



California Regulatory Notice Register

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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 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

CONFLICT-OF-INTEREST CODES

AMENDMENT

Multi-County: Oakdale Joint Unified School District
Resources Conservation District of
the Santa Monica Mountains
Upper Mokelumne River Watershed
Authority
State Agency: Department of Conservation

ADOPTION

Multi-County: California Virtual Academy

A written comment period has been established commencing on September 10, 2021 and closing on October 25, 2021. Written comments should be directed to the Fair Political Practices Commission, Attention Daniel Vo, 1102 Q Street, Suite 3000, Sacramento, California 95811.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to

Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than October 25, 2021. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code-reviewing body for the above conflict-of-interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to Daniel Vo, Fair Political Practices Commission, 1102 Q Street, Suite

3000, Sacramento, California 95811, telephone (916) 322-5660.

**AVAILABILITY OF PROPOSED
CONFLICT-OF-INTEREST CODES**

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Daniel Vo, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 322-5660.

**TITLE 11. COMMISSION ON PEACE
OFFICER STANDARDS AND TRAINING**

**PEACE OFFICER SELECTION STANDARDS
REGULATIONS 1953 AND 1955**

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Division 2 of Title 11 of the California Code of Regulations as described below in the Informative Digest. A public hearing is not scheduled. Pursuant to Government Code Section 11346.8, any interested person, or his/her duly authorized representative, may request a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

**PUBLIC COMMENTS DUE BY
OCTOBER 25, 2021**

Notice is also given that any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action by fax at (916) 227-4547, by email to Melani Singley at melani.singley@post.ca.gov, or by letter to:

Commission on POST
Attention: Rulemaking
860 Stillwater Road, Suite 100
West Sacramento, CA 95605-1630

AUTHORITY AND REFERENCE

This proposal is made pursuant to the authority vested by Penal Code (PC) Section 13503 (authority of POST) and PC Section 13506 (POST authority to adopt regulations). This proposal is intended to interpret, implement, and make specific PC Section 13503(e), which authorizes POST to develop and implement programs to increase the effectiveness

of law enforcement, including programs involving training and education courses.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

POST was required by AB 846 (2020), which added Section 1031.3 to the Government Code (GC), to study, review, and update regulations and screening materials related to the emotional and mental condition evaluation required by Section 1031 to incorporate the identification of explicit and implicit bias towards race or ethnicity, gender, nationality, religion, disability, or sexual orientation.

To meet the mandate of GC Section 1031.3, POST initiated the AB 846 Project (project), which was comprised of three phases. Phase One included identifying and working with a Subject Matter Expert (SME) Panel to review survey results, conduct a literature review, and develop recommendations. SMEs were selected based on their nationally recognized research and expertise involving psychological screening, prejudice and bias, and/or police behavior/performance. Phase Two involved stakeholder review and input of the recommendations developed by the SME group. Stakeholders included a psychological evaluator advisory group, background investigators, law enforcement representatives and other interested groups and individuals. Input was received through stakeholder meetings and/or through individual contact with interested parties, and changes were made to the recommendations if/as necessary. Phase Three of the project included review and approval by the Commission.

In support of the project and in compliance with Government Code Section 1031.3, the SME Panel reviewed the psychological evaluator survey results and conducted a comprehensive literature review which focused on the use of measures of explicit and implicit bias for predicting discrimination. They specifically conducted research to determine if there were specific measures (i.e., assessments) that could be used in the selection of peace officer candidates and if data existed on their use and/or relevant outcome data. Utilizing the results of the survey, the literature review, and current POST regulations, a Bias Assessment Framework (Framework) was developed. The proposed Framework identifies three targeted constructs — Biased Behaviors, Biased Attitudes, and Bias-Relevant Traits & Attributes — to be assessed through three data sources — Background and Personal History, Written Instruments and Psychological Interview. It also provides information on the aggravating/facilitative and mitigating/protective factors to consider for each of the targeted constructs within the three data sources.

GC Section 1031(f) specifically addresses the emotional and mental condition of peace officers, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation which is to be assessed through a psychological evaluation. Regulation 1955 (peace officer psychological evaluation) outlines the specific criteria for the evaluation which currently includes information gathered from three data sources — personal history (background information), written assessments (e.g., psychological instruments), and a psychological interview. These data sources are reflected in the proposed Bias Assessment Framework. The required personal history information [Regulation 1955(e)(3)] comes from information gathered during the peace officer background investigation [Regulation 1953(g)(3)]. Both of these regulations — 1955: Peace Officer Psychological Evaluation and Regulation 1953: Peace Officer Background Investigation are being updated to incorporate the Framework and add language to address the identification of implicit and explicit bias in peace officer screening and require that the background investigation (narrative) report include relevant findings in personal and background history, as categorized in the Framework.

The proposed regulations implement the requirements of GC Section 1031.3, while taking into consideration current POST regulations and associated screening materials.

Anticipated Benefits of the Proposed Amendments:

The benefits anticipated by the proposed amendments to the regulations will be to ensure that legislative mandates are met through the incorporation of a standardized framework and by utilizing existing regulations and procedures, it will increase the efficiency of the state of California in delivering services to stakeholders. Thus, the law enforcement standards are maintained and effective in preserving peace, protection of public health, safety, and welfare of California. The proposed amendments will have no impact on worker safety or the State’s environment.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

POST has determined that these proposed amendments are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, POST has concluded that these are the only regulations that concern peace officer selection standards, specifically the psychological evaluation and background investigation.

BENEFITS ANTICIPATED

The benefits of proposed amendments to the regulation will increase the efficiency of the state

of California in delivering services to stakeholders. Thus, the law enforcement standards are maintained and effective in preserving peace, protection of public health, safety, and welfare of California. The proposed amendments will have no impact on worker safety or the state’s environment.

DOCUMENTS INCORPORATED BY REFERENCE

The following documents are incorporated by reference:

- Bias Assessment Framework
- Psychological Evaluator Competencies

ADOPTION OF PROPOSED REGULATIONS

Following the public comment period, the Commission may adopt the proposal substantially as set forth without further notice, or the Commission may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date of adoption, the text of any modified language, clearly indicated, will be made available at least 15 days before adoption to all persons whose comments were received by POST during the public comment period and to all persons who request notification from POST of the availability of such changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date that the revised text is made available.

ESTIMATE OF ECONOMIC IMPACT

Fiscal impact on Public Agencies including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Non-Discretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Costs to any Local Agency or School District for which Government Code Sections 17500–17630 requires reimbursement: None.

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses: POST has made an initial determination that the amended regulations will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

Small Business Determination: POST has found that the proposed language will not affect small business because the amended language applies only to POST–

participating departments and does not impact how they currently do business, rather provides them with additional tools for assessing peace officer candidates.

Additionally, the Commission's main function to select and maintain training standards for law enforcement has no effect financially on small businesses.

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

Effect on Housing Costs: POST has made an initial determination that the proposed regulation would have no effect on housing costs.

**RESULTS OF ECONOMIC
IMPACT ASSESSMENT**
per Gov. Code Section 11346.3(b)

The adoption of the proposed amendments of regulations 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.

The benefits of the proposed amendments of regulations to the regulations will increase the efficiency of the state of California in delivering services to stakeholders. Thus, the law enforcement standards are maintained and effective in preserving peace, protection of public health, safety, and welfare in California. There would be no impact that would affect worker safety or the State's environment.

CONSIDERATION OF ALTERNATIVES

To take this action, the Commission must determine that no reasonable alternative considered by the Commission, or otherwise identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is 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 than the proposed action.

CONTACT PERSONS

Questions regarding this proposed regulatory action may be directed to Melani Singley, Commission on POST, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1630 at (916) 227-4258. General questions regarding the regulatory process may be directed to Katie Strickland at (916) 227-2802.

TEXT OF PROPOSAL

Individuals may request copies of the exact language of the proposed regulations and of the initial statement of reasons, and the information the proposal is based upon, from the Commission on POST at 860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1630. These documents are also located on the POST Website at <https://post.ca.gov/Regulatory-Actions>.

**AVAILABILITY AND LOCATION OF THE
RULEMAKING FILE AND THE FINAL
STATEMENT OF REASONS**

The rulemaking file contains all information upon which POST is basing this proposal and is available for public inspection by contacting the person(s) named above.

To request a copy of the Final Statement of Reasons once it has been approved, submit a written request to the contact person(s) named above.

**TITLE 15. BOARD OF PAROLE
HEARINGS**

**ARTICLE 17. PAROLE CONSIDERATION
HEARINGS FOR ELDERLY INMATES**

**ENACTMENT OF SECTIONS 2449.40-2449.43,
GOVERNING PAROLE CONSIDERATION
HEARINGS FOR
ELDERLY INMATES**

NOTICE IS HEREBY GIVEN that the Executive Officer of the Board of Parole Hearings (board), under the authority granted by Government Code section 12838.4 and Penal Code sections 3052 and 5076.2, authorizes the board to adopt the proposed added Sections 2449.40 through 2449.43 of the California Code of Regulations, Title 15, Division 2, concerning Elderly Parole Consideration Hearings.

AUTHORITY AND REFERENCE

Government Code section 12838.4 vests the board with all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the Board of Prison Terms and Narcotic Addict Evaluation Authority, which no longer exist.

Penal Code section 3052 generally vests with the board the authority to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside of prison when eligible for parole.

Penal Code section 5076.2 requires the board to promulgate, maintain, publish, and make available to the general public a compendium of its rules and regulations.

Penal Code section 3055, subdivisions (a)–(j), establishes the criteria for conducting statutory elderly parole hearings, and the procedures for reviewing parole suitability of any inmate who is 50 years old or older and who has served 20 years of continuous incarceration.

Penal Code section 667 contains prior felony or “strike” sentencing requirements for persons sentenced to felonies who have already been convicted of prior serious or violent felonies.

Penal Code section 1170.12 contains prior felony or “strike” sentencing requirements for persons sentenced to felonies who have already been convicted of prior serious or violent felonies.

Penal Code section 3041.5 establishes the requirements and conditions concerning parole denial periods.

Penal Code section 3041 establishes the timing mechanism for providing a suitability hearing to an inmate, the requirement for meeting with an inmate the sixth year before parole eligibility for a consultation, and the procedures for granting or denying an inmate parole.

Penal Code section 3046 establishes the requirement for elderly inmates to be paroled upon receiving a grant from the board, subject to the board and Governor’s statutory decision review periods, regardless of how the board would normally calculate an inmate’s parole date.

In the case *In re Lawrence* (2008) 44 Cal.4th 1181, 1214, the California Supreme Court held that, when a board hearing panel conducts a parole consideration hearing, the panel members must grant the inmate’s parole unless they find evidence that the inmate continues to pose a current unreasonable risk of danger to the public safety if released on parole.

In *People v. Culp* (2002) 100 Cal.App.4th 1278, the California Court of Appeals for the 5th district held that, the trial court must add the total time the inmate spent in his two, separate periods of custody, for the purposes of calculating “good behavior and work performance credits” before sentencing. *Culp* indicates “continuous incarceration” means an uninterrupted period of detention in one or more facilities described in Penal Code section 3055, subdivision (b).

In the class action lawsuit *Coleman/Plata v. Newsom*, the court ordered the board to “finalize and implement a new parole process whereby inmates who are 60 years of age and have served a minimum of [25] years of their sentence” to be referred to the board for parole consideration. This order created the board’s Elderly Parole Program.

PUBLIC COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the board. **THE WRITTEN COMMENT PERIOD ON THIS PROPOSED REGULATORY ACTION WILL COMMENCE ON FRIDAY, SEPTEMBER 10, 2021, AND WILL CLOSE ON MONDAY, OCTOBER 25, 2021.** For comments to be considered by the board, they must be submitted in writing to the board’s Contact Person identified in this Notice no later than the close of the comment period.

CONTACT PERSON

Please direct requests for copies of the Initial Statement of Reasons, the Proposed Text of the Regulation, or other information upon which the rulemaking is based to:

Chancellor Veal, Staff Attorney

Board of Parole Hearings

P.O. Box 4036

Sacramento, CA 95812–4036

Phone: (916) 322–6729

Facsimile: (916) 322–3475

E–mail: BPH.Regulations@cdcr.ca.gov

If Chancellor Veal is unavailable, please contact Assistant Chief Counsel, Heather L. McCray at Heather.McCray@cdcr.ca.gov. In any such inquiries, please identify the action by using the board’s regulation control number **BPH RN 21–04**.

NO PUBLIC HEARING SCHEDULED

The board has not scheduled a public hearing on this proposed regulatory action. The board, however, will 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 before the close of the written comment period. Written or facsimile comments submitted during the prescribed comment period have the same significance and influence as oral comments presented at a public hearing.

