



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:

Patterson Joint Unified School District

STATE AGENCY:

Department of Motor Vehicles

A written comment period has been established commencing on January 27, 2023 and closing on March 13, 2023. 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 codes 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 codes will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict-of-interest codes, 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 codes 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 codes. Any written comments must be received no later than March 13, 2023. 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 codes 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 Com-

mission should be made to Daniel Vo, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 322-5660.

TITLE 5. COMMISSION ON TEACHER CREDENTIALING

DIVISION 8

PERTAINING TO BILINGUAL AUTHORIZATION

The Commission on Teacher Credentialing (Commission) proposes to take the regulatory action described below after considering all comments, objections, and recommendations regarding the proposed action. A copy of the proposed regulations is included with the new proposed text shown in underline.

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

Summary of the Effect of the Proposed Action

The proposed action would add to the California Code of Regulations, Title 5, section 80615, 80615.1, 80615.2 and 80615.3. Specifically, section 80615 is a glossary of definitions, section 80615.1 is a precondition, section 80615.2 includes standard language, and section 80615.3 includes performance expectation language. Additionally, current regulation section 80033(d)(2) incorporates by reference the *Standards of Quality and Effectiveness for Programs Leading to Bilingual Authorization (rev. 1/13)*. This section of regulations needs to be updated to point the reader to the new sections proposed for sections 80615-80615.3 as the entire document which is currently incorporated by reference has had sweeping updates as compared to the January 2013 version currently incorporated by reference.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments by fax, through the mail, or by email relevant to the proposed action. The written comment period closes on March 13, 2023. Comments must be received by that time or may be submitted at the public hearing, should one be requested. Interested parties may fax their response to (916) 327-3165; write to the Commission on Teacher Credentialing, attention Lynette Roby, 1900 Capitol Avenue, Sacramento, California 95811; or

submit an email to Lynette.robby@ctc.ca.gov or Miranda Gutierrez at mgutierrez@ctc.ca.gov.

Any written comments received by the closing of the public comment period will be reproduced by the Commission's staff for each member of the Commission as a courtesy to the person submitting the comments and will be included in the written agenda prepared for and presented to the full Commission at the hearing.

AUTHORITY AND REFERENCE

The Commission's authority to establish program standards is established in subsection (b)(1)(C) and (d) of Education Code section 44225. Specifically, section (b)(2) of Education Code 44225 states that "The commission may establish standards and requirements for preliminary and professional credentials of each type." Additionally, Education Code section 44225(i) states, "to appoint classroom teachers, school administrators, other school services personnel, representatives of the public, and public or private higher education representatives to one or more standing committees, which shall be given authority to recommend to the commission standards relating to examinations, performance assessments, program accreditation, and licensing."

INFORMATION DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

In 2016, Proposition 58 (Prop 58) was passed by California voters allowing for flexibility in how California public schools offer bilingual education and programs for English learners. In addition to Prop 58, statewide initiatives, such as Global 2030 involve expanding bilingual education in California. Since the prior Bilingual Authorization program standards were originally adopted in 2008.

Objectives and Anticipated Benefits of the Proposed Regulations

The purpose of these regulations is to ensure the regulations are aligned with the policy shift for Bilingual Education in California and to ensure that the newly adopted standards are placed into regulation so that institutions operating Bilingual Authorization Educator Preparation Programs are aware of the standards for operating a program.

The prior Bilingual Authorization program standards were originally adopted in 2008. In 2016 Prop 58 was passed by California voters. This Proposition allows for flexibility in how California public schools offer bilingual education and programs for English learners. Additionally, statewide initiatives, such as Global 2030 involve expanding bilingual education in California.

In response to the policy changes, the Commission adopted revised Bilingual Authorization Educator Preparation Program Standards in December 2021 and in October 2022 the Commission adopted additional language to be added to the program standards. These revised standards include a precondition, program standards, a glossary with definitions for Bilingual Authorization educator preparation programs and the new Bilingual Teaching Performance Expectations (BTPEs) which are the knowledge, skills, and abilities a candidate must demonstrate in a Bilingual Authorization program. The revised standards and performance expectations honor the linguistic diversity represented among the student population, the variety of bilingual programs available to students, and the current research on instructing and supporting bilingual Transitional Kindergarten (TK)–12 students. They include the continuous support of students’ connection to their home language to sustain their home culture. Bilingual teachers work with diverse students and the updated standards and new BTPEs are responsive to the socio–linguistic, socioemotional, and sociocultural factors of the students served.

Amend Section 80033(d)(2) & Repeal Outdated Document Incorporated by Reference

Section 80033 deals with intern credentials and section (d)(2) and includes the now outdated Bilingual Authorization standards incorporated by reference. Amendments are proposed to direct the reader to the actual precondition, program standards, and teaching performance expectations, proposed sections 80615.1, 80615.2, and 80615.3, and to repeal the outdated standards from incorporation by reference.

