- 15) *Exclusionary Berm.* To meet CDFW's fully mitigated standard and abate existing potential for vehicle strikes, Caltrans will install an exclusionary berm feature on the southern side of SR-1 between PM 42.1 and 42.2. Caltrans will design the feature to impede California tiger salamander northern movement across the roadway and redirect individuals back south towards open habitat. Caltrans will design the feature in such a way that allows any individuals moving from the north side of the roadway in a southward direction to freely cross without impediment. Once the exclusionary berm feature is completed, Caltrans will conduct annual routine inspections, maintenance, and repairs prior to the start of the rainy season. Caltrans will ensure that soil, debris, leaf litter, and other materials are kept from accumulating along the feature and will perform necessary repairs promptly.

Caltrans will require the Designated Biologist to monitor the effectiveness of the exclusionary berm feature using wildlife camera trap stations. Caltrans will design camera trap arrays to assess whether the exclusionary berm feature is performing as designed and to ensure it is effective at excluding California tiger salamander northern movements across the roadway. Caltrans will commence camera monitoring during the first November following exclusionary berm completion. Monitoring will occur during the rainy season (November 1 to May 1) of each year, when California tiger salamander are anticipated to make dispersal movements. Data collection and camera maintenance shall occur every 2–4 weeks for the duration of the rainy season of each year in the monitoring period, unless otherwise agreed to by CDFW. Monitoring will continue for up to 5 years or until the occurrence of 3 years of at least 70 percent average rainfall occurring between September 1 and April 1 as measured at the nearest National Oceanic and Atmospheric Administration climate station.

- 16) *Invasive Non-Native Plant Species Prevention.* During construction, Caltrans will ensure that the spread or introduction of invasive exotic plant species is avoided to the maximum extent possible.

Caltrans will only import clean fill. When practicable, Caltrans will remove and properly dispose of invasive exotic plants in the project site. Caltrans will take all vegetation removed from the construction site to a landfill to prevent the spread of invasive species. If soil from weedy areas need to be removed off-site, Caltrans will dispose the top six inches containing the seed layer in areas with weedy species at a landfill.

Caltrans will establish wash stations onsite for construction equipment under the guidance of the Designated Biologist if deemed necessary in order to avoid/minimize the spread of invasive plants and/or seed within the construction area.

The Caltrans erosion control seed mix or landscaping planting plans will not include any invasive species listed in the Cal-IPC Invasive Plant Inventory, accessible at: www.cal-ipc.org/ip/inventory/index.php.

- 17) *Use of Native Plants for Revegetation.* Caltrans will condition contracts for permanent erosion control and restoration plantings to require the use of regionally appropriate California native forb and grass species that occur in the same general geographic area as the project site.

Additional Monitoring and Reporting Measures

- 1) Any California tiger salamander observation data must be reported to the California Natural Diversity Database within 90 days of the observation. Although not a condition of the BO, CDFW requests that these observations be reported within 10 days.

Financial Security

Caltrans has completed purchase of 17.4 credits through La Purisima Conservation Bank as documented by a May 29, 2018, Bill of Sale provided to CDFW.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of California tiger salamander, provided Caltrans implements the Project as described in the ITS and its associated BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the ITS and its associated BO and the associated MND. If there are any substantive changes to the Project, including changes to the mitigation measures or the MND, or if the Service amends or replaces the ITS and its associated BO, Caltrans shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish & G. Code, §§ 2080.1, 2081, subdivisions (b) and (c)).

CDFW’s determination that the Service ITS and its associated BO are consistent with CESA is limited to California tiger salamander.

DESCRIPTIONS OF TABLES AND FIGURES INCLUDED IN THE SOLOMON CANYON SHOULDER WIDENING AND RUMBLE STRIPE PROJECT (2080-2021-008-05)

Table 1. Guardrail and Dike Locations.

