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PROPOSED ACTION ON REGULATIONS

GENERAL PUBLIC INTEREST

(Continued on next page)

Time-Dated Material

DECISION NOT TO PROCEED

SUMMARY OF REGULATORY ACTIONS

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

Information contained in this document is published as received from agencies and is not edited by Thomson Reuters.

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

STATE AGENCY: Business, Consumer Services and Housing Agency

A written comment period has been established commencing on May 13, 2022 and closing on June 27, 2022. 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 June 27, 2022. 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 Amanda Apostol, 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 Amanda Apostol, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 322–5660.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)[1] by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **June 16, 2022** at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **June 14, 2022**.

BACKGROUND/OVERVIEW

Members of the Commission, including the Chair, are subject to the Act like all other state and local officers, and persons participating in regulated political activity. As a result, Commission members can be accused of violating the Act. Such allegations should be investigated and can result in legal action if there is reason to believe a violation occurred.

A stated purpose of the Act is that "(a)dequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced."[2] Consequently, the Act provides multiple avenues for enforcement of its provisions. Nearly all violations of the Act can be pursued through administrative or civil action.[3] Further, if a person knowingly or willfully violates the Act, they can also be subject to criminal prosecution.[4]

The Commission's Enforcement Division investigates and prosecutes most cases involving alleged violations of the Act via administrative proceedings. The Commission has sole authority to bring administrative proceedings for alleged violations of the Act.[5] For civil court actions involving violations of the Act, the Commission shares jurisdiction with local district attorneys, city attorneys, and the Office of the Attorney General (the AG's Office), depending on who is alleged to have violated the Act. Specifically, the Commission is the "civil prosecutor" for cases involving any state agency, except itself. The AG's Office is the civil prosecutor for alleged violations of the Act involving the Commission, including its members.[6] The AG's Office also has jurisdiction over criminal violations of the Act for state agencies, including the Commission.[7]

While the Act does not explicitly provide for referral of complaints to other agencies, such authority exists as the result of the concurrent jurisdiction provided under the Act. The Enforcement Division occasionally refers complaints to other agencies in instances when doing so would be preferable for obtaining adequate resolution of the complaint, or where the other agency expresses an interest in pursuing a particular complaint.

In instances where a current Commission member is accused of violating the Act, the AG's Office is the appropriate agency to investigate the allegations and pursue any appropriate legal action. While the Commission's Enforcement Division has authority to pursue administrative action in such an instance, practical and ethical concerns dictate that the best course of action is for the Enforcement Division to refer the matter to the AG's Office.

REGULATORY ACTION

Adopt 2 Cal. Code Regs. Section 18315 directing the Commission's Chief of Enforcement to refer complaints alleging a current Commission member violated the Act to the AG's Office, provide notice of the referral to the complainant and Commissioner named in the complaint, and provide notice of the complaint to the Commission's Chair or Vice Chair.

SCOPE

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issue identified above or any related issue.

FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. None.

Fiscal Impact on State Government. None.

Fiscal Impact on Federal Funding of State Programs. None.

[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

[2] Section 81002(f).

[3] Sections 89520, 89521, 91004, 91005, and 91005.5.

[4] Section 91000.

[5] Sections 83116 and 83116.5.

[6] Sections 91001(b).

[7] Section 91001(a).

AUTHORITY

Government Code section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Act.

REFERENCE

Government Code sections 83115, 91001, 91004, 91005, and 91005.5.

CONTACT

Any inquiries should be made to Dave Bainbridge, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, CA 95811; telephone (916) 322–5660; dbainbridge@fppc.ca.gov. Proposed regulatory language can be accessed at http://www.fppc.ca.gov/the–law/fppc–regulations/proposed–regulations–and–notices.html.

TITLE 22. DEPARTMENT OF SOCIAL SERVICES

ORD #0122–01

SMALL FAMILY HOMES

California Department of Social Services (CDSS) hereby gives notice of the proposed regulatory action described below. Any person interested may present statements or arguments relating to the proposed regulations in writing, e–mail, or by facsimile to the address, e–mail address, or numbers listed below. All comments must be received by June 28th, 2022.

Following the close of the public notice, CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. Except for nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who submit written comments during the public comment period and all persons who request notification on this proposal. Please address requests for regulations as modified to the agency contact identified below.

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

CONTACT

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

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

CHAPTERS

Title 22, Division 6, Chapter (Small Family Homes)

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Family First Prevention Services Act (FFPSA) became federal law as part of the Bipartisan Budget Act of 2018 (Public Law 115–123) and made significant changes to foster care funding, including limiting IV–E funding to specified congregate care settings, including Qualified Residential Treatment Programs (QRTPs). QRTPs are nationally accredited facilities that serve youth with clinical treatment needs. In California, Short–Term Residential Therapeutic Programs (STRTPs) already had many of the traits required of QRTPs prior to passage of FFPSA and STRTP licensing standards became fully compliant with FFPSA QRTP requirements on October 1, 2021.

The FFPSA also directed the United States Department of Health and Human Services, Administration for Children and Families (ACF) to issue model licensing standards for foster family homes. States were subsequently required to provide ACF with detailed information about whether their state foster family home licensing standards (resource family approval standards in California) were consistent with the model licensing standards identified by ACF, and if not, why not.

Small Family Homes (SFH) are defined in Health and Safety Code section 1502 as residential facilities in a licensee's family residence, licensed in California to provide care for six or fewer children who have mental health, developmental or physical disabilities requiring special care and supervision. They are subject to their own regulation scheme rather than Resource Family Approval standards because they serve this specialized population, but they are home–based settings, rather than congregate care facilities.

While STRTPs are intended for limited stays to stabilize children with acute mental health issues, and resource families are caregivers who provide out–of–home care for children in foster care, small family homes are generally long–term, often permanent homes for youth with chronic health care needs. In light of the changes that FFPSA made to federal IV–E funding, it became necessary to make clear to ACF that SFHs are not congregate care facilities subject to QRTP standards, but rather a type of foster family home. Since they are not resource families, this subsequently necessitated submitting a comparison to ACF of SFH regulations to the model licensing standards, similar to what was done for resource families.

In the course of preparing the comparison for ACF, the Department identified several instances where specific health and safety standards required of resource families were higher than those required of small family homes or absent in the SFH regulations. The SFH regulations thus require amendments for consistency with health and safety requirements for resource families, which has been communicated to ACF for the purpose of maintaining Title IV–E funding for SFHs.