If scheduled, the purpose of a public hearing would be to receive oral comments about the proposed regulations. It would not be a forum to debate the proposed regulations, and no decision regarding the permanent adoption of the proposed regulations would be rendered at a public hearing. The members of the board would not necessarily be present at a public hearing.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

Through ongoing litigation in *Coleman v. Newsom*, and *Plata v. Newsom*, prisoners with serious medical and mental health conditions filed suit asserting their constitutional rights were violated due to prison overcrowding, resulting in their receiving inadequate medical and mental health care. The court found that the deficiencies in prison medical and mental health care violated prisoners' Eighth Amendment Rights. Plaintiffs' in both cases requested a three-judge court be convened pursuant to the Prison Litigation Reform Act (PLRA). The two district judges in each case independently granted those requests, and The Chief Judge of the Court of Appeals for the Ninth Circuit convened a three-judge court to preside over the consolidated class action.

On August 4, 2009, the three-judge court issued an order that required the State to submit a plan to reach a prison population cap of 137.5% design capacity in two years. According to the three-judge court's order, the population reduction was necessary because, at the time, the State's prisons housed twice as many prisoners as they were designed for, making the prisons unsafe for prisoners and staff. The three-judge court found that prisoners were unable to obtain life-saving medical and psychiatric care in these overcrowded prisons.

As an additional measure to reduce overcrowding, on February 10, 2014, the three-judge court directed the Board of Parole Hearings (board) to "finalize and implement a new parole process whereby inmates who are 60 years of age and have served a minimum of [25] years of their sentence" to be referred to the board for parole consideration. This process excluded from eligibility inmates who were either sentenced to life without the possibility of parole or condemned.

On June 16, 2014, the board issued a memorandum providing guidance on how the board would implement the court-ordered Elderly Parole Program. This memorandum also outlined that risk assessments performed by the board's forensic psychologists would incorporate how an inmate's age, long-term confinement, and diminished physical condition, if any, reduce the inmate's risk of future violence. The court-ordered Elderly Parole Program was fully implemented on October 1, 2014.

On January 1, 2018, the California Legislature enacted Assembly Bill 1448 (2017-2018 Leg. Session) (AB 1448), which codified into law the Elderly Parole Program by adding section 3055 to the Penal Code. The statutory version of the Elderly Parole Program differed from the Court-Ordered Elderly Parole Program in several respects. First, in addition to excluding condemned inmates or inmates sentenced

to life without the possibility of parole, the statutory Elderly Parole Program also excluded inmates sentenced on any current offense under the strike laws in Penal Code sections 1170.12 or 667, subdivisions (b) through (i). Second, the statutory Elderly Parole Program also excluded any inmate convicted of first-degree murder of a peace officer, where the individual knows or reasonable should have known the victim was a police officer.

In signing AB 1448, Governor Brown commented that the Elderly Parole Program "has been a successful program that saves [California] a significant amount of money that would be otherwise spent for geriatric prisoners who no longer pose a risk to public safety," and that he believed "the pool of eligible inmates can and should be broadened." On January 1, 2021, the California Legislature enacted Assembly Bill 3234 (2019-2020 Reg. Session) (AB 3234), which amended Penal Code section 3055 to encompass a broader version of the statutory Elderly Parole Program to include inmates who are 50 years old and have served 20 years of continuous incarceration. The additional exclusions still apply.

This proposed regulation package is submitted to comply with the statutory mandate to regulate the board's process for providing parole consideration hearings for qualified elderly inmates. In this package, the board is providing clarity on elderly inmate qualification, the board's process for scheduling and holding elderly parole consideration hearings, and the elderly inmate factors that require different levels of consideration throughout the hearing process.

ANTICIPATED BENEFITS OF THE
PROPOSED REGULATIONS

Defining who qualifies as an elderly inmate benefits all stakeholders by resolving several ambiguities and clarifying how to determine whether an inmate will qualify for elderly inmate consideration. These processes also benefit public safety by ensuring the greatest possible accuracy in qualifying inmates for elderly parole consideration and calculating their parole eligibility dates.

Clarifying the process for calculating an elderly parole eligible date (EPED) as well as how initial and subsequent hearings will be scheduled benefits inmates, victims, and other hearing participants because each stakeholder will have a better understanding of when to prepare for an elderly inmate's initial or subsequent parole consideration hearing. Placing each of the at-hearing rights and requirements into a single section is necessary to simplify for hearing panels, inmates, and the public all of the variations for parole consideration hearings for elderly inmates. Interpreting the three elderly factors also benefits each stakeholder by

clarifying what information will be discussed and given special consideration at hearings for elderly inmates. Moreover, collating each of the at-hearing rights and requirements into a single subdivision further benefits these stakeholders by providing a single location from which to identify all of the ways in which hearings for elderly inmates differ from other parole consideration hearings, which allows each hearing participant to better prepare for their role in the hearings.

DETERMINATION OF INCONSISTENCY/
INCOMPATIBILITY WITH EXISTING
STATE REGULATIONS

The board has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the board has concluded that these are the only regulations that concern the board’s requirements in conducting parole hearings for elderly inmates. The California Department of Corrections and Rehabilitation (CDCR) has promulgated regulations in Division 3, Article 3, sections 3499 to 3499.2 in title 15 of the California Code of Regulations. CDCR’s regulations govern who is eligible for the Statutory Elderly Parole Program, the criteria for calculating an EPED, and the appeals process for elderly inmates who disagree with the calculation of their EPED or their exclusion from the Statutory Elderly Parole Program; these regulations do not infringe on the board’s requirements for conducting parole hearings for elderly inmates.

DISCLOSURES REGARDING THE
PROPOSED ACTION

Local Mandates: The board has determined that the proposed action imposes no mandate upon local agencies or school districts.

Fiscal Impact Statement: The board has made the following initial determinations:

- o Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: **None.**
- o Cost or savings to any state agency: **\$0: A budget increase was already granted to the board prior to the filing of this regulation package that was based in small part on additional staffing and funds needed to implement statutory elderly parole requirements. The implementation of these regulations will be absorbed by the current already increased budget and resources and should not result in any additional costs or savings to the board.**

Specifically, for the current fiscal year, additional resources were not necessary to implement these regulations. However, in the prior fiscal year, the board requested, and was granted, additional funding beginning in the current fiscal year to effectively carry out all general board functions, which includes the board’s new statutory obligation under AB 3234 to provide Elderly Parole hearings to qualified elderly inmates.

The additional resources were also intended to address an increase in projected workload associated with youth offender hearings under Penal Code section 3051, the rescheduling of hearings that had to be postponed due to COVID–19, and hearings for nonviolent offenders required to be scheduled under Proposition 57. Thus, this regulation package is not expected to create or eliminate jobs in California because staffing needs have been absorbed within existing allocated resources.

- o Other non–discretionary cost or savings imposed on local agencies: **None.**
- o Cost or savings in federal funding to the state: **None.**

Significant Statewide Adverse Economic Impact on Business: The board has determined that there is no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impacts on Representative Private Persons 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.

Assessment of Effects on Job and/or Business Creation, Elimination or Expansion: The board has determined that adoption of the proposed regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing business within California; or (3) affect the expansion of businesses currently doing business within California. As noted above, while the enactment of AB 3234, amending the elderly parole statute, contributed in small part to an overall need for additional resources, the adoption of these regulations will not result in the creation or elimination of additional jobs.

Effect on Housing Costs: The board has made an initial determination that the proposed action will have no significant effect on housing costs because housing costs are not affected by the internal processes governing the board’s requirements in conducting parole consideration hearings or parole reconsideration hearings for elderly inmates.

Small Business Determination: The board has determined that the proposed regulations do not have a significant adverse economic impact on small business because small businesses are not affected by the internal processes governing the board's requirements in conducting parole consideration hearings or parole reconsideration hearings for elderly inmates.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The board concludes that it is (1) unlikely that the proposed regulations will create or eliminate any jobs in California, (2) unlikely that the proposed regulations will create any new business or eliminate any existing businesses, and (3) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state.

Anticipated Benefits to the health and welfare of California residents, worker safety, and the state's environment: As further explained in the Economic Impact Analysis, contained within the Initial Statement of Reasons, these proposed regulations will benefit all stakeholders by providing greater clarity on how to determine which inmates qualify for elderly parole consideration and when each hearing participant should prepare for the elderly inmate's initial hearing. We anticipate that having a better understanding for how to prepare for these hearings will ultimately help reduce some of the risk and anxiety hearing participants experience when faced with these hearings. Additionally, the proposed regulations ensure greater uniformity in how the elderly factors are considered and applied to inmate cases. This will ultimately benefit public safety and welfare by ensuring that the candidates most suitable for parole will be released. The board has determined the proposed regulations will not have any effect on the state's environment.

CONSIDERATION OF ALTERNATIVES

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 affected private persons and equally effective in implementing the statutory policy or other provision of law. Interested parties are accordingly invited to present statements or arguments with

respect to any alternatives to the proposed changes during the public comment period.

AVAILABILITY OF PROPOSED TEXT

The board will make the rulemaking file available to the public throughout the rulemaking process at its offices located at 1515 K Street, Suite 600, Sacramento, California. As of the date this Notice is published in the Office of Administrative Law's Notice Register, the rulemaking file consists of this Notice, Form 400 (Notice of Submission of Regulation), the Proposed Text of the Regulation and Initial Statement of Reasons. Copies of any of these documents may be obtained by contacting the board's Contact Person identified in this notice at the mailing address, fax number, or email address listed above or by visiting the board's website at: http://www.cdcr.ca.gov/BOPH/reg_revisions.html.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the board may adopt the proposed regulations substantially as described in this Notice. If the board 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 board adopts the regulations as revised. Please send requests for copies of any modified regulation text to the attention of the Contact Person identified in this Notice or by visiting the board's website at http://www.cdcr.ca.gov/BOPH/reg_revisions.html. If the board makes modifications, the board will accept written comments on the modified regulations for 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 the board's Contact Person identified in this notice at the mailing address, phone number, fax number, or email address listed above or by visiting the board's website at: http://www.cdcr.ca.gov/BOPH/reg_revisions.html.

TITLE 16. BOARD OF BARBERING AND COSMETOLOGY

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING § 961. INSTRUCTIONAL MATERIALS

NOTICE IS HEREBY GIVEN that the Board of Barbering and Cosmetology (Board) is proposing to amend California Code of Regulations (CCR), Title 16, Division 9, Section 961, as described in the Informative Digest. 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. on Tuesday, October 26, 2021.**

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will 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. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this Notice.

WRITTEN COMMENTS

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 7312 and 7362, and to implement, interpret or make specific BPC sections 7312 and 7362, the Board is considering changes to Division 9 of Title 16 of the California Code of Regulations (“CCR”) as follows:

BPC section 7312 authorizes the Board “make rules and regulations in aid or furtherance” of Chapter 10 of Division 3 of the BPC, also known as the Barbering and Cosmetology Act. Section 7312 also requires the Board to make written materials available in English, Korean, Spanish and Vietnamese. BPC section 7362 requires barbering and cosmetology schools to provide a course of instruction approved by the Board.

Existing Title 16, section 961 of the CCR describes the instructional materials Board-approved schools are required to use. The Board proposes to amend the regulation language in its entirety for brevity and clarity, and to specify who is responsible for providing the materials to students. The proposed language will require schools provide a translation guide to students who plan to take the Board’s examination in one of the Board-offered non-English languages but repeals a requirement that schools maintain alternate instructional materials. In addition, the proposed language removes any mention of the National Interstate Council of State Boards of Cosmetology (NIC) so the Board is not limited to this one particular exam vendor in the future.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

See Results of Economic Impact Assessment/ Analysis: Benefits of Regulation below.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing this regulation, 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.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None. The regulations do not result in additional workload or costs to the state.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 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 because schools already typically provide a textbook and the Board's laws and regulations to students and because the language translation guides are available for free.

Cost Impact on Representative Private Person or Business:

The regulations do not result in additional costs to individuals or business because schools already typically provide a textbook and the Board's laws and regulations to students and because the language translation guides are available for free.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation will not significantly affect small businesses because schools already typically provide a textbook and the Board's laws and regulations to students and because the language translation guides are available for free.

**RESULTS OF ECONOMIC IMPACT
ASSESSMENT/ANALYSIS**

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have an impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California because there are no additional costs to business associated with this amendment to section 961 of the CCR. The Board has determined that these amendments will not impact worker safety, the state's environment, or the public's health and safety because they only address the educational materials used by students.

Benefits of Regulation:

Removing the requirement to use text and reference books approved by the National Interstate Council of State Boards of Cosmetology (NIC) will provide schools more options for resources and will allow the Board to use a different exam vendor in the future.