1. Guardrail Location: PM 40.85, Station Location 148+00 to 150+00. Dike Installation: Yes. Length (linear ft): 400
2. Guardrail Location: PM 42.73, Station Location 245+50 to 246+50. Dike Installation: Yes. Length (linear ft): 200
3. Guardrail Location: PM 44.19, Station Location 322+50 to 323+50. Dike Installation: No. Length (linear ft): 100
4. Guardrail Location: PM 44.31, Station Location 329+00 to 329+70. Dike Installation: Yes. Length (linear ft): 70
5. Guardrail Location: PM 44.70, Station Location 349+00 to 350+00. Dike Installation: Yes. Length (linear ft): 200
6. Guardrail Location: PM 44.91, Station Location 360+00 to 361+00. Dike Installation: Yes. Length (linear ft): 200
7. Guardrail Location: PM 45.01, Station Location 365+50 to 366+50. Dike Installation: No. Length (linear ft): 100
8. Guardrail Location: PM 45.19, Station Location 374+70 to 375+70. Dike Installation: Yes. Length (linear ft): 100
9. Guardrail Location: PM 45.31, Station Location 381 +50 to 382+50. Dike Installation: No. Length (linear ft): 200
10. Guardrail Location: PM 46.11, Station Location 424+00 to 425+00. Dike Installation: No. Length (linear ft): 100
11. Guardrail Location: PM 46.16, Station Location 426+50 to 427+50. Dike Installation: No. Length (linear ft): 100
12. Guardrail Location: PM 46.52, Station Location 445+00 to 451+000. Dike Installation: Yes. Length (linear ft): 600
13. Guardrail Location: PM 48.63, Station Location 547+00 to 548+00. Dike Installation: Yes. Length (linear ft): 200

Total Guardrail Length 2,570

Total Associated Dike Length 1,970

Table 2. *Raised Road Profile Locations.*

1. Raise Road profile location: Approximate Central PM 40.5, Station Location 122+93.06 to 139+04.66. Approximate Road Profile Adjustment: 5 ft. Approximate Length (linear ft): 1,746.
2. Raise Road profile location: Approximate Central PM 41.45, Station Location 167+81.16 to 182+04.95. Approximate Road Profile Adjustment: 5 ft. Approximate Length (linear ft): 1,014.

Figure 1. Map of Project Area from United States Fish and Wildlife Service Biological Opinion Dated June 4, 2021.

Map shows project location on Solomon Canyon Road with the Project Start at PM R36.3 and the Project End at PM 49.2. Map also shows locations of guardrails with dikes, raised road profile locations, and mile markers.

Table 3. *Habitat Mitigation Calculations from Service BO.*

Project Impact: Permeable Features: Loss in Reproductive Value (Footprint)*:12,480. Loss in Reproductive Value (Deficit Wedge/Shadow)*: N/A

Project Impact: Impermeable Features: Loss in Reproductive Value (Footprint)*:1,077. Loss in Reproductive Value (Deficit Wedge/Shadow)*: 28,930

Total Project Impact: 42,487

Total with 40 percent West Santa Maria/Orcutt metapopulation surcharge: 59,482

Credits to Offset Impacts $59,482/3,427^{**} = 17.4$

DEPARTMENT OF FISH AND WILDLIFE

HABITAT RESTORATION AND ENHANCEMENT ACT
 CONSISTENCY DETERMINATION
 NO. 1653–2021–071–001–R1

Project: South Fork Floodplain Restoration Phase II Project
Location: South Fork Scott River, Siskiyou County
Applicant: California Trout
Notifier: Andrew Braugh

Background

Project Location: The South Fork Floodplain Restoration Phase II Project (Project) is located at 3044 Cecilville Road, two miles west of Cecilville, in the County of Siskiyou. The Project will occur on the Assessor Parcel Number (APN) 031–090–080–000, which is owned by Michael Thamer. The South Fork Scott River is a tributary to Klamath River and supports populations of Chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*O. kisutch*), and steelhead (*O. mykiss*).