CDSS considered other possible related regulations in this area, and we found that these are the only regulations dealing with licensing family residence, that provides 24–hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision. CDSS finds that these proposed regulations are compatible and consistent with existing state regulations.

In order to conform the health and safety requirements of small family home regulations to those required of resource families, the Department is proposing the following amendments:

Risk Assessment

Section 83018 is amended to add a requirement that prospective SFH licensees include in their application information sufficient to allow the licensing agency to conduct a risk assessment of the applicant, including past and current alcohol and substance use and abuse history; abuse, neglect and domestic violence history and; past and current physical and mental health. A definition of "risk assessment" is added to Section 83001 for clarity.

Carbon Monoxide Detectors

Changes to Section 83087(e) amend current requirements for carbon monoxide detectors, clarifying that they must be functioning and be placed on each level of occupancy and near all sleeping areas of the home, and be audible in each bedroom.

Smoke Alarms

A new subsection is added to Section 83087 stating that every small family home must have one or more functioning smoke alarms as required in the California Fire Code.

Fire Extinguishers

A new subsection is added to Section 83088 stating that a small family home shall have at least one operational fire extinguisher as required by the California Fire Code.

Forms Incorporated by Reference

Small Family Home Risk Assessment–Confidential (LIC XX (x/22) (CONFIDENTIAL) [draft to be finalized prior to completion of rulemaking process]

COST ESTIMATE

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

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate on local agencies or school districts. There are no state–mandated local costs in these regulations which require State reimbursement under Section 17500 et seq. of the Government Code.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the fact that these regulations largely clarify existing health and safety standards for Small Family Homes in California.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

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

SMALL BUSINESS IMPACT STATEMENT

These regulations will impact small family homes that are operating as small businesses, however, complying with them will incur little to no costs to these providers.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

CDSS has determined that the adoption of these 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 regulations as amended will yield the benefit of providing clarity to providers offering small family homes to their communities and ensuring consistency of health and safety requirements between Small Family Homes and Resource Families. The state's environment and worker safety is not affected by this regulatory action.

STATEMENT OF EFFECT ON HOUSING COSTS

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

STATEMENT OF ALTERNATIVES CONSIDERED

These regulations are being pursued in response to changes in federal law. In light of changes that the federal FFPSA made to IV–E funding of state programs, it was necessary to make clear to the Administration of Children and Families that Small Family Homes are not congregate care facilities. As they are home–based settings, but not resource families, this subsequently necessitated submitting a comparison to the Administration of Children and Families of SFH regulations to federal model licensing standards and amending SFH regulations where health and safety requirements were lower than those required of resource families. No alternatives have been presented to CDSS for review.

CDSS must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, 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.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Health and Safety Code Section 1530. Subject regulations also add references to Title 24, Chapter 9, Sections 201, 906.1, 907, and 915 of the California Fire Code.

CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION

Contact Person: Tyler Penn (916) 657–1808
Backup: Oliver Chu (916) 657–3588

TITLE 22. UNEMPLOYMENT INSURANCE APPEALS BOARD

The California Unemployment Insurance Appeals Board (CUIAB) proposes to adopt, amend, and repeal the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

CUIAB has not scheduled a public hearing on this proposed action. However, CUIAB 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 COMMENT PERIOD

Any person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to CUIAB. The written comment period closes at 5:00 p.m. **on June 28, 2022.** CUIAB will consider only written comments received at CUIAB by that time. Submit comments as follows:

Kim Hickox, Attorney III
California Unemployment Insurance Appeals Board
Office of the Chief Counsel
2400 Venture Oaks Way, 3rd Floor
Sacramento, California 95833

or

By facsimile (FAX) at (916) 263–6842, or by e–mail to kim.hickox@cuiab.ca.gov.

AUTHORITY AND REFERENCE

California Unemployment Insurance Code section 411 authorizes CUIAB to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific sections 1951, 1953.5, 2712, and 3262 of the California Unemployment Insurance Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

CUIAB is an independent administrative court system established to provide due process for workers and employers who seek to appeal Unemployment Insurance benefit decisions, Disability Insurance benefit decisions, and Employer Payroll Tax assessments made by the Employment Development Department. Benefit decisions issued by CUIAB must be issued in accordance with the federal timeliness guidelines issued by the United States Department of Labor, as set forth in Title 20 Code of Federal Regulations section 650.4. The purpose of this proposed rulemaking action is to enhance compliance with those timeliness guidelines, and to improve the appeals process to make it convenient and accessible as possible to all parties.

Anticipated Benefits of the Proposed Regulation Changes

These regulation changes will enhance the alternatives by which the parties, their representatives and witnesses will be able to access hearings on their appeals, enable the CUIAB to schedule those hearings in the most expeditious manner possible, improve and provide clarity on Board procedures.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

CUIAB has determined that this proposed rulemaking action is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, CUIAB has concluded that these are the only regulations that concern the quasi–judicial hearings of CUIAB.

DISCLOSURES REGARDING THE PROPOSED ACTION

CUIAB has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

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

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

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

Cost impacts on a representative private person or business: Based on historical averages, charging fees in accordance with Government Code section 69950 for transcripts will result in savings. However, charging a per–page fee for files may increase costs for non–claimants. Actual costs may vary from estimates based on the actual size of case files and/or transcripts requested by parties. Any additional costs or savings to parties will be solely dependent on the actual size of the case file and/or transcript requested by a party, which will vary.

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None.

Results of the Economic Impact Analysis/Assessment

CUIAB concludes that the proposed regulatory action will neither create nor eliminate jobs within California, will neither create new businesses nor eliminate existing businesses within California, and will not result in the expansion of businesses currently doing business within California.

Benefits of the Proposed Action: The proposed regulatory action will benefit the public by helping the scheduling of electronic hearings to be done more quickly and flexibly, and by clarifying Board practices and public access to administrative records in cases. It will also allow parties more time to file a request for reinstatement of a withdrawn appeal; request for reopening; and a request to vacate a decision.

CUIAB has determined there may be cost impacts incurred by a representative private person or business in reasonable compliance with the proposed regulatory action. Charging a per–page fee for files may increase costs for non–claimants. Any additional costs to parties will be solely dependent on the actual size of the case file and/or transcript requested by a party, which will vary.