Providing that schools shall provide a current version of the California Barbering and Cosmetology Act and Barbering and Cosmetology Regulations ensures that students are aware of the most recent laws and regulations upon graduation and will understand how to comply.

The requirement concerning translations guides will benefit students who are more comfortable taking

examinations in their native language and help them to successfully pass the licensing examination

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation 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 proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

**INITIAL STATEMENT OF
REASONS AND INFORMATION**

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Contact Person named below.

**AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS AND
RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Sandie Lee
 Address: 2420 Del Paso Road,
 Suite 100
 Sacramento, CA 95834
 Telephone Number: (916) 575-7100
 Fax Number: (916) 928-6810
 E-Mail Address: Sandie.Lee@dca.ca.gov

450 N Street, Sacramento, California. The text of the statement of reasons and proposed amendments to Regulation 1706 are also available on the Department's website at <https://www.cdtfa.ca.gov/taxes-and-fees/regscont.htm>.

CONTACT PERSONS

The backup contact person is:

Name: Allison Lee
 Address: 2420 Del Paso Road,
 Suite 100
 Sacramento, CA 95834
 Telephone Number: (916) 575-7100
 Fax Number: (916) 928-6810
 E-Mail Address: Allison.Lee@dca.ca.gov

Questions regarding the substance of the proposed amendments should be directed to Sarah Smith, by telephone at (916) 309-5292, by e-mail at Sarah.Smith@cdtfa.ca.gov, or by mail at California Department of Tax and Fee Administration, Attn: Sarah Smith, MIC:50, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0050.

Written comments for the Department's consideration, written requests to hold a public hearing, notices of intent to present testimony or witnesses at the public hearing, and other inquiries concerning the proposed regulatory action should be directed to Kim DeArte, Regulations Coordinator, by telephone at (916) 309-5227, by fax at (916) 322-2958, by e-mail at CDTFARegulations@cdtfa.ca.gov, or by mail to: California Department of Tax and Fee Administration, Attn: Kim DeArte, MIC:50, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0050. Kim DeArte is the designated backup contact person to Sarah Smith.

Website Access: Materials regarding this proposal can be found at http://www.barbercosmo.ca.gov/laws_regs/prop_regs.shtml.

TITLE 18. DEPARTMENT OF TAX AND FEE ADMINISTRATION

SECTION 1706, DROP SHIPMENTS

NOTICE IS HEREBY GIVEN that the California Department of Tax and Fee Administration (Department), pursuant to its authority under Revenue and Taxation Code (RTC) section 7051, proposes to amend California Code of Regulations, title 18, section (Regulation) 1706, *Drop Shipments*. The proposed amendments clarify that marketplace sales are generally not drop shipment transactions and provide more guidance about how a person can overcome the presumption they are a drop shipper.

AUTHORITY

RTC section 7051.

REFERENCE

RTC sections 6007, 6041, 6043, 6091, and 6203.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Department has prepared copies of the text of the proposed amendments to Regulation 1706, as well as a statement of reasons for the proposed revisions to Regulation 1706. These documents and all the information on which the proposed regulatory action is based are available to the public upon request. The rulemaking file is available for public inspection at

WRITTEN COMMENT PERIOD

The written comment period ends at 11:59 p.m. (PDT) on October 25, 2021. The Department will consider the statements, arguments, and/or contentions contained in written comments received by Kim DeArte at the postal address, email address, or fax number provided above, prior to the close of the written comment period, before the Department decides whether to adopt the proposed regulatory action. The Department will only consider written comments received by that time.

However, if a public hearing is held, written comments may also be submitted at the public hearing and the Department will consider the statements, arguments, and/or contentions contained in written comments submitted at the public hearing before the Department decides whether to adopt the proposed regulatory action.

PUBLIC HEARING

The Department has not scheduled a public hearing to discuss the proposed regulatory action. However, any interested person or his or her authorized representative may submit a written request for a public hearing no later than 15 days before the close of the written comment period, and the Department will hold a public hearing if it receives a timely written request.

CHANGES TO THE TEXT OF THE ORIGINAL
PROPOSED AMENDMENTS

The Department may adopt the proposed amendments to Regulation 1706 with changes that are non-substantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Department will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be distributed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Kim DeArte. The Department will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF UPDATED
STATEMENT OF REASONS

If the Department adopts the proposed regulatory action, the Department will prepare an updated statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Department's website at <https://www.cdtfa.ca.gov/taxes-and-fees/regscont.htm>.

**TITLE 18. DEPARTMENT OF TAX AND
FEE ADMINISTRATION**

SECTION 4801, RETAILER'S RECORDS

NOTICE IS HEREBY GIVEN that the California Department of Tax and Fee Administration (Department), pursuant to its authority under Business and Professions Code (BPC) section 22971.2, proposes to adopt California Code of Regulations, title 18, section (Regulation) 4801, *Retailer's Records*. The proposed regulation will clarify for licensed retailers of cigarettes and tobacco products the scope and duration records should be maintained. The proposed regulation will also explain the requirements for transferring cigarettes and tobacco products between retail locations operated by the same licensed retailer.

AUTHORITY

BPC section 22971.2.

REFERENCE

BPC sections 22971, 22972, 22974, 22974.3 and 22980.

AVAILABILITY OF STATEMENT OF
REASONS AND TEXT OF
PROPOSED REGULATION

The Department has prepared copies of the text of the proposed Regulation 4801, as well as a statement of reasons for the proposed regulation. These documents and all the information on which the proposed regulatory action is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The text of the Statement of Reasons and proposed Regulation 4801 is also available on the Department's website at www.cdtfa.ca.gov/taxes-and-fees/regscont.htm.

CONTACT PERSONS

Questions regarding the substance of the proposed regulation should be directed to Michael Patno, by telephone at (916) 309-5303, by e-mail at Michael.Patno@cdtfa.ca.gov, or by mail at California Department of Tax and Fee Administration, Attn: Michael Patno, MIC:50, 450 N Street, PO Box 942879, Sacramento, CA 94279-0050.

Written comments for the Department's consideration, written requests to hold a public hearing, notices of intent to present testimony or witnesses at the public hearing, and other inquiries concerning the proposed regulatory action should be directed to Kim DeArte, Regulations Coordinator, by telephone at (916) 309-5227, by fax at (916) 322-2958, by e-mail at CDTFARegulations@cdtfa.ca.gov, or by mail to: California Department of Tax and Fee Administration, Attn: Kim DeArte, MIC:50, 450 N Street, PO Box 942879, Sacramento, CA 94279-0050. Kim DeArte is the designated backup contact person to Michael Patno.

WRITTEN COMMENT PERIOD

The written comment period ends at 11:59 pm (PDT) on October 25, 2021. The Department will consider the statements, arguments, and/or contentions contained in written comments received by Kim DeArte at the postal address, email address, or fax number provided above, prior to the close of the written comment period, before the Department decides whether to adopt the proposed regulatory action. The Department will only consider written comments received by that time.

However, if a public hearing is held, written comments may also be submitted at the public hearing

and the Department will consider the statements, arguments, and/or contentions contained in written comments submitted at the public hearing before the Department decides whether to adopt the proposed regulatory action.

PUBLIC HEARING

The Department has not scheduled a public hearing to discuss the proposed regulatory action. However, any interested person or his or her authorized representative may submit a written request for a public hearing no later than 15 days before the close of the written comment period, and the Department will hold a public hearing if it receives a timely written request.

CHANGES TO THE TEXT OF THE ORIGINAL PROPOSED AMENDMENTS

The Department may adopt the proposed regulation with changes that are non-substantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Department will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be distributed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Kim DeArte. The Department will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF UPDATED STATEMENT OF REASONS

If the Department adopts the proposed regulatory action, the Department will prepare an updated statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Department's website at www.cdtfa.ca.gov/taxes-and-fees/regscont.htm.

TITLE 18. DEPARTMENT OF TAX AND FEE ADMINISTRATION

ADOPT CHAPTER 4, ACCESS TO PUBLIC RECORDS MAINTAINED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, AND SECTIONS 35301, 35302, 35303, 35304, AND 35305 IN CHAPTER 4 OF DIVISION 5 OF TITLE 18 OF THE CALIFORNIA CODE OF REGULATIONS

NOTICE IS HEREBY GIVEN that the California Department of Tax and Fee Administration (Department), pursuant to the authority vested in it by sections 6253.4, 15570.40, subdivision (a), and 15570.42 of the Government Code, proposes to adopt chapter 4, *Access to Public Records Maintained by the California Department of Tax and Fee Administration*, and Sections (Regulations) 35301, 35302, 35303, 35304, and 35305 in chapter 4 of division 5 of title 18 of the California Code of Regulations. The Department proposes to adopt chapter 4 and new Regulations 35301, 35302, 35303, 35304, and 35305 to establish procedures and guidelines to access the Department's public records, provide for maximum public accessibility to the Department's public records, and specifically identify and describe the types of public records pertaining to the tax and fee programs administered by the Department.

AUTHORITY

Government Code sections 6253.4, 15570.40, and 15570.42.

REFERENCE

Regulation 35301: Government Code sections 6250, 6251, 6252, and 6253.

Regulation 35302: Government Code sections 6250, 6251, 6252, 6253, 6254, 6254.20, 6255, and 15570.84, Revenue and Taxation Code sections 7056, 9255, 30455, 38705, 43651, 45982, 46751, 55381, and 60609.

Regulation 35303: Government Code sections 6253 and 6253.9.

Regulation 35304: Government Code sections 6253 and 6253.1.

Regulation 35305: Government Code sections 6250, 6251, 6252, 6253, 6253.1, 6254, 6254.20, 6255, and 15570.84, Revenue and Taxation Code sections 7056, 9255, 30455, 38705, 43651, 45982, 46751, 55381, and 60609.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

Public Records Act

The Public Records Act (Gov. Code (GC), § 6250 et seq.) provides that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” (GC, § 6250.) As relevant here, the Public Records Act defines the term “public records” to include “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” (GC, § 6252, subdivision (e).) The Public Records Act provides that public records are open to public inspection and that every person has a right to inspect any public record, unless exempt from public disclosure, and any “reasonably segregable portion of a record” after deletion of the portions that are exempt from public disclosure. (GC, § 6253, subdivision (a).)

The Public Records Act generally requires state agencies to help the public make effective requests for public records. (GC, § 6253.1, subdivision (a).) The Public Records Act also authorizes a state agency to “adopt regulations stating the procedures to be followed when making its records available in accordance with” the Public Records Act. (GC, § 6253.4, subdivision (a).)

The Public Records Act authorizes a state agency to charge a person requesting public records “fees covering direct costs of duplication.” (GC, § 6253, subdivision (b).) The Public Records Act generally requires state agencies to make public records that are maintained in electronic format available in electronic format when requested and authorizes state agencies to charge a person requesting any public record in electronic format for the “direct cost of producing a copy of a record in an electronic format.” (GC, § 6253.9, subdivision (a).) Also, when a request for a public record requires data compilation, extraction, or programming to produce the record, the Public Records Act generally authorizes a state agency to charge the person making the request for “the cost of producing a copy of the record, including the cost to

construct a record, and the cost of programming and computer services necessary to produce a copy of the record.” (GC, § 6253.9, subdivision (b).)

In addition, the Public Records Act provides several exemptions from public disclosure, including, but not limited to exemptions for preliminary drafts of interagency and intra-agency memorandums or other documents not retained by an agency in the normal course of business (GC, § 6254, subdivision (a)), records pertaining to pending litigation (GC, § 6254, subdivision (b)), personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy (GC, § 6254, subdivision (c)), test questions, scoring keys, and other data regarding licensing, employment and academic examinations (GC, § 6254, subdivision (g)), and records the disclosure of which is exempted or prohibited pursuant to federal or state law. (GC, § 6254, subdivision (k).) The Public Records Act does not require the disclosure of records that relate to electronically collected personal information, as defined by Government Code section 11015.5, received, collected, or compiled by a state agency. (GC, § 6254.20.) Also, a state agency may justify withholding a public record from disclosure under the Public Records Act when the public interest served by not disclosing the record clearly outweighs the public interest served by the disclosure of the record. (GC, § 6255, subdivision (a).) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, is required to be made in writing. (GC, § 6255, subdivision (b).)