Project Description: California Trout (Applicant) proposes to enhance or restore habitat within Scott River to provide a net conservation benefit for Chinook salmon, coho salmon, and steelhead. The conservation benefits from the proposed project will help restore stream function and salmonid populations. The placement of large woody debris and inset floodplain to create scour pools, disperse high flow into the new benches, and assist with the sorting of stream substrate to create complex refugia. The Project will implement two inset floodplains, an apex logjam, six large wood structures (LWS), and five chop-and-drop logjams. Hand tools and heavy equipment will be used, along with the temporary placement of a bridge for access. The bridge will be removed upon project completion or before high flow events.

Project Size: The total area of ground disturbance associated with the Project is approximately 1.5 acres and 500 linear feet. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., title 14, § 15333).

Project Associated Discharge: Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project include those associated with the following: (1) approximately 71 logs, (2) five tons of boulders, (3) five tons of washed course gravel, (4) up to 75 native plantings, (5) a flatcar bridge, and (6) up to 25 feet of cable for anchoring logs will be discharged to waters of the state. The flatcar bridge is temporary and will be removed immediately at project completion.

Project Timeframes:

Start date: September 15, 2021
 Completion date: December 31, 2022
 Work window: July 15–November 1, with an option for extension with written approval by CDFW and Regional Water Board
 Number of Workdays: Approximately 30 days

Water Quality Certification Background: Because the Project’s primary purpose is habitat restoration intended to improve the quality of waters in California and improve fish passage and function to South Fork

*Results calculated using Searcy model (Searcy 2008).
 ** Credit equivalence to reproductive value calculated at 5m cell size (1 credit: reproductive value of 3,427).

Scott River, the North Coast Regional Water Quality Control Board (Regional Water Board) issued a Notice of Applicability (NOA) for Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects SBI2006GN (Order) (Waste Discharge Identification (WDID) No. 1A20179WNSI, Electronic Content Management Identification (ECM PIN) No. CW—868947 for the Project. The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has provided a supplemental document that sets forth measures to avoid and minimize impacts to fish (Chinook salmon, coho salmon, and steelhead), plants, mammals, and birds.

Receiving Water: South Fork Scott River, Scott River, Klamath River

Filled or Excavated Area:

Permanent area impacted: unknown
Temporary area impacted: 0.94 acres
Length temporarily impacted: 500 linear feet
Length permanently impacted: unknown

Dredge Volume: None.

Discharge Volume: Approximately 71 logs, five tons of boulders, five tons of washed course gravel, up to 75 native plantings, a flatcar bridge, and up to 25 feet of cable for anchoring logs. The flatcar bridge is temporary and will be removed immediately at project completion.

Project Location: Within the APN 031–090–080–000, the coordinates for the Project are Latitude 41.2895° N, Longitude 122.8358° W.

Regional Water Board staff determined that the Project may proceed under the Order. Additionally, Regional Water Board staff determined that the Project, as described in the Notice of Intent (NOI) complies with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.).

On June 22, 2021, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code Section 1653 that the NOA, NOI, and related species protection measures are consistent with the Habitat Restoration and Enhancement Act (HREA) with respect to the Project.

Pursuant to Fish and Game Code section 1653 subdivision (c), CDFW filed an initial notice with the Office of Administrative Law on June 22, 2021, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z–2021–0622–04) on July 2, 2021. Upon approval, CDFW will file a final notice pursuant to Fish and Game Code section 1653 subdivision (f).

Determination

CDFW has determined that the NOA, NOI, and related species protection measures are consistent with HREA as to the Project and meets the conditions set forth in Fish and Game Code section 1653 for authorizing the Project.

Specifically, CDFW finds that: (1) The Project purpose is voluntary habitat restoration and the Project is not required as mitigation; (2) the Project is not part of a regulatory permit for a non–habitat restoration or enhancement construction activity, a regulatory settlement, a regulatory enforcement action, or a court order; and (3) the Project meets the eligibility requirements of the State Water Resources Control Board’s Order for Clean Water Act Section 401 General Water Quality Certification for Small Habitat Restoration Projects.