Determination of Inconsistency/Incompatibility with Existing State Regulations

The Commission has determined that the proposed regulation amendments are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Commission has concluded that these are the only regulations that concern Bilingual Authorization requirements.

**DISCLOSURES REGARDING THE
PROPOSED ACTIONS/FISCAL IMPACT**

The Commission has made the following initial determinations.

LOCAL MANDATE

These proposed regulations will not impose a mandate on local agencies or school districts that must be reimbursed in accordance with Part 7 (commencing with section 17500) of the Government Code. Local education agencies may choose to sponsor educator

preparation programs utilizing the proposed regulations; however, no mandate exists requiring local agencies or school districts to have educator preparation programs and, therefore, no reimbursement in accordance with Part 7 (commencing with section 17500) of the government code is required.

FISCAL IMPACT

Costs to any local agency or school districts requiring reimbursement pursuant to Government Code section 17500 et seq.

These proposed regulations will not impose a cost to local agencies or school districts requiring reimbursement in accordance with Part 7 (commencing with section 17500) of the Government Code as sponsoring an educator preparation program which is aligned to the proposed regulations and is not required by law.

Cost or savings to any state agency.

None. This will not create a cost or savings to any state agency. The regulations apply to currently approved educator preparation institutions or to institutions seeking approval to offer a Bilingual Authorization program and those institutions must already have regional accreditation and are only expanding their business into educator preparation in California.

Other non–discretionary costs or savings imposed upon local agencies.

None. Sponsoring an educator preparation program is not a requirement.

Cost or savings in federal funding to the state.

None. Sponsoring an educator preparation program which is aligned to the proposed regulations is not required by law and would not impact federal funding to the state.

HOUSING COSTS

No effect on housing costs exists as these regulations only pertain to demonstration of subject matter competence for preliminary teaching credentials.

**SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT DIRECTLY
AFFECTING BUSINESSES, INCLUDING
THE ABILITY OF CALIFORNIA
BUSINESSES TO COMPETE WITH
BUSINESSES IN OTHER STATES**

The Commission has concluded there is no significant adverse impact on business.

**STATEMENT OF THE RESULTS OF THE
ECONOMIC IMPACT ASSESSMENT**

In accordance with Government Code section 11346.3(b), the Commission has made the following assessments regarding the proposed regulations:

Creation or Elimination of Jobs within California

The proposed amendments pertain to the preparation of prospective bilingual educators. These amendments will not create or eliminate jobs in California.

Creation of New Businesses or Elimination of Existing Business within California

The proposed amendments pertain to the preparation of prospective bilingual educators. These amendments will not create or eliminate existing businesses in California.

Expansion of Businesses Currently Doing Business within the California

The proposed amendments pertain to the preparation of prospective bilingual educators. These amendments will not cause the expansion or elimination of existing businesses in California.

Benefits of the Regulations

The Commission anticipates that the proposed amendments will continue to benefit the health and welfare of California residents to ensure high quality educator preparation programs which result in effective bilingual educators for California students. Successful programs prepare teachers who are better able to address the current needs of TK–12 students in California in the coming decade.

The Commission anticipates that the proposed amendments will continue to benefit the health and welfare of California residents, as high quality Bilingual educators will result in a health and welfare benefit to students, colleagues, and parents. The Commission does not anticipate that these regulations will result in a direct benefit to worker safety or the state’s environment.

**COST IMPACTS ON A REPRESENTATIVE
PRIVATE PERSON OR BUSINESS**

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

BUSINESS REPORT

This proposal does not require a report to be made.

EFFECT ON SMALL BUSINESS

The proposed regulations will not have a significant adverse economic impact upon small business.

The proposed regulations apply only to educational institutions electing to offer or offering Commission–approved and accredited educator preparation programs. Educational institutions are California State Universities, Universities of California, private four–year colleges and universities, or local education agencies, none of which meet the definition for small business as defined in government code 11342.610. The vast majority of Commission approved program sponsors are nonprofit educational institutions. Very few institutions of higher education approved by the Commission at this time are for profit businesses. Because offering an educator preparation program is voluntary, any institution must evaluate whether or not they have sufficient resources to offer a high–quality preparation program in accordance with the state adopted standards, state statute, and regulations.

ALTERNATIVES STATEMENT

The Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost–effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at the public hearing.

**CONTACT PERSON/
FURTHER INFORMATION**

General or substantive inquiries concerning the proposed action may be directed to Lynette Roby by telephone at 916–324–3668, by mail at Commission on Teacher Credentialing: Attention: Regulations, 1900 Capitol Avenue, Sacramento, CA 95811, or by email to Lynette.robby@ctc.ca.gov or Miranda Gutierrez at mgutierrez@ctc.ca.gov. General question inquiries may also be directed to the addresses mentioned above. Upon request, a copy of the express terms of the proposed action and a copy of the Initial Statement of Reasons will be made available. This information is also available on the Commission’s website at <http://www.ctc.ca.gov/notices/rulemaking.html>. In addition, all the information on which this proposal is based is available for inspection and copying.