California Department of Tax and Fee Administration

On June 27, 2017, the Governor approved Assembly Bill No. (AB) 102 (Stats. 2017, ch. 16), which added part 8.7 (commencing with section 15570) to division 3 of title 2 of the Government Code (part 8.7). As relevant here, part 8.7 established the California Department of Tax and Fee Administration (Department). (GC, § 15570). Part 8.7 transferred most of the State Board of Equalization’s (Board’s) former duties, powers and responsibilities to the Department, operative July 1, 2017 (GC, § 15570.22), including, but not limited to the Board’s former duties, powers, and responsibilities related to the administration and enforcement of the Sales and Use Tax Law (Rev. & Tax. Code (RTC), § 6001 et seq.), Use Fuel Tax Law (RTC, § 8601), Cigarette and Tobacco Products Tax Law (RTC, § 30001 et seq.), Timber Yield Tax Law (RTC, § 38101), Hazardous Substances Tax Law (RTC, § 43001 et seq.), Integrated Waste Management Fee Law (RTC, § 45001 et seq.), Oil Spill Response, Prevention, and Administration Fees Law (RTC, § 46001), Fee Collection Procedures Law (RTC, § 55001 et seq.),

and Diesel Fuel Tax Law (RTC, § 60001 et seq.), which each contain a statute prohibiting the Department and its staff from disclosing specified information. (See RTC, §§ 7056, 9255, 30455, 38705, 43651, 45982, 46751, 55381, and 60609). Part 8.7 also provides that “whenever any reference to the [Board] appears in any statute, regulation, or contract, or in any other code, with respect to any of the functions transferred to the [Department], it shall be deemed to refer to the [Department].” (GC, § 15570.24).

In addition, part 8.7 authorizes the Department to adopt regulations to carry out the purposes of part 8.7. (GC, § 15570.40, subdivision (a).) It requires the Department to adopt regulations to establish procedures and guidelines to access public records. (GC, § 15570.42.) It also requires those regulations to facilitate maximum public accessibility to the Department’s public records, and specifically identify and describe the types of public records pertaining to the tax and fee programs administered by the Department. (*Ibid.*)

Effect, Objective, and Benefits of the Proposed Regulations

There is an issue (or problem within the meaning of GC, § 11346.2, subdivision (b)(1)) because the Department has not yet adopted regulations to establish procedures and guidelines to access its public records as required by part 8.7. Therefore, the Department is proposing to adopt Regulations 35301, 35302, 35303, 35304, and 35305, which establish procedures and guidelines to access the Department’s public records, provide for maximum public accessibility to the Department’s public records, and specifically identify and describe the types of public records pertaining to the tax and fee programs administered by the Department to have the effect and accomplish the objective of addressing the issue (or problem). The Department is also proposing to codify Regulations 35301 through 35305 in new chapter 4, *Access to Public Records Maintained by the California Department of Tax and Fee Administration*, to be added to division 5 of title 18 of the California Code of Regulations.

Proposed Regulation 35301, *Purpose and Scope*, explains that access to public records maintained by the Department is governed by the California Public Records Act. Proposed Regulation 35301 explains that the purpose of new chapter 4 is to facilitate public access to the Department’s public records and provide a better understanding of the types of public records available that pertain to the Department’s tax and fee programs. It also incorporates the definition of “public records” from the Public Records Act into new chapter 4 and expressly defines the term “Department” to mean the California Department of Tax and Fee Administration for purposes of chapter 4.

Proposed Regulation 35302, *Disclosure Policy*, sets forth the Department’s policy to provide the public access to public records that are not exempt from disclosure by state or federal law, and permit the inspection and copying of any reasonably segregable portion of a public record after deletion of the portions that are exempt from disclosure. Proposed Regulation 35302 explains that the Department’s public records may be inspected and copied pursuant to the procedures set forth in the Public Records Act and proposed Regulations 35301, 35302, 35303, 35304, and 35305. Proposed Regulation 35302 also provides a non-exhaustive list of examples of records that the Department deems exempt from public disclosure, including tax and fee information that must be kept confidential under state or federal laws, confidential legal advice, records prepared in connection with litigation, preliminary drafts of intra-agency memorandums or other documents not retained by Department staff in the normal course of business, personnel, medical or similar files, and test questions, scoring keys, and other data regarding licensing, employment and academic examinations.

Proposed Regulation 35303, *Cost for Copies of Public Records*, provides that the Department’s general policy is to require any person making a request for copies of public records to reimburse the Department for the cost of duplication. Proposed Regulation 35303 provides that the copying fee may be waived if the cost for the records is less than ten dollars (\$10). Proposed Regulation 35303 also provides that if the Department must compile or extract electronic data or perform computer programming to produce a copy of an electronic record, it may charge its full costs.

Proposed Regulation 35304, *Procedure for Requesting Public Records*, describes the procedures to follow to request to inspect or obtain copies of the Department’s public records. It directs the public to submit written requests to inspect or obtain copies of public records to the Department’s Disclosure Office by email at Disclosure.Office@cdtfa.ca.gov, by fax at (916) 324-5995, or by mail at California Department of Tax and Fee Administration, Disclosure Office, P.O. Box 942879, MIC: 82, Sacramento, CA 94279. This regulation also requires requests to provide a sufficiently specific description to allow the Department to identify the requested records, and explains that the Disclosure Office will assist the public in making focused and effective requests that reasonably describe an identifiable record or records.

Proposed Regulation 35305, *Public Records Available*, specifically identifies and describes the types of public records pertaining to the tax and fee programs administered by the Department. Subdivision (a) of the proposed regulation specifically identifies the public records that are available on the

Department's website where they can be downloaded or printed by the public. Subdivision (b) of the proposed regulation specifically identifies the public records that can be requested by making a request to the Department's Disclosure Office.

The Department has determined that the adoption of new chapter 4 and proposed Regulations 35301 through 35305 is reasonably necessary to have the effect and accomplish the objective of addressing the issue (or problem) discussed above by adopting regulations to establish procedures and guidelines to access the Department's public records as required by part 8.7. The Department anticipates that the new chapter and proposed regulations will benefit members of the public, including businesses and individuals, by helping them better identify, request, and obtain copies of the Department's public records, including public records pertaining to the tax and fee programs administered by the Department. The Department also anticipates that the new chapter and proposed regulations will benefit the Department by making it more likely that future requests for public records will be more focused and effective and contain a sufficiently specific description to allow the Department to more easily identify the requested records.

The Department has performed an evaluation of whether new chapter 4 and proposed Regulations 35301 through 35305 are inconsistent or incompatible with existing state regulations and determined that the new chapter and proposed regulations are not inconsistent or incompatible with existing state regulations because the proposed regulations are the only regulations that establish procedures and guidelines to access the Department's public records as required by part 8.7.

In addition, the federal Freedom of Information Act (FOIA) (5 U.S.C. § 552) provides access to federal agencies' records and the Internal Revenue Service (IRS) has adopted a regulation (26 C.F.R. § 601.702) that prescribes the procedures for accessing IRS records in accordance with FOIA. The Department has determined that some provisions in FOIA and the IRS regulation are comparable to provisions in proposed Regulations 35301 through 35305, which prescribe the procedures to access the Department's public records in accordance with the Public Records Act (PRA), and that some of the provisions in proposed Regulations 35301 through 35305 differ substantially from their comparable provisions in FOIA and the IRS regulation due to differences in federal and state law and differences between the Department and the IRS. The following is a brief description of the significant differences:

- Access to the Department's public records is governed by the PRA, not FOIA or the IRS regulation;

- The term "public record," as defined in the PRA, is different than the term "record," as defined in FOIA (5 U.S.C. § 552(f)(2));
- There are different exemptions from disclosure under the PRA and FOIA (5 U.S.C. § 552(b));
- There are different requirements for requesting records and responding to those requests under the PRA and FOIA (5 U.S.C. § 552(a)(3)) and the IRS regulation (26 C.F.R. § 601.702(c));
- There are different limits on agencies' charges for searching and duplicating records under the PRA and FOIA (5 U.S.C. § 552(a)(4)(A));
- The Department and IRS administer different taxes and maintain different types of records pertaining to their tax programs; and
- The IRS regulation does not identify and describe the types of public records pertaining to the tax programs administered by the IRS.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department has determined that the adoption of new chapter 4 and proposed Regulations 35301, 35302, 35303, 35304, and 35305 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

ONE-TIME COST TO THE DEPARTMENT, BUT NO OTHER COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Department has determined that the adoption of new chapter 4 and proposed Regulations 35301, 35302, 35303, 35304, and 35305 will result in an absorbable \$436 one-time cost for the Department to update its website after the proposed regulatory action is completed. The Department has determined that the adoption of new chapter 4 and proposed Regulations 35301, 35302, 35303, 35304, and 35305 will not result in any other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE
ADVERSE ECONOMIC IMPACT
DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the adoption of new chapter 4 and proposed Regulations 35301, 35302, 35303, 35304, and 35305 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.

The adoption of new chapter 4 and proposed Regulations 35301, 35302, 35303, 35304, and 35305 may affect small business.

NO COST IMPACTS TO
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.

ECONOMIC IMPACT ASSESSMENT

The Department assessed the economic impact of proposed Regulations 35301, 35302, 35303, 35304, and 35305 on California businesses and individuals and determined that the proposed regulatory action is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. The Department also determined that the adoption of proposed Regulations 35301, 35302, 35303, 35304, and 35305 will neither create nor eliminate jobs in the State of California nor result in the creation of new businesses or the elimination of existing businesses within the state and will not affect the expansion of businesses currently doing business within the State of California. Furthermore, the Department determined that the adoption of proposed Regulations 35301, 35302, 35303, 35304, and 35305 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON
HOUSING COSTS

The adoption of new chapter 4 and proposed Regulations 35301, 35302, 35303, 35304, and 35305 will not have a significant effect on housing costs.

DETERMINATION REGARDING
ALTERNATIVES

The Department must determine that no reasonable alternative considered by it 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 than the proposed action.

CONTACT PERSONS

Questions regarding the substance of proposed Regulations 35301, 35302, 35303, 35304, and 35305 should be directed to Ms. Kimberly Willy, Tax Counsel III (Supervisor), by telephone at (916) 323-3078, by e-mail at Kimberly.Willy@cdtfa.ca.gov, or by mail at California Department of Tax and Fee Administration, Attn: Kimberly Willy, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Department's consideration, written requests to hold a public hearing, notices of intent to present testimony or witnesses at the public hearing, and other inquiries concerning the proposed regulatory action should be directed to Ms. Kim DeArte, Regulations Coordinator, by telephone at (916) 309-5227, by fax at (916) 322-2958, by e-mail at CDTFARegulations@cdtfa.ca.gov or by mail at California Department of Tax and Fee Administration, Attn: Kim DeArte, MIC:50, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0050. Ms. DeArte is the designated backup contact person to Ms. Willy.

WRITTEN COMMENT PERIOD

The written comment period ends on October 25, 2021. The Department will consider the statements, arguments, and/or contentions contained in written comments received by Ms. DeArte at the postal address, email address, or fax number provided above, prior to the close of the written comment period, before the Department decides whether to adopt new chapter 4 and proposed Regulations 35301, 35302, 35303, 35304, and 35305. The Department will only consider written comments received by that time.

However, if a public hearing is held, written comments may also be submitted at the public hearing and the Department will consider the statements, arguments, and/or contentions contained in written comments submitted at the public hearing before the Department decides whether to adopt new chapter 4

and proposed Regulations 35301, 35302, 35303, 35304, and 35305.

**AVAILABILITY OF
STATEMENT OF REASONS AND
TEXT OF PROPOSED REGULATIONS**

The Department has prepared copies of the text of new chapter 4 and proposed Regulations 35301, 35302, 35303, 35304, and 35305 illustrating the express terms of the proposed action. The new chapter and proposed regulations are not illustrated in underline or italics because California Code of Regulations, title 1, section 8, subdivision (b), provides that underline or italic is not required for the adoption of a set of regulations if the text otherwise clearly indicates that all of the text is being added to the California Code of Regulations.

The Department has also prepared a statement of reasons for the adoption of new chapter 4 and proposed Regulations 35301, 35302, 35303, 35304, and 35305. These documents and all the information on which the proposed regulations are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of new chapter 4 and proposed Regulations 35301, 35302, 35303, 35304, and 35305 and the statement of reasons are also available on the Department's website at www.cdifa.ca.gov.

PUBLIC HEARING

The Department has not scheduled a public hearing to discuss the proposed adoption of new chapter 4 and Regulations 35301, 35302, 35303, 35304, and 35305. However, any interested person or his or her authorized representative may submit a written request for a public hearing no later than 15 days before the close of the written comment period, and the Department will hold a public hearing if it receives a timely written request.

**SUBSTANTIALLY RELATED
CHANGES PURSUANT TO
GOVERNMENT CODE SECTION 11346.8**

The Department may adopt new chapter 4 and proposed Regulations 35301, 35302, 35303, 35304, and 35305 with changes that are non-substantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Department will make the full text of the proposed regulations, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting

regulations will be mailed to those interested parties who commented on the original proposed regulations orally or in writing or who asked to be informed of such changes. The text of the resulting regulations will also be available to the public from Ms. DeArte. The Department will consider written comments on the resulting regulations that are received prior to adoption.