Avoidance and Minimization Measures

The avoidance and minimization measures for Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in an attachment to the NOI, which contains the following categories: (1) Fish Avoidance and Protection Measures; (2) Special Status Botanical Species; (3) Special Status Avian Species; (4) Minimizing Impacts to Water Quality; and (5) Cultural Resources. Additionally, the Applicant provided an Avian Resources Report and Plant Clearance Report with Best Management Practices. The specific avoidance and minimization requirements are found in an attachment to the NOI.

Monitoring and Reporting

As required by Fish and Game Code section 1653, subdivision (g), the Applicant included a copy of the monitoring and reporting plan. The Applicant’s Monitoring and Reporting Plan provides a timeline for restoration, performance standards, and monitoring parameters and protocols. Specific requirements of the plan are found in an attachment to the NOI, identified as “Monitoring Plan.”

Notice of Completion

Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects requires the Applicant to submit a Notice of Completion (NOC) no later than 30 days after the project has been completed. A complete NOC includes at a minimum:

- 1) Photographs with a descriptive title.
- 2) Date the photographs was taken.
- 3) Names of the photographic sites.
- 4) WDID number and ECM PIN number indicated above.
- 5) Success criteria for the Project.

The NOC shall demonstrate that the Applicant has carried out the Project in accordance with the

Project description as provided in the Applicant's NOI. Applicant shall include the project name, WDID number, and ECM PIN number with all future inquiries and document submittals. Pursuant to Fish and Game Code section 1653, subdivision (g), the Applicant shall submit the monitoring plan, monitoring report, and notice of completion to CDFW as required by the General Order. Applicant shall submit documents electronically to: Janae R. Scruggs, janae.scruggs@wildlife.ca.gov.

Project Authorization

Pursuant to Fish and Game Code section 1654, CDFW's approval of a habitat restoration or enhancement project pursuant to section 1652 or 1653 shall be in lieu of any other permit, agreement, license, or other approval issued by the department, including, but not limited to, those issued pursuant to Chapter 6 (commencing with section 1600) and Chapter 10 (commencing with section 1900) of this Division and Chapter 1.5 (commencing with section 2050) of Division 3. Additionally, Applicant must adhere to all measures contained in the approved NOA and comply with other conditions described in the NOI.

If there are any substantive changes to the Project or if the Water Board amends or replaces the NOA, the Applicant shall be required to obtain a new consistency determination from CDFW. (See generally Fish and Game Code, subsection 1654, subdivision (c).)

DEPARTMENT OF FISH AND WILDLIFE

July 22, 2021

Andrew Braugh
California Trout
701 South Mount Shasta Boulevard
Mt. Shasta, CA 96067
dbraugh@caltrout.org

SUBJECT: Habitat Restoration and Enhancement Act—Request for Consistency Determination, Request No. 1653–2021–065–001–R1, South Fork Scott River Floodplain Restoration Phase II Project, Siskiyou County

Dear Andrew Braugh:

On June 22, 2021, the California Department of Fish and Wildlife (CDFW) received your notification on behalf of California Trout that on June 17, 2021, the North Coast Regional Water Quality Control Board (Regional Water Board) issued a Notice of Applicability (NOA) (WDID No. 1A20179WNSI, ECM PIN No. CW–868947) for the proposed South Fork Floodplain Restoration Phase II Project (Project) referenced above. The NOA describes the Project and

you provided supplemental information describing a series of measures to avoid and minimize impacts to fish and wildlife species.

Your notification includes a request pursuant to Fish and Game Code section 1653 that CDFW determine that the NOA, including its related Notice of Intent (NOI) comply with the terms of, and obtain coverage under, the General 401 Water Quality Certification Order for Small Habitat Restoration Projects, and that the supplemental avoidance and minimization measures are consistent with the Habitat Restoration and Enhancement Act (HREA) with respect to the Project.