Small Business Determination: CUIAB has determined the proposed regulatory action will save small businesses money as it reduces the costs of obtaining transcripts, gives more flexibility to schedule hearings electronically thereby reducing travel costs for small employers, and will allow small employers to electronically submit documents, thereby reducing mailing costs. However, charging a per–page fee for files may increase costs for small business employers who have a former employee who files a claim. Any additional costs or savings to parties will be solely dependent

on the actual size of the case file and/or transcript requested by a party, which will vary.

The proposed regulations are not anticipated to have an effect on worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

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

CUIAB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action at the scheduled hearing (if any) or during the written comment period.

CONTACT PERSON

Kim Hickox, Attorney III
California Unemployment Insurance Appeals Board
Office of the Chief Counsel
2400 Venture Oaks Way, 3rd Floor
Sacramento, California 95833
Email: kim.hickox@cuiab.ca.gov
FAX: 916–263–6842

The back up contact person is:

Mark Woo–Sam, Chief Counsel
California Unemployment Insurance Appeals Board
Office of the Chief Counsel
2400 Venture Oaks Way, 3rd Floor
Sacramento, California 95833
Email: mark.woo–sam@cuiab.ca.gov
FAX: 916–263–6842

Please also direct all requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Hickox at the above address.

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

CUIAB will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Ms. Hickox at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the written comment period and/or public hearing if one is requested, and after considering all timely and relevant comments received, CUIAB may thereafter adopt the proposed regulatory actions substantially as described in this notice. If CUIAB 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 CUIAB adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Ms. Hickox at the address indicated above. CUIAB 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 Ms. Hickox at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout format can be accessed through our website at www.cuiab.ca.gov.

GENERAL PUBLIC INTEREST

FISH AND GAME COMMISSION

NOTICE OF FINDINGS
SOUTHERN CALIFORNIA STEELHEAD
(*ONCORHYNCHUS MYKISS*)

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2074.2 of the Fish and Game Code, the California Fish and Game Commission (Commission or FGC), at its April 20–21, 2022

meeting, accepted for consideration the petition submitted to list the Southern California steelhead (*Oncorhynchus mykiss*) as endangered under the California Endangered Species Act.

Pursuant to subdivision (e)(2) of Section 2074.2 of the Fish and Game Code, the Commission determined that the amount of information contained in the petition, when considered in light of the California Department of Fish and Wildlife's (Department) written evaluation report, the comments received, and the remainder of the administrative record, would lead a reasonable person to conclude there is a substantial possibility the requested listing could occur.

Based on that finding and the acceptance of the petition, the Commission is also providing notice that the Southern California steelhead is a candidate species as defined by Section 2068 of the Fish and Game Code.

Within one year of the date of publication of this notice of findings, the Department shall submit a written report, pursuant to Section 2074.6 of the Fish and Game Code, indicating whether the petitioned action is warranted. Copies of the petition, as well as minutes of the April 20–21, 2022 Commission meeting, are on file and available for public review from Melissa Miller–Henson, Executive Director, California Fish and Game Commission, 715 P Street, 16th floor, Sacramento, California 95814, phone (916) 653–4899.

Written comments or data related to the petitioned action should be directed to the California Department of Fish and Wildlife, P.O. Box 944209, Sacramento, CA 94244–2090, Attn: Vanessa Gusman or email SCSH@wildlife.ca.gov (include "Southern California steelhead") in the subject line. Submission of information via email is preferred.

FISH AND GAME COMMISSION

NOTICE OF FINDINGS
NORTHERN CALIFORNIA
SUMMER STEELHEAD
(ONCORHYNCHUS MYKISS)
(4/21/2022)

NOTICE IS HEREBY GIVEN that the California Fish and Game Commission (Commission), at a meeting on June 16, 2021, found pursuant to California Fish and Game Code (Fish & G. Code) Section 2075.5, that the information contained in the petition to list northern California summer steelhead (*Oncorhynchus mykiss*) (hereinafter "NCSS") and other information in the record before the Commission, warrants adding NCSS to the list of endangered species under the California Endangered Species Act (CESA) (Fish and Game Code, Section 2050 et seq.). (See also California Code of Regulations, Title 14, Section 670.1, subsection (i))

NOTICE IS ALSO GIVEN that, at its April 20–21, 2022, meeting, the Commission adopted the following findings outlining the reasons for its determination.

I. Background and Procedural History

Petition History

On September 28, 2018, the Friends of the Eel River submitted a petition to the Commission to list NCSS as endangered under CESA. The Commission reviewed the petition for completeness, and pursuant to Section 2073 of the California Fish and Game Code, referred the petition to the California Department of Fish and Game (Department) on October 8, 2018 for evaluation. The Commission gave public notice of receipt of the petition on October 26, 2018 (California Regulatory Notice Register 2018, Number 43–Z, page 1915). The Department requested a 30–day extension of the 90–day review period which was granted by the Commission at its December 12–13, 2018 meeting. The Department transmitted to the Commission the Department's petition evaluation on January 24, 2019, and on February 6, 2019, the Commission formally received the Department's petition evaluation.

At its June 2019 meeting, FGC determined that listing may be warranted, and subsequently provided notice regarding NCSS's protected, candidate species status (California Regulatory Notice Register 2019, Number 26–Z, page 954).

Status Review Overview

The Commission's action designating NCSS 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. At a public meeting in August 2019, the Commission approved a request for a 6–month extension to complete the status review.

On March 29, 2021, the Department transmitted to the Commission the Department's report to the Commission titled *California Endangered Species Act Status Review for Northern California Summer Steelhead (Oncorhynchus mykiss)* (status review) dated March 11, 2021. On April 14, 2021, the Commission formally received the Department's status review during a public meeting. On June 16, 2021, the Commission found that the information contained in the petition to list NCSS and other information in the record before the Commission warranted listing NCSS as an endangered species under CESA.

Species Description

Steelhead

Oncorhynchus mykiss is a species of salmonid native to cold–water tributaries of the Pacific Ocean in Asia and North America. *Oncorhynchus mykiss* includes

multiple subspecies and several ecotypic forms, including resident and anadromous forms which are detailed in the petition and status review. Steelhead are the anadromous[1] ecotype of *Oncorhynchus mykiss* and are found in Asia and North America, occurring in North American watersheds from Alaska to Southern California (Light et al. 1989; CDFW 2021). Steelhead are the most widely present ecotype of all the Pacific salmonids, occupying nearly all ocean–connected streams throughout their range (Garza et al. 2014; CDFW 2021).