**AVAILABILITY OF UPDATED
STATEMENT OF REASONS**

If the Department adopts Regulations 35301, 35302, 35303, 35304, and 35305, the Department will prepare an updated statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Department's website at www.cdifa.ca.gov.

GENERAL PUBLIC INTEREST

**DEPARTMENT OF FISH AND
WILDLIFE**

**HABITAT RESTORATION AND
ENHANCEMENT ACT**

**CONSISTENCY DETERMINATION
NO. 1653-2021-079-001-R1**

Project: Mill Creek Ward Dam Sediment
Routing Project
Location: Tehama County
Applicant: Matt Brown, U.S. Fish and Wildlife
Service

Background

Project Location: The Mill Creek Ward Dam Sediment Routing Project (Project) is located at Ward Dam on Mill Creek near Los Molinos, California, 40.053170 Latitude, -122.076607 Longitude, Section 3, Township 25 North, Range 2 West, Assessor Parcel Number (APN) 078-140-034-000, and affects Mill Creek, which supports populations of anadromous fish and other wildlife species.

Project Description: Applicant proposes to enhance or restore habitat within Mill Creek to provide a net conservation benefit for Chinook Salmon (*Oncorhynchus tshawytscha*), Central Valley Steelhead (*Oncorhynchus mykiss*), and River Lamprey (*Lampetra ayresii*). The purpose of the proposed project is to address gravel deposition problems in

front of the existing diversion headgate and Ward Dam Fish Ladder exit on Mill Creek, as well as deposition in the fish ladder itself, so that sufficient anadromous fish passage is achieved. The project will involve installation of three to five “Bendway” weirs on both banks of Mill Creek, upstream of Ward Dam. Higher velocity water and suspended, cobble-sized bedload will be forced back into the center of Mill Creek channel during high flow events, which will reduce the potential for gravel and cobble deposition in front of the headgate and within the fish ladder.

Project Size: The total area of ground disturbance associated with the Project is approximately 1.81 acres and 200 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 placement of clean gravel and rock in Mill Creek. The five proposed Bendway weirs will require excavation and placement of 512 cubic yards of ½ ton rock within waters of the State, while 300 cubic yards of clean gravel will be placed temporarily to provide equipment access within the channel.

Project Timeframes:

- Start date: August 2021
- Completion date: October 2026
- Work window: July 15–September 30 (may be extended to October 14 with CDFW approval)

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 to upstream spawning and rearing habitats, the Central Valley 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 SB12006GN (Order), Waste Discharge Identification (WDID) No. 5A52CR00213 for the Project. The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has provided supplemental documents that set forth measures to avoid and minimize impacts to anadromous species and other fish and wildlife.

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 (Public Resources Code, § 21000 et seq.).

On August 20, 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 August 23, 2021, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z–2021–0823–03) on September 3, 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 meet 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 the Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in attachments to the NOI, which contains the following categories: (1) measures to protect state and federal listed and candidate species; (2) measures to protect species of special concern and fully protected species; (3) measures to protect other nesting raptors and migratory birds; (4) measures to protect natural communities; (5) water quality measures; (6) invasive species measures; and (7) general measures. The specific avoidance and minimization requirements are found in attachments to the NOI, *Mill Creek Ward Dam Sediment Routing Project Biological Study Report* and *Species Protection Measures in Project Design, Mill Creek Ward Dam Sediment Routing Project*.

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, *Mill Creek Ward Dam Sediment Routing Project Biological Study Report*.

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:

- photographs with a descriptive title;
- date the photograph was taken;
- name of the photographic site;
- WDID number indicated above;
- 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. The Applicant shall include the project name and WDID 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: brad.henderson@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 & Game Code, § 1654, subdivision (c).)

DEPARTMENT OF FISH AND WILDLIFE

HABITAT RESTORATION AND ENHANCEMENT ACT CONSISTENCY DETERMINATION NO. 1653-2021-0072-001-R3

Project: Stevens Creek Steelhead Passage Improvement Project
Location: Santa Clara County
Applicant: Rajiv Mathur/Friends of Stevens Creek Trail
Notifier: Rob Thoms/Stillwater Sciences

Background

Project Location:

The Stevens Creek Steelhead Passage Improvement Project (Project) is located within the Deep Cliff Golf Course, 10700 Club House Lane, Cupertino, CA 95014. The parcel address is 22222 McClellan Road, Cupertino, CA 95014. The property is owned by Chris Bracher, et al., Assessor Parcel Numbers (APN) 356-05-003 and 356-05-004, and affects Stevens Creek, a tributary to San Francisco Bay. Stevens Creek supports populations of Steelhead, Central California Coast Distinct Population Segment (*Oncorhynchus mykiss irideus* population 8).

Project Description:

Rajiv Mathur (Applicant) proposes to enhance or restore habitat within Stevens Creek to provide a net conservation benefit for Steelhead, Central California Coast Distinct Population Segment. The Project includes removal of a concrete low-water vehicle crossing that creates a passage impediment for juvenile steelhead. The creek bed will be stabilized through a rock grade control structure and aquatic habitat complexity will be enhanced through installation of large woody debris.

Project Size:

The total area of ground disturbance associated with the Project is approximately 0.44 acres and 260 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) boulder and cobble, (2) large woody debris, and (3) erosion control materials.

Project Timeframes: Start date: September 2021

Completion date: October 2021

Work window: September 1 to October 31

Water Quality Certification Background:

Because the Project’s primary purpose is habitat restoration intended to improve the quality of waters in California and to improve fish passage, the San Francisco Bay 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 SB12006GN (Order) WDID# 2CW443323 and Place ID. 874093 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 steelhead and other fish species, California red–legged frog (*Rana draytonii*), western pond turtle (*Emys marmorata*), and white–tailed kite (*Elanus leucurus*) and other nesting birds.

Receiving Water: Stevens Creek, a tributary to San Francisco Bay.

Filled or Excavated Area: Permanent area impacted: 0.09 acres

Temporary area impacted: 0.35 acres

Length permanently impacted: 110 linear feet

Length temporarily impacted: 150 linear feet

Dredge Volume: None.

Project Location: Latitude 37.31057 North and Longitude 122.06314 West (NAD 83); APN: 356–05–003 and 356–05–004.

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 August 9, 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 August 9, 2021, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z–2021–0809–03) on August 20, 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 meet 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) measures to protect wildlife species, (2) measures to protect on–site and downstream water quality, and (3) measures for hazardous materials spill prevention and response. The specific avoidance and minimization requirements are found in an attachment to the NOI, *100% Basis of Design Report for the Stevens Creek Steelhead Passage Improvement Project*.

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, *Monitoring and Maintenance Plan for the Stevens Creek Steelhead Passage Improvement Project, Santa Clara County, California*.

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:

- photographs with a descriptive title;
- date the photograph was taken;
- name of the photographic site;
- WDID number and Place ID number indicated above;
- 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 Place ID 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: kristin.garrison@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 & Game Code, § 1654, subdivision (c).)

DEPARTMENT OF FISH AND WILDLIFE

CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION
NO. 2080-2021-009-05

Project: 2753 Gypsy Canyon Road, Lompoc,
CA 93436
(Assessor's Parcel Number (APN)
099-610-014)

Location: Santa Barbara County
Applicant: Serenity Gypsy Canyon, LLC

Background

Serenity Gypsy Canyon, LLC (Applicant) proposes to develop a cannabis cultivation project (Project) on 25 acres of a 127.5-acre parcel (APN 099-610-014) located at 2753 Gypsy Canyon Road, Lompoc, County of Santa Barbara, State of California, 93436 (Property). The Project includes the conversion and use of an active, historically cultivated farm and related support facilities including an existing residence, access roads

and ancillary structures, and existing utilities present on site.

Cultivation Areas

The Project involves the planting of cannabis on 25 total acres within a portion of the 127.5-acre Property. The Project includes Best Management Practices (BMPs) to prevent erosion and offsite transport of sediment. Herbicide operators will also be trained and will adhere to application guidelines. Worker environmental awareness program training is also included to aid in identifying potential impacts and implementing the appropriate BMPs. All operation- and harvest-related debris and trash will be removed from the cultivation fields for recycling or proper disposal. If materials are to be re-used, stockpiles will be placed within areas previously disturbed.

Streams and Stream Setbacks

An unnamed stream is located approximately 100 feet east of the cultivation area and runs along the eastern boundary of the Property line from north to south. All cultivation activities, including storage, will maintain a minimum 100-foot setback from the unnamed stream.

Fencing and Lighting

All cannabis cultivation areas will be enclosed with six-foot-tall chain-link fencing and designed to blend into the surrounding terrain. No razor wire, tarps, dust guard fencing, privacy netting, or woven or non-woven polyethylene plastic materials will be used. Fences will contain gate(s) that are locked at all times, except for times of active ingress/egress. Night lights needed for security will be limited to the minimum necessary, motion-activated and directed downward.

Access and Roadways

The access road for the Project is located at the southern end of the Property and crosses the unnamed stream that flows along its eastern border. Vehicles and equipment will not be parked or stored within the dripline of any coast live oaks or other native trees that may occur near the cultivation fields.

Federal Permit History

In September 2019, the United States Fish and Wildlife Service (USFWS) approved a General Conservation Plan for Cultivation Activities in Santa Barbara County, California (GCP). The GCP is a conservation plan as required in Endangered Species Act (ESA; 16 U.S.C. § 1531 et seq.) section 10(a)(2)(A) for issuance of an incidental take permit (ITP) pursuant to ESA section 10(a)(1)(B) for take of California tiger salamander (*Ambystoma californiense*; CTS). These ESA provisions allow USFWS to develop a 10(a)(1)(B) conservation plan suitable for the needs of a local area, and then to issue individual permits to landowners who apply for an ITP and demonstrate compliance with the terms and conditions of the plan. The GCP therefore

provides a federal ESA permitting mechanism for incidental take of CTS by private landowners engaged in horticulture activities.

Anticipated Take of California Tiger Salamander

The Project activities described above are expected to incidentally take¹ CTS where those activities take place within the 25-acre Project site. In particular, CTS could be incidentally taken as a result of the development-related and long-term activities that include equipment access, staging, material storage, earth moving activities, active agricultural activities, operation and maintenance of structures, agricultural fields, infrastructure, irrigation and water management, vehicular traffic, security fencing and lighting, and increased human activities. CTS is designated as an endangered species pursuant to the federal ESA and a threatened species pursuant to the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.). (See Cal. Code Regs., title 14, § 670.5, subdivision (b)(3)(G).)

The Property possesses ecological features that provide high-value upland habitat for CTS, owing to its proximity (within 1.3 miles) to no fewer than 16 known or potential CTS breeding ponds designated by the USFWS². Due to the proximity of the nearest known or potential CTS breeding pond, CTS dispersal patterns, and the presence of suitable CTS habitat within the Property, USFWS determined that the species could occur within the Project site and that Project activities could result in the incidental take of CTS. The Applicant applied for an ITP under the GCP for federal authorization to take CTS on the Project site.

On July 14, 2021, USFWS issued an ITP (Permit No. ESPER0016083) to the Applicant pursuant to the GCP. The ITP describes the Project, requires the Applicant to comply with terms of the ITP and GCP, and incorporates additional measures.

The federal ITP authorizes take of CTS in the form of capture for up to ten individuals and up to three individuals in the form of injury or mortality during Project implementation.

USFWS calculated the value of the impacted habitat using the methodology outlined in Searcy and Shaffer (2008)³ that included incorporating the amount of

CTS aquatic breeding habitat and upland habitat on the Project site that will be impacted. The method described in Searcy and Shaffer (2008) attaches a value to habitat that scales with the reproductive value of the individuals estimated to be occupying an area. According to Searcy and Shaffer (2008), the reproductive value of a site is a function of: (1) distance from each known or potential breeding pond within dispersal distance of the site; and (2) land-use in the surrounding areas.

USFWS determined that the Project would consequently result in the loss of a reproductive value of up to -19,784 units as calculated in accordance with Searcy and Shaffer (2008). Compensatory mitigation is based on the loss of this reproductive value for CTS.

On August 2, 2021, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from Walter J. Lack, requesting a determination pursuant to Fish and Game Code section 2080.1 that the federal ITP is consistent with CESA for purposes of the Project and CTS. (Cal. Reg. Notice Register 2021, No. 33-Z, p. 1063).

Determination

CDFW has determined that the ITP is consistent with CESA as to the Project and CTS because the mitigation measures contained in the ITP, and the GCP insofar as the ITP references and requires compliance with mitigation measures in the GCP, 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 CTS will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the ITP, and the GCP insofar as the ITP references and requires compliance with mitigation measures in the GCP, will minimize and fully mitigate the impacts of the authorized take; (3) 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 CTS. The mitigation measures in the ITP, and the GCP insofar as the ITP references and requires compliance with the GCP, include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

1. As mitigation for the project, the Applicant has proposed to purchase a conservation easement on lands that are known to support CTS. The lands identified for conservation is a 34-acre area located along California State Highway 246 and owned by Mr. Dave Campbell. The 34-acre area proposed for conservation has a reproductive value of 22,774, using methodology described in Searcy and Shaffer (2008). Using the same calculations, the approximately 25-acre project

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").