CDFW has determined that the Project as described in the NOA, and its related NOI, are consistent with HREA. A copy of the CDFW determination is enclosed for your records. (See also Fish and Game Code, subsection 1653, subdivision (f).)

If you have any questions regarding this letter, please contact Janae Scruggs, Senior Environmental Scientist (Specialist) at (530) 945–9458 or by email at janae.scruggs@wildlife.ca.gov.

Sincerely,

/s/
Tina Bartlett, Regional Manager
Northern Region
Enclosure

cc: Jake Shannon, Senior Environmental Scientist (Specialist)
North Coast Regional Water Quality Control Board
Jacob.Shannon@Waterboards.ca.gov

Brendan Reed, Environmental Scientist
State Water Resources Control Board
Brendan.Reed@Waterboards.ca.gov

Michael Thamer
Landowner
michael@trinityinstitute.com

California Department of Fish and Wildlife
Wendy Bogdan, Chad Dibble, Garry Kelley,
Jeff Drongesen, Jay Rowan, Joe Croteau, Janae Scruggs, Lucy Haworth

wendy.bogdan@wildlife.ca.gov, chad.dibble@wildlife.ca.gov, garry.kelley@wildlife.ca.gov, jeff.drongesen@wildlife.ca.gov, jay.rowan@wildlife.ca.gov, joe.croteau@wildlife.ca.gov, janae.scruggs@wildlife.ca.gov, lucy.haworth@wildlife.ca.gov

FISH AND GAME COMMISSION

NOTICE OF RECEIPT OF PETITION

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2073.3 of the Fish and Game Code, the California Fish and Game Commission (Commission), on July 6, 2021, received a petition from Chris McCarron and the California Native Plant Society to list Lime Ridge eriastrum (also known as Lime Ridge woolly star) (*Eriastrum erterrae*) as endangered under the California Endangered Species Act.

The Lime Ridge eriastrum is an annual wildflower found on Lime Ridge in Walnut Creek, Contra Costa County. The plant begins to flower in late May and blooms until mid to late June. Fruiting occurs in late June to mid-July. The plant is typically found in a very specific habitat that consists of compacted barren calcareous soil in ecotones between chaparral and grasslands or in open areas within shrublands. The soil in which occurrences of the plant have been found in is compacted and sandy with low nutrients and organic matter content. Lime Ridge eriastrum is exclusively found on rock outcrops with soils that are formed due to erosion and occurs between 190 to 280 meters in elevation.

Pursuant to Section 2073 of California Fish and Game Code, on July 15, 2021, the Commission transmitted the petition to the California Department of Fish and Wildlife (Department) for review pursuant to Section 2073.5 of said code. The Commission will receive the petition at its August 18, 2021 meeting, which will be held via teleconference and webinar. It is anticipated that the Department's evaluation and recommendation relating to the petition will be received by the Commission at its December 15–16, 2021, meeting.

For information about the petition or to submit information to the Department relating to the petitioned species, interested parties may contact Isabel Baer, Native Plant Program Manager, California Department of Fish and Wildlife, by mail at P.O. Box 94244–2090, Sacramento, California, 94244–2090, or telephone at (916) 203–3193, or email at Isabel.Baer@wildlife.ca.gov.

**RULEMAKING PETITION
DECISION**

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF DECISION ON
PETITION TO AMEND
REGULATIONS PURSUANT TO
GOVERNMENT CODE 11340.7

On behalf of Maxim Healthcare Services (Petitioner), Erica Eisenlauer Drury submitted a petition by letter on June 30, 2021, to the California Department of Public Health (CDPH) in accordance with Government Code section 11340.6. The Petitioner requests that CDPH amend Title 22 of the California Code of Regulations, section 74709(a)(2) to allow a home health agency (HHA) to conduct supervisory visits virtually.

AUTHORITY

Health and Safety Code Section 100275 grants CDPH the general authority to adopt and enforce regulations for the execution of its duties. Health and Safety Code section 1734(a) authorizes CDPH to adopt, modify, amend, or rescind regulations related to the licensure of home health agencies.