There are numerous non–taxonomic units or runs (below the species level), or nontaxa, of *Oncorhynchus mykiss* in California (Friends of Eel River 2018). The most commonly recognized nontaxa are defined by their migration types (i.e., anadromous or resident) or their seasonal run timing (i.e., summer or winter), though *Oncorhynchus mykiss* cannot be differentiated by seasonal run timing or anadromy through classical taxonomy (Behnke 1972; Wilson et al. 1985; Hayes et al. 2008).

Steelhead exhibit two seasonal run types; winter, also called ocean–maturing or mature migrating, and summer, also called stream–maturing or premature migrating (Withler 1966; CDFW 2021). The names of these two run types are reflective of the time of year the fish reenter the estuaries and rivers as adults in their upriver migration to reproduce (Busby et al. 1996; Moyle 2002).

The life cycle, physiology, diet, and habitat needs are detailed in the petition and status review.

Northern California Summer Steelhead (NCSS)

NCSS currently occupy fluvial habitat from Redwood Creek in northern Humboldt County south to the Mattole River, though they do not occur in all watersheds within this range (CDFW 2021). NCSS are categorized by the Department, for purposes of evaluating this potential listing, within a larger Northern California steelhead distinct population segment (DPS) as one of two regional ecotypes: summer and winter (Pearse et al. 2019; CDFW 2021).

NCSS are included in two NMFS–defined geographic diversity strata: Northern Coastal and North Mountain Interior; these two diversity strata encompass 10 historically functionally independent summer steelhead populations (NMFS 2016b). The NCSS range encompasses Redwood Creek, the Mad River, and the Mattole River as well as sectors of the Eel River watershed including the Middle Fork Eel River and the Van Duzen River (Moyle et al. 2017).

II. Statutory and Legal Framework

The Commission, as established by the California State 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 & G. Code, § 2070.) The CESA listing process for NCSS began in the present case with the petitioners' submittal of the petition to the Commission. 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;
- California Forestry Association v. California Fish and Game Commission (2007) 156 Cal.App.4th 1535;
- Center for Biological Diversity v. California Fish and Game Commission (2008) 166 Cal.App.4th 597;
- Natural Resources Defense Council v. California Fish and Game Commission (1994) 28 Cal. App.4th 1104;
- Central Coast Forest Association v. California Fish and Game Commission (2017), 2 Cal. 5th 594; and
- Central Coast Forest Association v. California Fish and Game Commission (2018) 18 Cal. App. 5th 1191.

The "is warranted" determination at issue here stems from Commission obligations established by Fish and Game Code Section 2075.5. Under the 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 NCSS, the Commission made the finding under Section 2075.5(e)(2) that listing NCSS is warranted.

The Commission was guided in making its 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 & G. 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

[1] Anadromous referring to the trait of migrating to the ocean as juveniles, and from the sea up into fresh water to spawn.

protection and management efforts required by this chapter." (*Id.*, § 2067.)

The Commission also considered Title 14, Section 670.1, subsection (i)(1)(A), of the California Code of Regulations in making its determination regarding NCSS. This provision provides, in pertinent part, that NCSS shall be listed as endangered or threatened under CESA if the Commission determines that its 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, providing 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 & G. 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 pages 1545–1546, citing *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 601; Fish & G. Code, §§ 2051, 2052.)

Finally, in considering the six identified 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 & G. Code, §§ 2073.3, 2074, 2074.2, 2075, 2075.5, 2078; Cal. Code Regs., title 14, § 670.1, subdivisions (c), (e), (g), (i); see also Gov. Code, § 11120 et seq.) The referenced obligations are in addition to the requirements prescribed for the Department in the CESA listing process, including an initial evaluation of the petition, 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 & G. Code, §§ 2073.4, 2073.5, 2074.4, 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 NCSS as an endangered species under CESA is warranted are set forth in detail in the Commission's record of proceedings, including the petition (Friends of the Eel River 2018); the Department's petition evaluation report; the Department's status review (CDFW 2021); written and oral comments received from members of the public, the regulated community, tribal entities, and the scientific community; and other evidence included in the Commission's record of proceedings.

The Commission determines that the continued existence of NCSS 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, subsection (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 NCSS as an endangered species under CESA is warranted. Similarly, the Commission determines that NCSS 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 NCSS. 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 has previously listed units at a lower level than a taxonomic subspecies, in each case making a factually–specific determination as to whether the unit was appropriate to list under CESA. In 2004, the Commission listed two evolutionarily significant units (ESUs) of coho salmon, a decision that was upheld in *California Forestry Association v. California Fish and Game Commission.* In 2016, the Commission listed an ESU of fisher. In 2020, the Commission listed five clades of the foothill yellow–legged frog; a clade, also referred to as a monophyletic group, is a branch on a phylogenetic tree that contains a group of lineages comprised of an ancestor and all its descendants. In 2021, the Commission listed an ecotype of Chinook salmon — the Upper Klamath–Trinity Spring Chinook Salmon — as a threatened species.

The Commission bases its "is warranted" finding for NCSS most fundamentally on its determination that NCSS qualifies as a "subspecies" as specified in CESA sections 2062 and 2067. The qualification is based on the discreteness (when compared to other ecotypes) and significance of NCSS within the state of California (Fraser 2001; Waples 1991, 1995; Moran et al. 1994; de Guia and Saitoh 2007), coupled with the threats faced due to relatively small abundances, habitat loss and alteration, overexploitation, and climate change (Friends of the Eel River 2018; CDFW 2021; Moyle et al. 2008). Construing "subspecies" under this framework supports the preservation of important elements of genetic diversity, which has been shown to support long–term species conservation (Frankham 2005; Frankham 1996; Waples and Lindley 2018) and is important to fulfill the purpose of CESA of biodiversity preservation.

Qualification for Listing

The petition specifically refers to NCSS as a subspecies. and argues as to why NCSS should be considered as such. In making a recommendation to the Commission, the Department deemed that NCSS was best understood as an ecotype of a larger combined Northern California steelhead DPS composed of NCSS and Northern California winter steelhead, and from that the Department concluded that NCSS does not itself constitute an independent subspecies. Following from this conclusion, the Department recommended against listing NCSS (CDFW 2021). The Commission must make its own factually–specific determination as to whether NCSS qualifies for listing, supported by CESA and relevant case law.