²United States Fish and Wildlife Service. 2010. California Tiger Salamander Habitat Map.

³Searcy, C. A. and H. B. Shaffer. 2008 Calculating biologically accurate mitigation credits: insights from the California tiger salamander. *Conservation Biology* 22: 997-1005.

proposed at 2753 Gypsy Canyon Road would result in a loss of reproductive value of -19,784. Because the conservation area has more than enough reproductive value to compensate for the impacts resulting from the proposed Project, the Applicant can apply the remaining conservation value of 2,990 to future impacts to the CTS if deemed appropriate by USFWS and CDFW. Along with the execution of a conservation easement, a one-time endowment, which has been deemed adequate to support tasks necessary for the long-term management of the property, will be contributed. Said endowments will be created by, and will be held, administered, invested, and expended by the Land Trust under terms described in the conservation easement. Together, the conservation easement and associated management plan enumerate a number of reserved rights and prohibited uses, and detail the goals, objectives, tasks or financial expenditures required to ensure the conserved area's long-term monitoring and management.

1.1 Although not a condition of the ITP, CDFW requests a copy of the documentation of the conservation easement purchase for the 34-acre area located along California State Highway 246 and owned by Mr. Dave Campbell as well as the associated Management Plan.

2. During the Project planning phase, the Applicant worked with USFWS to site all impacts as far away from known and potential CTS breeding habitats and to avoid high quality upland and dispersal habitat as possible.
3. At least 15 days prior to ground-disturbing activities, the Applicant will submit the names and credentials of biologists and monitors to the USFWS for approval to conduct the minimization measures outlined below. Excluding an emergency activity, no Project activities will begin until the Applicant has received notice from the USFWS that the biologists and monitors are approved to do the work. The USFWS-approved biologist(s) will notify the Ventura Fish and Wildlife Office of their intent to conduct any monitoring events within 48 hours of commencing the activity.

3.1 Although not a condition of the ITP, CDFW requests that Applicant submits the names and credentials of proposed biologists and monitors to CDFW at least 15 days prior to ground-disturbing activities.
4. A USFWS-approved biologist will conduct a biological resources training program for all construction workers and their contractors to minimize potential impacts to CTS and sensitive

habitats. Training will occur prior to initial ground-disturbing activities and be repeated, annually and as needed for new workers for the duration of each project covered by the permit. The training program will be reviewed and approved by the USFWS and will include a description of: (1) important biological resources within their project site, specifically CTS that have potential to occur within or adjacent to work areas; (2) the applicable avoidance and minimization measures; (3) the roles and responsibilities of personnel; and (4) communication protocols if CTS are detected. Applicants who submit their training programs along with their permit applications should expect to receive an approval at the time they receive their Permit. Applicants who submit their training programs after they submit their permit application should expect to receive an approval within 30 days of receipt of the training program.

5. A USFWS-approved biologist will periodically review and monitor ground-disturbing activities and will be responsible for ensuring that conditions of approval are being enforced. Except for emergency situations, a USFWS-approved biologist will have the authority to temporarily halt activities if ITP requirements and conditions are not being met.
6. Prior to ground-disturbing activities, all grading limits and construction boundaries, including staging areas, parking, and stockpile areas, will be delineated and clearly marked in the field. All suitable CTS habitat located within 10 feet of ground-disturbing activities will be delineated with specific sensitive species labeling (e.g., permanent signage stating, "No Entry — Sensitive Habitat."). A USFWS-approved biologist(s) will work with the USFWS to identify these areas.
7. All proposed linear routes (i.e., roads and pipelines) will be reviewed and modified, if necessary, in the field to minimize impacts to CTS with assistance by the on-site biologist or environmental monitor.
8. Personnel will limit their vehicle use to existing routes of travel. Travelling off designated roads will be prohibited unless access is determined critical for a particular activity and the route has been flagged to avoid or minimize adverse effects. To minimize the potential for road mortality of CTS and their habitat, nighttime traffic will be minimized during the ground-disturbing phase to the extent feasible; all hauling activities within habitat for covered wildlife will be restricted to daylight hours, defined as the hours after sunrise and before sunset.

9. Except in areas with posted speed limits greater than 10 miles-per-hour, Project-related vehicle speeds will not exceed 10 miles-per-hour when driving within CTS habitat.
10. Prior to moving vehicles or equipment, personnel will look under the vehicles or equipment for the presence of CTS. If a CTS or any other wildlife species is observed, the vehicle will not be moved until the animal has vacated the area on its own accord or has been relocated out of harm's way in accordance with Measure 12.
11. A USFWS-approved biologist will conduct pre-activity surveys of CTS habitat within Project disturbance boundaries immediately prior to the onset of any ground disturbance associated with the Project to determine if any CTS individuals are present, and to refine the final habitat mitigation acreages. The USFWS-approved biologist will monitor ground-disturbing activities in the vicinity of habitats to be avoided. Upon completion of initial ground disturbance, the biologist or monitor will periodically (minimum twice per week) visit the Project site throughout the ground-disturbing period to ensure that impacts to the Project site are in compliance with the permit. After periods of rain, a USFWS-approved biologist will conduct daily pre-activity surveys to ensure no CTS have migrated into the work area prior to ground-disturbing activities resuming. No construction work will be initiated until a USFWS-approved biologist determines that the work area is clear of CTS. Should any CTS be observed within harm's way, the animal will be allowed to vacate the area on its own accord or be relocated in accordance with Measure 12.
12. Any CTS or individuals of other wildlife species will be allowed to vacate the Project areas on its own accord under the observation of a USFWS-approved biologist. If any CTS or individuals or other wildlife species do not relocate on their own, or if they are in harm's way, they will be relocated out of harm's way to nearby suitable habitat, similar to that in which it was found, and outside the Project area. Only a USFWS-approved biologist will relocate CTS. The biologists conducting relocation activities will follow the Declining Amphibian Task Force Fieldwork Code of Practice: https://www.fws.gov/southwest/es/NewMexico/documents/SP/Declining_Amphibian_Task_ForceFieldwork_Code_of_Practice.pdf. A USFWS-approved biologist will relocate any CTS found within the Project footprint to an active rodent burrow system located no more than 300 feet outside of the Project area unless otherwise approved by the USFWS. The individuals will be handled with clean and wet hands. During relocation they will be placed in a clean, covered plastic container with a wet non-cellulose sponge. Captured individuals will be relocated immediately; individuals will not be stored for lengthy periods or in heated areas. The relocation container will be kept out of direct sunlight. A USFWS-approved biologist will monitor relocated CTS until they enter a burrow and are concealed underground or otherwise deemed safe in the relocation area by the biologist. Relocation areas will be identified by the USFWS-approved biologist based on the best suitable habitat available. The USFWS-approved biologist will document both the capture site and the relocation site by photographs and GPS positions. The CTS will be photographed and measured (Snout-Vent) for identification purposes prior to relocation. All documentation will be provided to the USFWS within 24 hours of relocation.
 - 12.1 Although not a condition of the ITP, CDFW requests that the Applicant provides copies of the translocation and monitoring reports to CDFW.*
13. Rodent burrows within the Project areas that overlap CTS habitat will be excavated by a USFWS-approved biologist using hand tools until it is certain that the burrows are unoccupied. In lieu of burrow excavation, steel plates or plywood may also be utilized to protect small mammal burrows from ground disturbance. Plates and plywood will be removed nightly and will be removed if work is scheduled to cease for consecutive days. Any individual CTS that are encountered will be allowed to vacate the area on their own accord or be relocated out of harm's way in accordance with Measure 12.
14. Exclusionary silt fencing (or other suitable fence material) will be installed at the discretion of a USFWS-approved biologist to minimize the potential for CTS to enter the worksite. Exclusionary fencing will be maintained for the duration of the Project. If a CTS or other wildlife species is observed within an enclosed worksite, a portion of the fencing.
15. All construction and sediment control fencing will be inspected each workday during construction activities to ensure they are functioning properly.
16. Steep-walled excavations (e.g., trenches) that may act as pitfall traps will be inspected for wildlife at least once per day and immediately before backfilling. In lieu of daily inspections (weekends, etc.), exclusionary fencing, covers,

- ramps, or similar measures will be taken to prevent wildlife entrapment.
17. Open pipe segments will be capped or sealed with tape (or equivalent material) nightly, or otherwise stored at least three feet above ground. Should a pipe segment become occupied by a CTS or any other wildlife species, the animal will be allowed to vacate the pipe on its own or will be removed and relocated in accordance with Measure 12.
 18. If covered activities must occur during the rainy season, Applicant will not work during rain events, 48 hours prior to significant rain events (>0.5 inch), or during the 48 hours after these events, to the extent practicable. If work must occur 48 hours prior to significant rain events (>0.5 inch), or during the 48 hours after these events, a USFWS-approved biologist will conduct a pre-activity survey to ensure that the work area is clear (refer to Measure 10 above).
 19. The Applicant will ensure that all staging areas, equipment storage areas, stockpile sites, and refueling areas are located at least 100 feet from surface water bodies and wetland habitats to minimize the potential for releases into surface water or wetland habitat. In lieu of the 100-foot buffer, secondary containment measures may be employed to prevent contamination of soil and water.
 20. When working in areas with a predominance of native plants, the upper layer of topsoil material (6 inches) will be segregated during excavations to preserve the seed bank. The preserved topsoil will be covered to protect it from erosion and invasion of non-native plants until completion of the activity, when the topsoil will be replaced in the affected area. Existing access roads are not subject to this measure.
 21. Disturbed areas will be restored and stabilized to reflect pre-existing contours and gradients to the extent practicable. Erosion and sediment controls (e.g., silt fences, fiber rolls, sandbags) will be installed, where necessary, utilizing weed-free materials in areas with a predominance of native plants. Where necessary, restored areas will be maintained and monitored, including weed removal (focused on noxious weeds and excluding nonnative annual grasses). All planting and seeding will occur the first year after construction is complete, after the first significant rain event of the year (i.e., more than 0.25 inches of precipitation).
 22. Upon locating CTS individuals that may be dead or injured as a result of Project-related activities, notification will be made within 72 hours to the USFWS's Ventura Field Office at (805) 644-1766.

22.1 Although not a condition of the ITP, CDFW requests that the Applicant also contact CDFW upon locating any individuals that maybe dead or injured from Project-related activities.

Monitoring and Reporting Measures

Annual Reports: By March 31 following each year of ITP issuance and Project implementation, Applicant will submit a report to the Ventura Fish and Wildlife Office to document the status of the Project. The reports will be sent to the Ventura Fish and Wildlife Office by email at sbc-cultivationgcp@fws.gov. Section 5 of the GCP details the information that is required in the annual reports.

Project Completion Report: Once an Applicant completes activities covered by the ITP, the Applicant will notify the Ventura Fish and Wildlife Office that they have completed all covered activities and mitigation measures and provide a final report to the Ventura Fish and Wildlife Office; subsequent annual compliance reports will not be necessary thereafter unless take of a listed species occurs or a changed or unforeseen circumstance occurs.

Although not a condition of the ITP, CDFW requests copies of the annual reports and Project completion report.

Financial Assurances

As set forth in Avoidance, Minimization and Monitoring Measure No. 1 above and in the section of the GCP titled Measures to Mitigate Unavoidable Impacts, prior to the commencement of any activity that could result in take of CTS, the Applicant will demonstrate the purchase of a conservation easement on the 34-acre area located along California State Highway 246 and owned by Mr. Dave Campbell.

Along with the execution of a conservation easement, a one-time endowment, which has been deemed adequate to support tasks necessary for the long-term management of the property, will be contributed. Said endowments will be created by, and will be held, administered, invested, and expended by the Land Trust under terms described in the conservation easement.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of CTS, provided the Applicant implements the Project as described in the ITP and associated GCP, including adherence to all measures contained therein and complies with the mitigation measures and other conditions described in the ITP and GCP, insofar as the ITP references and requires compliance with mitigation measures in the GCP. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the USFWS amends or replaces the ITP and

GCP, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish & Game Code, §§2080.1 and 2081, subdivisions (b) and (c)).

CDFW’s determination that the USFWS ITP is consistent with CESA is limited to CTS.