SUMMARY OF THE PETITION

Petitioner proposes the following amendment to the home health aide supervision requirements found in Title 22 of the California Code of Regulations, section 74709(a)(2):

(2) If the patient receives skilled care, the registered nurse (or another professional described in paragraph (a)(1) of this section) shall conduct a virtual visit or make an on-site visit to the patient's home no less frequently than every two weeks. The home health agency shall develop and implement policies and procedures for those circumstances when the home health agency requires on-site supervisory visits to be conducted jointly with the home health aide present (e.g. when joint visits are part of a performance evaluation).

The petition notes enforcement of the current requirement that nurse supervisory visits be conducted on-site was suspended by CDPH through All Facility Letter 20–72 due to the ongoing COVID–19 Public Health Emergency. At the federal level, the Centers for Medicare & Medicaid Services (CMS) has also permitted HHA providers during the pandemic to use

interactive telecommunications systems for purposes of aide supervision, on occasion. CMS recently issued a proposed rule (CMS–1747–P) to make these changes to home health aide supervision requirements permanent, among other changes to Medicare and Medicaid program regulations. The petition states that the flexibility of virtual supervisory visits benefits HHA patients, families, nurses, providers, and the public in several ways and should continue beyond the pandemic.

DEPARTMENT DECISION

Petitioner has raised an important issue. However, the proposed federal rule cited in the petition is still open to public comment and will likely change before it is finalized. Amending section 74709(a)(2) or related regulations before any changes to the federal rule are final would be premature. The federal regulations that are being revised specify conditions that an HHA must meet in order to participate in the Medicare program. If CDPH were to adopt a rule related to home health aide supervision that is inconsistent with the federal rule ultimately adopted by CMS, confusion would follow about what was required within the regulated community and an HHA’s ability to meet requirements necessary to participate in the Medicare program would be jeopardized.

For these reasons, CDPH denies Petitioner’s request to amend section 74709(a)(2) to allow for virtual supervisory home health aide visits. However, CDPH will conduct further inquiry into this matter and consider whether regulatory changes are necessary after the proposed federal rule is adopted.

DEPARTMENT CONTACT PERSON

Please direct any inquiries regarding this action to:

Keith Van Wagner, Assistant Chief Counsel
 Regulations, Privacy & Special Projects
 California Department of Public Health
 1415 L Street, Suite 500, MS 0505
 Sacramento, CA 95814

AVAILABILITY OF PETITION

Any interested persons may obtain a copy of the petition that is the subject of this decision by sending a request to the Department contact person listed in this notice. When submitting such a request, please reference CDPH PETITION RESPONSE P–21–02 in the request.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH THE SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653–7715. Please have the agency name and the date filed (see below) when making a request.

Department of Corrections and Rehabilitation
 File # 2021–0708–01
 Body–Worn Cameras

This emergency by operational necessity, pursuant to Penal Code 5058.3, adopts provisions governing the implementation of body worn cameras at the California Institution for Women; California State Prison, Corcoran, Kern Valley State Prison; California State Prison, Los Angeles County; Richard J Donovan Correctional Facility; and the Substance Abuse and Treatment Facility and State Prison Corcoran.

Title 15
 Adopt: 3270.3
 Filed 07/28/2021
 Effective 07/29/2021
 Agency Contact:
 Renee Rodriguez (916) 445–2217

Secretary of State
 File # 2021–0715–02
 Risk Limiting Audits

This action by the Secretary of State readopts emergency regulations related to risk limiting audits pursuant to Assembly Bill 2400 (Stats. 2020, Ch.33) as well as updates requirements related to procedures in conducting a two–phased audit.

Title 02
 Amend: 20110, 20111, 20114, 20122
 Filed 07/26/2021
 Effective 07/26/2021
 Agency Contact: Taylor Kayatta (916) 695–1530

California Prison Industry Authority
 File # 2021–0614–01
 Incarcerated Individuals

This action by the California Prison Industry Authority revises terminology within its regulations as changes without regulatory effect. Specifically, the

Authority changes terms “inmate,” “offender,” and “under the jurisdiction of CDCR” to “incarcerated individuals” and “parolee” to “paroled individual.”