Although summer and winter steelhead are not thought to be separate taxonomic subspecies, the genetics of NCSS distinguishes it from individuals in the winter ecotype, due to a specific genomic region highly correlated with migration timing (Hess et al. 2016; Prince et al. 2017; Micheletti et al. 2018; Ford et al. 2020). Summer and winter steelhead are more closely related within individual watersheds (Chilcote et al. 1980; Waples et al. 2004; Kinziger et al. 2013; Arciniega et al. 2016), and the National Marine Fisheries Service, accordingly, defines steelhead DPSs largely by geography (NMFS 2016a; Laird et al. 1995). Nevertheless, the summer and winter steelhead ecotypes do exhibit meaningful distinction in run time, and NCSS represents an important diversity component of the species (Kannry et al. 2020; Ford et al. 2020).

Summer and winter steelhead interbreed and can form heterozygous offspring at the GREB 1L/ROCK 1 gene region (Prince et al. 2017; Pearse et al. 2019), and these heterozygous fish are themselves capable of breeding. Heterozygotes may exhibit intermediate run timing, in the late summer to fall (Pearse et al. 2019; Greacen 2021). Adult heterozygotes may have reduced fitness (Pearse et al. 2019; Micheletti et al. 2018; Greacen 2021; Papa et al. 2007), and fish that migrate at that time may face substandard conditions, including river temperature (Quinn et al. 2016; Willis et al. 2020), although specific NCSS heterozygote persistence patterns have yet to be studied in detail. High heterozygote numbers may be a consequence of relatively small populations and disconnection from upstream habitats (Ford et al. 2020; Greacen 2021). Heterozygotes are likely an important mechanism for the spread and maintenance of the early migration alleles over long time scales (Ford et al. 2020).

The genetically–based run–time discreteness of summer and winter life history variants is meaningful, given that it expresses as the seasonal run in a very precise (albeit not perfectly exact) relationship (Hess et al. 2016; Prince et al. 2017; Micheletti et al. 2018; Ford et al. 2020). Although the two ecotypes are not completely distinct, and future developments may refine the understanding of how genetics (including GREB1L) define summer and winter runs (Ford et al. 2020), the two ecotypes are notably separate from each other as a consequence of genetic, ecological, and behavioral factors (e.g., Leider et al. 1984).

The summer run–time of NCSS provides a unique, adaptive contribution to the species. The run–time differentiation allows access to disparate habitat conditions during the return migration, conferring a significant adaptive consequence but also makes them particularly vulnerable to habitat degradation (Ford et al. 2020; Pearse et al. 2019). The summer–run

metapopulation[2] brings important diversity to the species that increases its chances of surviving when faced with natural and human–caused environmental change and environmental stochasticity. This critical life history variant, shared across watersheds despite their more distant evolutionary lineage through isolation by distance (Bjorkstedt et al. 2005; Arcinega et al. 2016; Nielsen 1999; Pearse et al. 2007; Garza et al. 2014; Reisenbichler et al. 1992), allows NCSS to persist in a unique ecological setting, with dissimilar habitat conditions to its winter counterpart, providing the (taxonomic) species with population diversity and protection against adverse winter conditions.

The best available genetic and evolutionary information indicates that run–timing genetics (at the GREB1L/ROCK1 locus) manifested from a single evolutionary event (Prince et al. 2017; Ford et al. 2020). Given its evolutionary history, run–timing in the summer is unlikely to evolve again in northern California steelhead over ecological time scales should it disappear (Ford et al. 2020; Prince et al. 2017). In the case of reestablishment following localized losses, there is evidence (from other species) to suggest that reintroduction through intra–basin migration from another source population (Thompson et al. 2020) or through heterozygotes (CDFW 2021) may be possible, but ultimately the likelihood of success is unknown (Greacen 2021).

Although the relationship between the genetic makeup of a particular fish is very closely related to its run timing, some variation is recognized in when it may choose to return from the ocean, even among homozygous individuals (Ford et al. 2020). That is, an individual with homozygous summer alleles may return well into the winter, and vice versa. Ultimately however, the strong associative link between observed run timing and NCSS's genetic composition (Hess et al. 2016; Prince et al. 2017; Micheletti et al. 2018; Ford et al. 2020) suggests an important genetic role in its inclination to migrate at a particular time of year. Therefore, the fundamental determinant of whether a fish is a NCSS is its genetic makeup; only North Coast steelhead that possess homozygous alleles associated with the summer return are classified as NCSS, for the purposes of this CESA listing.

Based on the foregoing factors, the Commission finds NCSS qualifies as a subspecies under CESA.

Threats

NCSS is endangered due to:

- present or threatened modification of its habitat;
- overexploitation;
- predation; and
- other natural events or human–related activities

NCSS is protected as threatened under the federal Endangered Species Act, as part of the listed Northern California steelhead DPS, which includes NCSS and winter steelhead (50 Code of Fed. Regs. 17.11 and 223.102).

Present or Threatened Modification or Destruction of Habitat

While there is spatial overlap between summer and winter steelhead, which can foster interbreeding, NCSS can often be found in higher reaches of watersheds in which they occur (Friends of the Eel River 2018). They specialize in climbing river roughs and difficult–to–navigate water stretches, to reach pools and other upstream holding areas that are difficult to reach for winter steelhead (Kannry et al. 2020). Still, major dams do obstruct passage to historic spawning habitat, including Matthews Dam on the Mad River and Scott Dam on the Eel River (NMFS 2005; Cooper 2017). The majority of NCSS are in the Eel and Mad Rivers combined (NOAA 2016; Greacen 2021). Additionally, dams and other large barriers may prevent anadromy in steelhead populations that have been isolated above them (Kannry et al. 2020).

Particularly problematic natural obstructions may also isolate significant portions of habitat, particularly during sustained periods of lower flows (CDFW 2021). Even small migration barriers may cause losses to genetic diversity (Waples et al. 2008).

Because NCSS hold for nine to twelve months before spawning, they may be subject to amplified exposure to adverse riverine conditions — even temporary perturbations. To complete their reproductive cycle, they require (1) deep, cold pools with riparian cover for holding (Baigún 2000, 2003; Nakamoto 1994; High et al. 2006; Nielsen and Lisle 1994), (2) loose gravel and adequate flows for spawning, and (3) sufficient flows, cool temperatures, and protection from predators for rearing (CDFW 2021). Changes in these factors have been suspected in the historical alteration of steelhead migration patterns (Robards and Quinn 2002).