FISH AND GAME COMMISSION

NOTICE OF FINDINGS

Clara Hunt’s milkvetch (*Astragalus claranus*)

NOTICE IS HEREBY GIVEN that the California Fish and Game Commission (Commission), at a meeting on June 16, 2021, found pursuant to Fish and Game Code section 2075.5, that the information contained in the petition to list Clara Hunt’s milkvetch (*Astragalus claranus*) and other information in the record before the Commission, warrants adding Clara Hunt’s milkvetch to the list of endangered species under the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.). (See also Cal. Code Regs., title 14, § 670.1, subdivision (i).)

NOTICE IS ALSO GIVEN that, at its August 18, 2021 meeting, the Commission adopted the following findings outlining the reasons for its determination.

I. BACKGROUND AND PROCEDURAL HISTORY

Petition History

Clara Hunt’s milkvetch has been listed as a threatened species pursuant to CESA since 1991 and is included in the list of threatened plants found in Title 14, Section 670.2. California Fish and Game Code (FGC) Section 2077 mandates that the status of species listed by FGC under CESA be reviewed every five years, if funding is available. The Department transmitted a five–year status review concerning Clara Hunt’s milkvetch recommending up–listing the species from threatened to endangered status (Cal. Regulatory Notice Register 2020, No. 4–Z, p. 133). This five–year status review is considered the equivalent of a petition with a Department recommendation to accept and consider the petition (Fish and Game Code sections 2072.7 and 2077).

At its December 2019 meeting, the Commission publicly received the Department’s five–year status review report concerning Clara Hunt’s milkvetch. At its February 2020 meeting, the Commission determined a change in status may be warranted. Notice of that decision was published (Cal. Regulatory Notice Register 2020, No. 11–Z, p. 421). Upon publication of the notice, Clara Hunt’s milkvetch is a

candidate species for listing. The notice also indicated this status.

Status Review Overview

The Commission’s notification regarding Clara Hunt’s milkvetch status as a candidate species triggered the Department’s process for conducting a status review to inform the Commission’s decision on whether to list the species.

The Department submitted a report to the Commission titled “STATUS REVIEW OF CLARA HUNT’S MILKVETCH (*ASTRAGALUS CLARANUS*)” and dated March 2021 (“Status Report”); the Status Report was received by the Commission at its April 2021 meeting. The Status Report represents the Department’s final written review of the status of Clara Hunt’s milkvetch and is based upon the best scientific information available to the Department. The Department recommended that the Commission list Clara Hunt’s milkvetch as an endangered species.

Species Description

Clara Hunt’s milkvetch is a short annual herb of the legume family that has white petals with bright purple tips. There are six small populations of Clara Hunt’s milkvetch, all located in Napa and Sonoma Counties within ten miles of St. Helena. The species is generally found in oak woodlands, in sparsely vegetated openings without significant shrub or tree overstory, and appears to be adapted to poor quality, acidic soils that may limit competition from other plants. Clara Hunt’s milkvetch only occurs in California, in the northern Coast Range near St. Helena in Napa County, and northeast of Santa Rosa in Sonoma County, at elevations of about 95 to 360 meters (320 to 1175 feet) above sea level (CNDDDB 2020). There are currently six occurrences of Clara Hunt’s milkvetch, which are documented in the Status Report: (1) the Lake Hennessey population, (2) the Lewelling Lane Population, (3) the Taplin Road Population, (4) the Alpine School Population, (5) the Bothe Population, and (6) the Saddle/Hayfork Population.

II. STATUTORY AND LEGAL FRAMEWORK

The Commission, as established by the California Constitution, has exclusive statutory authority under California law to designate endangered, threatened, and candidate species under CESA. (Cal. Const., art. IV, § 20, subdivision (b); Fish & Game Code, § 2070.) The CESA listing process for the Clara Hunt’s milkvetch began in the present case with the Department’s submittal of a five–year status review.

The regulatory and legal process that ensued is described in some detail in the preceding section, along with related references to the Fish and Game Code and controlling regulation. The CESA listing

process generally is also described in some detail in published appellate case law in California, including:

- *Mountain Lion Foundation v. California Fish and Game Commission* (1997) 16 Cal.4th 105, 114–116;
- *California Forestry Association v. California Fish and Game Commission* (2007) 156 Cal. App.4th 1535, 1541–1542;
- *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597, 600;
- *Natural Resources Defense Council v. California Fish and Game Commission* (1994) 28 Cal. App.4th 1104, 1111–1116;
- *Central Coast Forest Association v. California Fish and Game Commission* (2017), 2 Cal. 5th 594, 597–598; and
- *Central Coast Forest Association v. California Fish and Game Commission* (2018) 18 Cal. App. 5th 1191, 1196–1197.

The “is warranted” determination at issue here for Clara Hunt’s milkvetch stems from Commission obligations established by Fish and Game Code section 2075.5. Under this provision, the Commission is required to make one of two findings for a candidate species at the end of the CESA listing process; namely, whether listing a species is warranted or is not warranted. Here, with respect to Clara Hunt’s milkvetch, the Commission made the finding under section 2075.5(e)(2) that listing the species as endangered is warranted.

The Commission was guided in making these determinations by statutory provisions and other controlling law. The Fish and Game Code, for example, defines an endangered species under CESA as “a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease.” (Fish & Game Code, §2062.) Similarly, the Fish and Game Code defines a threatened species under CESA as “a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by this chapter.” (*Id.*, §2067.)

The Commission also considered Title 14, section 670.1, subdivision (i)(1)(A), of the California Code of Regulations in making its determination regarding Clara Hunt’s milkvetch. This provision provides, in pertinent part, that a species shall be listed as endangered or threatened under CESA if the Commission determines that the species’ continued

existence is in serious danger or is threatened by any one or any combination of the following factors:

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human–related activities.

Fish and Game Code section 2070 provides similar guidance. This section provides that the Commission shall add or remove species from the list of endangered and threatened species under CESA only upon receipt of sufficient scientific information that the action is warranted. Similarly, CESA provides policy direction not specific to the Commission per se, indicating that all state agencies, boards, and commissions shall seek to conserve endangered and threatened species and shall utilize their authority in furtherance of the purposes of CESA. (Fish & Game Code, §2055.) This policy direction does not compel a particular determination by the Commission in the CESA listing context. Nevertheless, “[l]aws providing for the conservation of natural resources’ such as the CESA ‘are of great remedial and public importance and thus should be construed liberally.’” (*California Forestry Association v. California Fish and Game Commission*, supra, 156 Cal. App.4th at pp. 1545–1546, citing *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 601; Fish & Game Code, §§ 2051, 2052.)

Finally, in considering these factors, CESA and controlling regulations require the Commission to actively seek and consider related input from the public and any interested party. (See, e.g., *Id.*, §§ 2071, 2074.4, 2078; Cal. Code Regs., title 14, §670.1, subdivision (h).) The related notice obligations and public hearing opportunities before the Commission are also considerable. (Fish & Game Code, §§ 2073.3, 2074, 2074.2, 2075, 2075.5, and 2078; Cal. Code Regs., title 14, §670.1, subdivisions (c), (e), (g), (i); see also Gov. Code, § 11120 et seq.) All of these obligations are in addition to the requirements prescribed for the Department in the CESA listing process, including an initial evaluation of the petition and a related recommendation regarding candidacy, and a review of the candidate species’ status culminating with a report and recommendation to the Commission as to whether listing is warranted based on the best available science. (Fish & Game Code, §§ 2073.4, 2073.5, 2074.4, and 2074.6; Cal. Code Regs., title 14, § 670.1, subdivisions (d), (f), (h).)

III. FACTUAL AND SCIENTIFIC BASES
FOR THE COMMISSION'S
FINAL DETERMINATION

The factual and scientific bases for the Commission's determination that designating Clara Hunt's milkvetch as an endangered species under CESA is warranted are set forth in detail in the Commission's record of proceedings, including the five-year status review, the Department's status review, written and other evidence included in the Commission's record of proceedings.

The Commission determines that the continued existence of Clara Hunt's milkvetch in the State of California is in serious danger or threatened by one or a combination of the following factors as required by the California Code of Regulations Title 14, section 670.1, subdivision (i)(1)(A):

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

The Commission also determines that the information in the Commission's record constitutes the best scientific information available and establishes that designating Clara Hunt's milkvetch as an endangered species under CESA is warranted. Similarly, the Commission determines that Clara Hunt's milkvetch is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease.

The items highlighted here and detailed in the following section represent only a portion of the complex issues aired and considered by the Commission during the CESA listing process for Clara Hunt's milkvetch. Similarly, the issues addressed in these findings represent some, but not all of the evidence, issues, and considerations affecting the Commission's final determination. Other issues aired before and considered by the Commission are addressed in detail in the record before the Commission, which record is incorporated herein by reference.

Background

The Commission bases its "is warranted" finding for Clara Hunt's milkvetch most fundamentally on the continued existence of the threats identified when originally listed in 1991 coupled with threats by invasive plants, climate change, and vegetation community succession. Additionally, habitat modification and destruction, predation, competition,

its small population, and climate change place the remaining Clara Hunt's milkvetch populations at risk of extinction.

Threats

Present or Threatened Modification or Destruction of Habitat

The threat of habitat elimination primarily comes from agricultural or other development activities, and these activities have eliminated some Clara Hunt's milkvetch habitat in the past. The threat of habitat degradation primarily comes from recreational land use, maintenance of infrastructure, improper domestic animal grazing regimes, equipment use, or other unforeseen activities in the future, particularly if those activities result in trampling, excessive or inadequate soil disturbance, hydrological changes, excessive winter or spring herbivory, or the creation of conditions that are favorable for the establishment and spread of invasive plant species. While regulatory mechanisms are in place to protect Clara Hunt's milkvetch habitat from some threats, impacts could still occur from unpermitted activities, or activities that occur and cannot be mitigated. Three Clara Hunt's milkvetch populations have a moderate to high risk of habitat elimination or degradation, and three populations have a low risk of habitat elimination or degradation (CDFW 2021).

The Commission finds habitat modification and destruction to be a significant threat to the continued existence of Clara Hunt's milkvetch.

Overexploitation

Clara Hunt's milkvetch does not appear to be threatened by overexploitation. The species is not known to be in the nursery trade, nor is the Department aware of any other use of the species by humans (CDFW 2021). As a threatened plant species under CESA, possession of Clara Hunt's milkvetch is unlawful without a permit from the Department. The Department does not consider overexploitation to be a significant threat to the continued existence of Clara Hunt's milkvetch (Id.).

Predation

Clara Hunt's milkvetch may be threatened to some degree by predation, but more information on this potential threat is needed. The degree and immediacy of threats from herbivory and predation are not currently known (Id.). The Department does not know whether or not herbivory and predation are significant factors affecting the ability of Clara Hunt's milkvetch populations to survive and reproduce (Id.).

Competition

Invasive plants are present at all Clara Hunt's milkvetch populations and pose an immediate and ongoing threat to the species throughout its range,

particularly in situations where an organic thatch layer is allowed to accumulate.

Studies have not been conducted on the impact of invasive species on Clara Hunt’s milkvetch specifically; however, the negative impacts of plant invasions on Mediterranean ecosystems have been well demonstrated (Gaertner et al. 2009; Fried et al. 2014).

Invasive Mediterranean grasses such as barbed goatgrass, soft chess, annual false brome (*Brachypodium distachyon*), rattlesnake grass (*Briza maxima*), rippgut brome (*Bromus diandrus*), medusahead (*Elymus caput-medusae*), and Italian ryegrass (*Festuca perennis*), have been observed in close proximity to Clara Hunt’s milkvetch populations and pose a significant risk to the species (Ruygt 1994; CDFW 2021). Additional invasive species that are not grasses, such as yellow star-thistle (*Centaurea solstitialis*), bearded creeper (*Crupina vulgaris*), red-stem filaree (*Erodium cicutarium*), French broom (*Genista monspessulana*), burclover (*Medicago polymorpha*), English plantain (*Plantago lanceolata*), and curly dock (*Rumex crispus*) have also been documented in close proximity to Clara Hunt’s milkvetch populations (Ruygt 1994; CDFW 2021).

The Bothe, Alpine School, and perhaps other populations are also threatened by vegetation community succession, which may be a result of reduced fire frequencies. Vegetation community succession appears to have already had a significant adverse effect on the Bothe Population, and the population may now be extirpated or may only exist in the soil seed bank (CDFW 2021).

The Commission finds competition with other plants to be a significant threat to the continued existence of Clara Hunt’s milkvetch.

Disease

Disease does not appear to be a significant threat to the continued existence of Clara Hunt’s milkvetch.