Title 15

Amend: 8000, 8001, 8004, 8004.1, 8004.2, 8004.3, 8004.4, 8005, 8006, 8007, 8008, 8104, 8107, 8115, 8116, 8116.1, 8117, 8118, 8119, 8119.1, 8201

Filed 07/27/2021

Agency Contact: Moira Doherty (916) 413-1140

California Prison Industry Authority

File # 2021-0615-02

Personnel Testing Program and Reasonable Suspicion for Testing

This action without regulatory effect by the California Prison Industry Authority amends California Code of Regulations, title 15, sections 8200 and 8205 to revise a title and delete an “authority” citation.

Title 15

Amend: 8200, 8205

Filed 07/27/2021

Agency Contact: Moira Doherty (916) 413-1140

Commission on Peace Officer Standards and Training

File # 2021-0610-03

Minimum Standards for Legislatively Mandated Courses

The Commission on Peace Officer Standards and Training submitted this action without regulatory effect, pursuant to California Code of Regulations, title 1, section 100, to make a provision in a regulation setting forth minimum standards for legislatively mandated courses consistent with Penal Code section 13519.14(e). The change affects training courses in human trafficking.

Title 11

Amend: 1081

Filed 07/26/2021

Agency Contact: Rob Patton (916) 227-4829

California Highway Patrol

File # 2021-0707-02

Explosives Routes — Map 4

This action by the CHP updates the route map for the transportation of explosives by commercial vehicles on highways to correct an error on route a map by removing 21.5 miles and adding 29.0 miles to make the map consistent with the correct route indicated in CCR Title 13, Section 1151.5(a), Map 5. It also changes “Clear Lake Oaks” to “Clearlake Oaks” for consistency with the spelling of the town name.

Title 13

Amend: 1151.4

Filed 07/22/2021

Effective 07/22/2021

Agency Contact: Tian-Ting Shih (916) 843-3400

California Highway Patrol

File # 2021-0721-02

Explosives Stops

This action amends the list of Safe Stopping and Parking Places for the transportation of explosives along designated routes in the state. The amendments add one new safe stopping place, remove two safe stopping places, and modify four safe stopping places to update or correct business hours, available services, and postmile information.

Title 13

Amend: 1153

Filed 07/26/2021

Effective 07/26/2021

Agency Contact: Tian-Ting Shih (916) 843-3400

California Horse Racing Board

File # 2021-0622-02

Classification of Drug Substances

This action amends the “Classification of Foreign Substances, Alphabetical Substances List,” which is incorporated by reference in section 1843.2 of Title 4 of the California Code of Regulations, in response to the December 2020 amendments by the Association of Racing Commissioners International to the Uniform Classification Guidelines for Foreign Substances and Recommended Penalties Model Rule.

Title 04

Amend: 1843.2

Filed 07/26/2021

Effective 07/26/2021

Agency Contact: Zachary Voss (916) 263-6036

Board of Barbering and Cosmetology

File # 2021-0610-02

Personal Service Permit & Schedule of Fees

In this regular rulemaking action the Board of Barbering and Cosmetology adopts regulations related to Personal Service Permits for licensed individuals to perform certain services outside of a licensed establishment.

Title 16

Adopt: 900, 965.2

Amend: 998

Filed 07/23/2021

Effective 10/01/2021

Agency Contact: Allison Lee (916) 928-6810

**PRIOR REGULATORY
DECISIONS AND CCR
CHANGES FILED WITH THE
SECRETARY OF STATE**

A quarterly index of regulatory decisions by the Office of Administrative Law (OAL) is provided in the California Regulatory Notice Register in the volume published by the second Friday in January, April, July, and October following the end of the preceding quarter. For additional information on actions taken by OAL, please visit www.oal.ca.gov.