Significant land uses that adversely affect conditions necessary for the NCSS life cycle include water use (particularly from noncompliant sites), mining, timber production, deforestation, road construction and maintenance, livestock grazing, and agriculture (CDFW 2021; Dillis et al. 2019). Effects from illegal cannabis operations can include both water diversions and the introduction of pollutants. Flood events (Jowett and Richardson 1989) and unstable geology have also contributed to NCSS habitat loss (Waples et

[2] The metapopulation framework can be a useful concept to understand NCSS dynamics because (i) the various NCSS spawning habitats are discrete and are separated by a matrix of unsuitable habitat; (ii) there is sufficient asynchrony in the population dynamics of local populations, such that some may persist while others may not, and (iii) some NCSS stray from their natal population, linking the disparate populations via dispersers.

al. 2008; CDFW 2021; Becker and Reining 2009), the effects of which can be amplified when experienced by small abundances. Wildfires present an ever–increasing threat to riparian habitat (Friends of the Eel River 2018). These threats have contributed to an overall contraction of available habitat for NCSS, and on balance the threats facing NCSS are increasing.

Therefore, the Commission finds habitat modification and destruction to be a significant threat to the continued existence of NCSS.

Overexploitation

There are currently no fisheries that target NCSS for harvest. (CDFW 2021). However, anecdotal evidence of poaching exists, especially in remote areas of NCSS watersheds (CDFG 1966–2018; CDFW 2021). There are no directed studies that quantify illegal take or identify poaching to be at a level that would affect NCSS abundance, though illegal activities are notoriously difficult to quantify. Still, NCSS are unusually vulnerable to fishing pressure given their high visibility and tendency to remain in holding pools, even when disturbed (CDFW 2021). Poaching continues to plague NCSS due to the difficulties with providing substantial law enforcement in such remote areas (Moyle et al. 2008). Even when released after being caught, steelhead can suffer an increased risk of mortality (Twardek et al. 2018), which can be exacerbated by warmer temperatures (Taylor and Barnhart 1996).

Therefore, the Commission finds overexploitation to be a significant threat to the continued existence of NCSS.

Predation

NCSS life history renders the species significantly more vulnerable to predation than winter run steelhead, particularly when the adults are in–river. With very small populations of NCSS in some of the watersheds where NCSS occur, high predation rates on adults could reduce or even eliminate successful spawning at a given location for a particular year.

The introduction of Sacramento pikeminnow to the Eel River watershed has significantly increased the impact of predation on NCSS (Yoshiyama and Moyle 2010; NMFS 2005). While pikeminnow are native to California, and even to the Russian River immediately to the south, they are not native to the Eel River. Recent geomorphic and hydrological changes in the upper Eel River are conducive to growing pikeminnow populations (Yoshiyama and Moyle 2010), particularly warmer water (Good et al. 2005). Negative effects from pikeminnow may be amplified when steelhead abundances are low, and pikeminnow may prove a significant barrier to recovery in the Eel River (Yoshiyama and Moyle 2010).

Predation in the marine environment is less understood. Increases in pinniped abundances and the relatively high prevalence of predatory wounds on returning steelhead may signal that ocean predation may warrant greater concern (CDFW 2021).

NCSS are particularly susceptible to impacts from these predation threats due to the very low population numbers (Friends of the Eel River 2018). Additionally, water depth and complex habitat structure may help salmonids deal with predation (Lonzarich and Quinn 1995), so changes in habitat configurations may increase the level and significance of predation. Overall, predation is likely a moderate threat on NCSS, although when combined with other threats (e.g., warming temperatures that stress fish, declines in habitat quality that degrade. NCSS ability to handle predators), predation impacts may increase in the future.

Therefore, the Commission finds predation to be a significant threat to the persistence of NCSS.

Other Natural Occurrences or Human–Related Activities

Small Populations

Small, isolated populations are inherently vulnerable to increased impacts from other identified threats and extinction generally. NCSS populations are likely far below historical abundances (CDFW 2021). NCSS populations in Redwood Creek have been declining recently, Middle Fork Eel River populations (the most robust of all NCSS populations) have been declining over a longer term. While other populations show either no statistically significant trends or do not have reliable trend estimates, all surveyed populations are either at low–to–moderate numbers or have already been extirpated. All NCSS population segments face a high risk of extinction (CDFW 2021).

Cohort Replacement Rate, one indicator of NCSS productivity, has been declining for all population segments in the most recent years (CDFW 2021). NMFS viability targets (2500 adult summer steelhead per generation) have not been met for all NCSS population segments with long–term survey data (CDFW 2021). Competition from brown trout (CDFW 2021) may also exacerbate the risks from small population sizes.

Therefore, the Commission finds small population sizes to be a threat to the persistence of NCSS.

Climate Change

The Earth's climate is warming, and the primary causes are greenhouse gas emissions and deforestation (IPCC 2007; USGCRP 2009; USGCRP 2017). Since 1900, global average temperature has increased 0.7° C (NRC 2006) due to carbon dioxide emissions. Ice core data indicates that atmospheric carbon dioxide is currently 30% greater than its peak in the last 800,000 years. Over the last 150 years, carbon dioxide levels have increased 37.5% (CDFW 2021).

Greenhouse gas increases have resulted in changes in seasonal precipitation, decreased snowpack, earlier snowmelt, and increased storm severity (USGCRP

2009; USGCRP 2017), 0.1° C increase in seas surface temperature since 1961 and increased ocean acidification (USGCRP 2009), 203 mm increase in sea level after approximately 2000 years of stability (USGCRP 2009), and approximately a 20% decrease in the amount of arctic sea ice since the 1950s (Curran et al. 2003).

If current conditions remain unchanged, studies project that global climate will change drastically. Projections include an increase of 1.1–6.4° C in average global surface temperature (USGCRP 2009), sea level rise of 1–3 meters (IPCC 2007; USGCRP 2009; USGCRP 2017), and greater extremes in storm events and wildfire (Krawchuck et al. 2009).

A warming climate is likely to result in poorer future environmental conditions for California's salmonids in general (Isaak et al. 2018; Katz et al. 2012; Crozier et al. 2019), including for steelhead in other areas (McCarthy et al. 2009; Sloat and Osterback 2013; Robards and Quinn 2002), and for NCSS specifically (CDFW 2021).