Other Natural Events or Human-Related Activities

Small Populations

Clara Hunt’s milkvetch occurs in such low numbers over such small geographical areas, that even localized accidents and chance events could lead to the extirpation of a population or could have severe and long-lasting negative effects on the ability of the species to survive and reproduce. Species with few populations and/or small population sizes are highly vulnerable to extinction due to stochastic (chance), demographic, environmental, and genetic events (Shaffer 1981, 1987; Primack 2006; Groom et al. 2006). Due to the small number of Clara Hunt’s milkvetch individuals and the presence of only six or fewer small Clara Hunt’s milkvetch populations, the loss of any Clara Hunt’s milkvetch population,

or the loss of a significant portion of a Clara Hunt’s milkvetch population would represent the loss of a significant portion of Clara Hunt’s milkvetch’s total range (CDFW 2021).

The Commission finds that the inherent vulnerability of small populations is a significant and immediate and ongoing threat to the continued existence of Clara Hunt’s milkvetch.

Climate Change

The climate of California is certain to change due to global climate change. By 2050, climate change is likely to have affected Clara Hunt’s milkvetch abundance and/or range extent, particularly if conditions in Clara Hunt’s milkvetch habitat become more favorable for invasive plant species such as cheat grass (CDFW 2021). Climate change is a factor that may influence Clara Hunt’s milkvetch’s ability to survive and reproduce, but the relative impact that climate change will have on Clara Hunt’s milkvetch populations in the future is unknown. However, Department staff assessed the vulnerability of Clara Hunt’s milkvetch to climate change using the NatureServe Climate Change Vulnerability Index Version 3.02 (NatureServe 2016; CDFW 2019a). Based upon the Department’s assessment, Clara Hunt’s milkvetch has a climate change vulnerability index value of Moderately Vulnerable (MV), indicating that abundance and/or range extent of Clara Hunt’s milkvetch within the geographical area assessed is likely to decrease by 2050 due to climate change (CDFW 2021).

The Commission finds that climate change is a significant and immediate and ongoing threat to the continued existence of Clara Hunt’s milkvetch.

IV. FINAL DETERMINATION BY THE COMMISSION

The Commission has weighed and evaluated the information for and against designating the Clara Hunt’s milkvetch as an endangered species under CESA. This information includes scientific and other general evidence in the Petition; the Department’s Petition Evaluation Report; the Department’s status review; the Department’s related recommendations; and other evidence included in the Commission’s record of proceedings.

Based upon the evidence in the record the Commission has determined that the best scientific information available indicates that the continued existence of Clara Hunt’s milkvetch is in serious danger or threatened by present or threatened modifications or destruction of the species’ habitat, competition, or other natural occurrences or human-related activities (including small population and impacts from climate change), where such factors are considered individually

or in combination. (See generally Cal. Code Regs., title 14, § 670.1, subdivision (i)(1)(A); Fish & Game Code, §§ 2062, and 2067.) The Commission determines that there is sufficient scientific information to indicate that designating Clara Hunt’s milkvetch as an endangered species under CESA is warranted at this time and that with adoption and publication of these findings Clara Hunt’s milkvetch for purposes of its legal status under CESA and further proceedings under the California Administrative Procedure Act, shall be listed as endangered.

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PETITION DECISION

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF DECISION ON PETITION TO AMEND REGULATIONS Pursuant to Government Code 11340.7

Health and Safety Code section 1265.4(a) requires certain types of licensed health facilities to employ a full-time, part-time, or consulting dietician. Health facilities that employ a registered dietician less than full-time must also employ someone to supervise dietetic service operations. The dietetic services supervisor must have completed at least one of the courses of study or training experience listed in section 1265.4(b). On July 26, 2021, Jeannie Fissinger of Healthcare Services Group, Inc. submitted a request to the California Department of Public Health (CDPH) to amend Health and Safety Code section 1265.4 to include two alternative programs that would satisfy the educational requirements of a dietetic services supervisor.

AUTHORITY

The petition cites to Health and Safety Code section 1265.4, which prescribes the educational requirements of a dietetic services supervisor, and subsection (b)(6), which includes “a graduate of a state approved program ...” among the list of qualifying educational programs.

SUMMARY OF THE PETITION

Petitioner has asked that section 1265.4 be amended to include two alternative qualifying courses of study for a dietetic services supervisor, the Certified Food Manager, and the Long-Term Care — Food Service Manager. Petitioner has also requested review and acceptance of these two alternative courses of study as “state approved programs” under section 1265.4(b)(6). The petition states that the proposed alternative courses cost less than other qualifying programs and have course content that is better tailored to the position of dietetic services supervisor.

DEPARTMENT DECISION

Government Code section 11340.6 permits an interested person to petition a state agency to request regulatory changes. Although the request does not cite to Government Code section 11340.6, the request refers to Health and Safety Code section 1265.4 as a regulation and asks CDPH to amend the dietetic services supervisor educational requirements listed in it. To the extent the request can be construed as a petition that CDPH amend the Health and Safety Code through regulation, the petition is denied. If the petitioner would like to propose an amendment to a California statute, CDPH suggests forwarding the proposal to the California Legislature for consideration.

In response to the request to add a particular educational program to the “state approved” programs provided for in Health and Safety Code section 1265.4(b)(6), the petitioner may contact Dagmar Porter by email at Dagmar.Porter@cdph.ca.gov. Dietetic services supervisor programs seeking approval under section 1265.4(b)(6) are reviewed and approved annually by CDPH. Mr. Porter can provide the application materials for the petitioner to complete and submit their dietetic services supervisor education programs for review.

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-21-03** 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.

State Water Resources Control Board
File # 2021-0820-05
Article 23.5, Klamath River Watershed Drought
Emergency Requirements

This emergency action adopts regulations concerning Klamath River Watershed Drought Requirements. The regulations authorize curtailments of diversions where flows are insufficient to protect fish. They allow for diversions for non-consumptive uses, minimum health and safety needs, and livestock watering as specified. The regulations establish a process for determining whether flows in the watershed are insufficient to support all water rights and the order of priority for curtailments as well as curtailment order reporting requirements, special rules during fall migration of Chinook and coho salmon, and provisions regarding penalties for violations of curtailment orders.

Title 23
Adopt: 875, 875.1, 875.2, 875.3, 875.4, 875.5, 875.6,
875.7, 875.8, 875.9
Filed 08/30/2021
Effective 08/30/2021
Agency Contact: Marianna Aue (916) 327-4440

California Alternative Energy and Advanced
Transportation Financing Authority
File # 2021-0820-04
Sales and Use Tax Exclusion Program

In this emergency readopt of OAL Matter No. 2021-1026-02E, the California Alternative Energy and Advanced Transportation Financing Authority is amending the Sales and Use Tax Exclusion Program to revise definitions, application requirements, eligibility

requirements, and compliance deadlines, and update cross-references and numbering.

Title 04
 Amend: 10031, 10032, 10033, 10034, 10035, 10036
 Filed 08/30/2021
 Effective 09/01/2021
 Agency Contact: Matt Jumps (916) 651-5103

Department of Food and Agriculture
 File # 2021-0820-02
 Oak Mortality Disease

This emergency rulemaking readopts the amendments to add Del Norte County to the regulated area for Oak Mortality Disease.

Title 03
 Amend: 3700
 Filed 08/30/2021
 Effective 08/30/2021
 Agency Contact: Karen Olmstead (916) 403-6879

California Collaborative for Educational Excellence
 File # 2021-0810-01
 Conflict-of-Interest Code

This is a Conflict-of-Interest code that has been approved by the Fair Political Commission and is being submitted for filing with the Secretary of State and printing.

Title 02
 Amend: 59800
 Filed 08/31/2021
 Effective 09/30/2021
 Agency Contact: Davina Harden (562) 653-3200

Department of Justice
 File # 2021-0726-03
 Department of Financial Protection and Innovation
 Bond Form

This action by Department of Justice amends section 31.26, Payment Instrument or Stored Value Licensee Bond, in the title 11 listing of approved surety bonds for the Department of Financial Protection and Innovation.

Title 11
 Amend: 31.26
 Filed 08/30/2021
 Effective 08/30/2021
 Agency Contact: Sarah L. Fabian (415) 510-3517

Department of Justice
 File # 2021-0726-04
 Department of Financial Protection and Innovation
 Bond Form

This action by Department of Justice amends section 31.25, Receiving Money for Transmission Licensee Bond, in the title 11 listing of approved surety bonds for the Department of Financial Protection and Innovation.

Title 11
 Amend: 31.25
 Filed 08/30/2021
 Effective 08/30/2021
 Agency Contact: Sarah L. Fabian (415) 510-3517

California Alternative Energy and Advanced
 Transportation Financing Authority
 File # 2021-0811-02
 Residential Energy Efficiency Loan Assistance
 Program

This action without regulatory effect changes the name of the Residential Energy Efficiency Loan Assistance Program, known as REEL, to the GoGreen Home Energy Financing Program, which may be referred to publicly as "GoGreen Home."

Title 04
 Amend: 10091.1, 10091.8, 10091.9, 10091.11
 Filed 08/25/2021
 Agency Contact: Susan Mills (916) 651-3760

Commission on Teacher Credentialing
 File # 2021-0727-01
 Teacher Credentialing Application Denials

The Commission on Teacher Credentialing (Commission) submitted this action without regulatory effect, pursuant to California Code of Regulations, title 1, section 100, to amend a definitions regulation. Specifically, the Commission amended the definition of "denial" by correcting a typographical error in a statutory cross-reference and adding a statutory cross-reference that pertain to denials of credentialing applications. Additionally, the Commission added reference citations that pertain to denials of credentialing applications and sexual misconduct to the definitions regulation.

Title 05
 Amend: 80300
 Filed 08/25/2021
 Agency Contact: Katie Elliott (916) 324-8007

CALIFORNIA REGULATORY NOTICE REGISTER 2021, VOLUME NUMBER 37-Z

State Water Resources Control Board
File # 2021-0721-01
San Diego Regional Water Quality Control Plan
Update

This action amends the Water Quality Control Plan for the San Diego Region (Basin Plan). On December 8, 2020, the San Diego Regional Water Quality Control Board adopted Resolution No. R9-2020-0254 to make nonsubstantive amendments to Chapters 2, 3, and 4 of the Basin Plan. The State Water Resources Control Board approved the amendments under Resolution No. 2021-0013 on April 20, 2021.

Title 23
Amend: 3983
Filed 09/01/2021
Effective 09/01/2021
Agency Contact:
Michelle Santillan (916) 521-3369

Air Resources Board
File # 2021-0715-03
Exemption of Add-On and Modified Part(s) for
On-Road Vehicles/Engines

This action updates the process by which a manufacturer may obtain an Executive Order to exempt an aftermarket add-on or modified part from the prohibitions of Vehicle Code section 27156.

Title 13
Amend: 2222, 2224
Filed 08/26/2021
Effective 01/01/2022
Agency Contact:
Bradley Bechtold (916) 322-6533

Board for Professional Engineers, Land Surveyors
and Geologists
File # 2021-0715-04
Examination Appeals

This action by the Board for Professional Engineers, Land Surveyors, and Geologists repeals regulations that allow an examinee to inspect and appeal a Professional Engineering or Professional Land Surveying examination.

Title 16
Repeal: 443, 444
Filed 08/26/2021
Effective 10/01/2021
Agency Contact: Angela Yu (916) 999-3610

California Horse Racing Board
File # 2021-0720-01
Use of Riding Crop

The California Horse Racing Board is establishing a minimum fine of \$500 with the potential for a larger fine if the violation is egregious or intentional or a minimum three days of suspension when a jockey violates rules for the use of a riding crop. Additionally, in all races where a jockey will not ride with a riding crop, an announcement is to be made and the information printed in the official program.

Title 04
Amend: 1688
Filed 08/30/2021
Effective 08/30/2021
Agency Contact: Zachary Voss (916) 263-6036

Podiatric Medical Board of California
File # 2021-0316-01
Suspension and Revocation of Certificates to Practice
Podiatric Medicine

In this rulemaking action, the Board amends its regulations to establish substantial relationship criteria and rehabilitation criteria for crimes, professional misconduct, or acts considered substantially related to the qualifications, functions, or duties of a certificate holder. The regulatory changes align the regulations with Assembly Bill 2138 (Stats. 2018, Ch. 995).

Title 16
Adopt: 1399.659.1, 1399.659.2
Amend: 1399.659
Filed 08/25/2021
Effective 08/25/2021
Agency Contact:
Kathleen Cooper (916) 263-0315

Department of Food and Agriculture
File # 2021-0818-02
Livestock Movements and Forms

This action updates existing interstate and intrastate cattle and sheep movement requirements for consistency with industry trends and practices to better control, manage, and eliminate livestock diseases.

Title 03
Amend: 752, 753, 753.1, 760.4, 820.55, 830.3,
830.4, 831, 831.1, 831.2, 1302.1, 1302.2, 1302.3
Repeal: 830.1
Filed 08/31/2021
Effective 10/01/2021
Agency Contact: Angelina Velez (916) 718-8242

**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.