With the impending effects of climate change, the limited amount of NCSS habitat will likely continue to decline in quality and extent; California's north coast may experience pronounced climate change impacts including rising water temperatures, intensified flooding, more frequent and persistent drought conditions, lower summer baseflows, altered hydrography especially in watersheds impacted by snowmelt and large–scale historical logging, ocean acidification, increased wildfires, and sea level rise (CDFW 2021).

Additionally, changing climate could adversely affect marine habitats during the life stages in which NCSS inhabits the ocean (Hayes et al. 2016; CDFW 2021; Thalmann et al. 2020), including changes in temperature, salinity, pH, and nutrient availability, influencing the availability of food, predation rates, and other factors.

Therefore, the Commission finds climate change to be a threat to the persistence of NCSS.

Therefore, the Commission finds the natural occurrences or human–related activities discussed above to be a significant threat to the continued existence of NCSS.

Conclusion

The continued existence of NCSS is in serious danger or threatened by significant threats, including present or threatened modification or destruction of habitat, overexploitation, predation, and other natural events or human–related activities.

IV. Final Determination by the Commission

The Commission has weighed and evaluated the information for and against designating NCSS 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; written and oral comments received from members of the public, the regulated community, various public agencies, and the scientific community; 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 NCSS is in serious danger or threatened by present or threatened modifications or destruction of the species' habitat, overexploitation, predation, or other natural occurrences or human–related activities, where such factors are considered individually or in combination. (See generally California Code of Regs., title 14, § 670.1, subdivision (i)(1)(A); Fish & G. Code, §§ 2062, 2067.) The Commission determines that there is sufficient scientific information to indicate that designating NCSS as an endangered species under CESA is warranted at this time, and that with adoption and publication of these findings NCSS, for purposes of its legal status under CESA, shall be listed as endangered.

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DEPARTMENT OF FISH AND WILDLIFE

HABITAT RESTORATION AND ENHANCEMENT ACT
CONSISTENCY DETERMINATION
NUMBER 1653–2022–090–001–R1

Project: Fish Creek Fish Passage Project
Location: Humboldt County
Applicant: Susan Leroy, California Department of Transportation

Background

Project Location: The Fish Creek Fish Passage Project (Project) is located at post mile 4.18 on State Route 254, also known as the Avenue of the Giants, approximately two miles northwest of the unincorporated community of Phillipsville and two miles southeast of the unincorporated community of Miranda. Coordinates for the Project are 40.22303° North, 123.80136° West, on Humboldt Redwoods State Park (Assessor Parcel Number 214–122–013–000) and within California Department of Transportation (Caltrans) State Right of Way. The Project affects Fish Creek, tributary to the South Fork Eel River. Fish Creek supports populations of Coho salmon (*Oncorhynchus kisutch*), steelhead trout (*O. mykiss*), and other aquatic species.

Project Description: Caltrans (Applicant) proposes to improve fish passage conditions within Fish Creek, which will result in a net conservation benefit for Coho salmon and steelhead trout. The Project includes replacement of a concrete box culvert with a bridge, installation of large wood features, and regrading the channel. Areas disturbed by construction activities will be revegetated with appropriate native species. If feasible, large trees slated for removal will be incorporated into the proposed wood features. Access to aquatic habitat above the existing box culvert is expected to improve for multiple life–stages of salmonids, as the current condition is considered a partial barrier for adults and a complete barrier for juvenile and resident fish. Replacing the box culvert with a bridge will restore an estimated 2.7 miles of habitat upstream for anadromous salmonids.

Detailed Project plans, discussion of proposed work, species protection measures, site photos and maps are on file with California Department of Fish and Wildlife's (CDFW) Habitat Conservation Planning Branch (HCPB).

Project Size: The total area of ground disturbance associated with the Project is approximately 1.17 acres and 400 linear feet. The Applicant has included project size calculations that were used to determine the total size of the Project. The 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) 1,100 cubic yards of engineered streambed material and rock, (2) 120 cubic yards of large woody debris, (3) assorted erosion control materials (fiber rolls, compost, duff, etc.), and (4) native planting stock.

Project Timeframes:

Start date: August 2022
Completion date: March 2027
Work window: June 15–October 31

Work below top of bank may occur outside of the seasonal work window (June 15–October 31), with appropriate best management practices and written approval from the North Coast Regional Water Quality Control Board (Regional Water Board) and CDFW.

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 2.7 miles of spawning and rearing habitat, the 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) Number 1B22021WNHU, Electronic Content Management Identification (ECM PIN) Number CW–875231 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 Coho salmon, steelhead trout, and other aquatic and terrestrial species.

Receiving Water: Fish Creek, tributary to the South Fork Eel River.

Filled or Excavated Area:

Permanent area impacted: 0.47 acre
Temporary area impacted: none
Length permanently impacted: 400 linear feet
Length temporarily impacted: none

Dredge Volume: None.

Latitude/Longitude: 40.22303° North, 123.80136° West.

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 April 1, 2022, the Director of 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 April 1, 2022, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number [Z–2022–0401–01]) on April 15, 2022. Upon approval, CDFW will file a final notice pursuant to Fish and Game Code section 1653 subdivision (f).

Determination

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

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

Avoidance and Minimization Measures

The avoidance and minimization measures for the 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) Erosion and Sedimentation Control Measures; (2) Dewatering and Aquatic Species Relocation Measures; (3) Construction Equipment Spill Prevention Measures; and (4) General Measures to Avoid Impacts on Biological Resources. The specific avoidance and minimization requirements are found in an attachment to the NOI, *Fish Creek Fish Passage Project: Biological Study.*

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, *Fish Creek Fish Passage Project: Hydraulic and Geomorphic Monitoring Plan.*

Notice of Completion

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

- photographs with a descriptive title;
- date the photograph was taken;
- name of the photographic site;
- WDID number and ECM PIN 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 ECM PIN number with all future inquiries and document submittals. Pursuant to Fish and Game Code section 1653, subdivision (g), the Applicant shall submit the monitoring plan, monitoring report, and notice of completion to CDFW as required by the General Order. Applicant shall submit documents electronically to: *Nicholas VanVleet.*

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, the 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 & G. Code, § 1654, subdivision (c).)

DEPARTMENT OF FISH AND WILDLIFE

FISH AND GAME CODE SECTION 1653
CONSISTENCY DETERMINATION
REQUEST FOR
SANTA ANA RIVER STREAM HABITAT
IMPROVEMENT PROJECT
(TRACKING NUMBER:
1653–2022–093–001–R6)
RIVERSIDE COUNTY

California Department of Fish and Wildlife (CDFW) received a Request to Approve on 4/25/2022, that San Bernardino Valley Municipal Water District proposes to carry out a habitat restoration or enhancement project pursuant to Fish and Game Code section 1653. The proposed project involves installing stake arrays in two zones of the river, to create turbulence and flush sediments downstream to improve habitat. The proposed project will be carried out on the Santa Ana River, within three miles of 5370 Riverview Drive, City of Riverside, Riverside County, California.

On 2/1/2022, the Santa Ana Regional Water Quality Control Board (Regional Water Board) received a Notice of Intent (NOI) to comply with the terms of, and obtain coverage under, the General 401 Water Quality Certification Order for Small Habitat Restoration Projects (General 401 Order) for the Santa Ana River Stream Habitat Improvement Project. The Regional Water Board determined that the Project, as described in the NOI, was categorically exempt from California Environmental Quality Act (CEQA) review (section 15333 — Small Habitat Restoration Projects) and met the eligibility requirements for coverage under the General 401 Order. The Regional Water Board issued a Notice of Applicability (WDID Number 332022–02) for coverage under the General 401 Order on 4/4/2022.

The San Bernardino Valley Municipal Water District is requesting a determination that the project and associated documents are complete pursuant to Fish and Game Code section 1653 subdivision (d). If CDFW determines the project is complete, the District will not be required to obtain an incidental take permit under Fish and Game Code section 2081 subdivision (b) or a Lake or Streambed Alteration Agreement under Fish and Game Code section 1605 for the proposed project.

In accordance with Fish and Game Code section 1653 subdivision (e), if CDFW determines during the review, based on substantial evidence, that the request is not complete, the District will have the opportunity to submit under Fish and Game Code section 1652.

DECISION NOT TO PROCEED

PURSUANT TO GOVERNMENT CODE SECTION 11347

DEPARTMENT OF VETERANS AFFAIRS

RE: NOTICE OF PROPOSED RULEMAKING
CONCERNING THE FARM AND HOME
LOAN AMENDMENTS

Pursuant to Government Code Section 11347, the California Department of Veterans Affairs (CalVet) hereby gives notice that it has decided not to proceed with the rulemaking action published in the California Regulatory Notice Register on January 15, 2021, Register 2021, Number 3–Z. The proposed rulemaking concerned the Farm and Home Loan Amendments. (OAL Notice Z2020–1229–04.)

Any interested person with questions concerning this rulemaking should contact Phil McAllister at either 916–202–0846 or by e–mail at: phil.mccallister@calvet.ca.gov.

CalVet will also post this Notice of Decision Not to Proceed on its website.

This regulatory action will be resubmitted at the earliest possible date for publishing and public review.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH THE SECRETARY OF STATE

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

Department of Corrections and Rehabilitation
File # 2022–0422–01
Program and Credit Earning Revisions (ISUDT/MCCS)

This emergency rulemaking action by the Department of Corrections and Rehabilitation readopts the changes approved in OAL File Nos. 2021–0407–03EON and 2022–0112–01EON. Those actions

updated terminology, expanded rehabilitative programs and reentry services, and eliminated the Long–Term Offender Program by incorporating participants into the new Integrated Substance Use Disorder Treatment (ISUDT) Program. Those actions also amended the Milestone Completion Credit Schedule (MCCS) to add new programs, discontinue programs that are no longer available to inmates, amend the amount of credit earned for some programs, and reorganize the schedule.

Title 15
Adopt: 3040.1
Amend: 3000, 3040, 3041, 3041.3, 3043.3, 3043.5, 3044, 3044.1 (previously 3043.7), 3044.2 (previously 3043.8), 3075.1, 3077.1, 3315, 3375, 3375.2, 3375.4, 3375.5, 3375.6, 3379
Repeal: 3040.1, 3040.2
Filed 05/02/2022
Effective 05/03/2022
Agency Contact: Sarah Pollock (916) 445–2308

California Science Center
File # 2022–0322–01
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: 46000, 46001
Filed 04/27/2022
Effective 05/27/2022
Agency Contact: Alfred Konuwa (213) 744–2308

Fish and Game Commission
File # 2022–0427–02
Northern California Summer Steelhead

This action to add the Northern California Summer Steelhead ("NCSS") to the endangered species list is exempt from the Administrative Procedure Act pursuant to Fish & Game Code § 2075.5(e)(2). This action was submitted to OAL for filing and printing only.

Title 14
Amend: 670.5
Filed 05/03/2022
Effective 05/03/2022
Agency Contact: Jennifer Greaves (916) 653–4899

Board of Behavioral Sciences
File # 2022–0321–01
Supervision; LPCC Requirements to Assess or Treat Couples or Families

This action makes changes without regulatory effect to requirements for licensed professional clinical counselors (LPCCs) as a result of changes made by Assembly Bill 462 (Stats. 2021, chapter 440).

Title 16
Amend: 1815.8, 1821,1833.1
Repeal: 1820.5, 1820.7
Filed 05/02/2022
Agency Contact: Christy Berger (916) 574–7817

State Allocation Board
File # 2022–0318–03
Leroy F. Greene School Facilities Act of 1995; 20–Year Repayment

This rulemaking action by the State Allocation Board increases the maximum timeline for repayment plans from five years to twenty years.

Title 02
Amend: 1859.106.1
Filed 05/02/2022
Effective 07/01/2022
Agency Contact: Lisa Jones (279) 946–8459

State Water Resources Control Board
File # 2022–0318–01
Reconsideration of the Implementation Plans for Nine Total Maximum Daily Loads (TMDLS)

This action amends the Water Quality Control Plan for the Los Angeles Region. On March 11, 2021, the Los Angeles Regional Water Quality Control Board adopted Resolution Number R21–001 to revise the final near–term wet weather total maximum daily load implementation schedules for MS4 dischargers. The State Water Resources Control Board approved the amendments under Resolution Number 2021–0037.

Title 23
Adopt: 3939.58
Filed 05/02/2022
Effective 05/02/2022
Agency Contact: Jun Zhu (916) 576–6691

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.