AVAILABILITY OF STATEMENT
OF REASONS AND TEXT OF
PROPOSED REGULATIONS

The entire rulemaking file is available for inspection and copying throughout the rulemaking process at the Commission office at the above address. As of the date this notice is published in the Notice of Register, the rulemaking file consists of the Notice of Proposed Rulemaking, the proposed text of regulations, the Initial Statement of Reasons, and an economic impact assessment/analysis contained in the Initial Statement of Reasons. Copies may be obtained by contacting Lynette Roby at the addresses or telephone number provided above.

MODIFICATION OF PROPOSED ACTION

If the Commission proposes to modify the actions hereby proposed, the modifications (other than non-substantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted.

AVAILABILITY OF FINAL
STATEMENT OF REASONS

The Final Statement of Reasons is submitted to the Office of Administrative Law as part of the final rulemaking package, following the conclusion of the public hearing. Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Lynette Roby at Lynette.robby@ctc.ca.gov.

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations can be accessed through the Commission's website at <http://www.ctc.ca.gov/notices/rulemaking.html>.

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

AMEND COMMISSION
REGULATION 1052–

REQUIREMENTS FOR
COURSE CERTIFICATION

At the November 30, 2022 meeting, the Commission on Peace Officer Standards and Training (POST)

approved the proposed amendment to Commission Regulation 1052.

The proposed change involves an amendment to existing regulation to address instructor qualifications for POST-certified courses where peace officers or former peace officers have had their certifications surrendered, suspended, or revoked.

The attached notice includes the proposed changes, an invitation for written input on this proposal, the deadline for written comments, and information about requesting a public hearing. The following related information is available on the *POST Website* at <https://post.ca.gov/Regulatory-Actions>.

- POST Bulletin and Notice of Proposed Regulatory Action
- Text of Proposed Regulatory Action
- Initial Statement of Reasons

Questions regarding this proposed regulatory action may be directed to *Michelle Weiler*, Commission on POST, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605–1630, at (916) 227–4870. General questions regarding the regulatory process may be directed to *Katie Strickland* at (916) 227–2802.

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 MARCH 13, 2023.

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) 227–2801, by email to *Michelle Weiler* at michelle.weiler@post.ca.gov, or by letter to:

Commission on POST
Attention: Michelle Weiler
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), 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**

On September 30, 2021, Governor Newsom signed Senate Bill (SB) 2. SB 2 made significant changes to existing Government and Penal Codes, respectively. These changes provide for additional peace officer hiring eligibility requirements. SB 2 also grants POST the authority to certify all peace officers in California, and subsequently take action against those certifications, should POST determine serious misconduct occurred. While the peace officer eligibility hiring requirements went into effect on January 1, 2022, the remaining changes to Government and Penal Codes went into effect on January 1, 2023.

This rulemaking action clarifies and makes specific the qualifications of instructors in POST-certified courses.

Currently, Commission Regulation 1052 establishes the requirements for course certification, including instructor qualifications.

The regulatory amendment proposed in this rulemaking action will prohibit current or former peace officers who have had their certifications surrendered, suspended, or revoked from being instructors in POST-certified courses. The proposed amendment will also prohibit individuals who are ineligible, or who have become ineligible to be peace officers, pursuant to Government Code section 1029, from being instructors in POST-certified courses.

Anticipated Benefits of the Proposed Amendments:

The benefits anticipated by the proposed amendments to the regulation will maintain the credibility of peace officer training, reduce potential liability, and both rebuild and maintain public trust. This 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 public health, safety, and welfare in the state. 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 nor incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, POST has concluded that this is the only regulation that concerns processes and procedures for general qualifications to be an instructor in peace officer training in the state.

FORMS INCORPORATED BY REFERENCE

There are no forms incorporated by reference in this proposed action.

**DISCLOSURES REGARDING
THE PROPOSED ACTION**

POST has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

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

Other non-discretionary costs or savings imposed on local agencies: None.

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

Cost impacts on a representative private persons or business: 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.

Significant, statewide adverse economic impact directly affecting California businesses: POST has determined that the proposed regulations 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.

Significant effect on housing costs: None.

Small Business Determination: POST has determined that the proposed regulations will not affect small business because the regulations only affect state agencies that are adopting, amending, or repealing regulations. Additionally, the Commission's main function to select and maintain training standards for law enforcement has no effect financially on small businesses.

**RESULTS OF ECONOMIC IMPACT
ANALYSIS/ASSESSMENT**

POST concludes that it is (1) unlikely the proposal will create nor eliminate jobs in the state of California, (2) unlikely that the proposal will create nor eliminate any businesses, and (3) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state.

Benefits of the Proposed Action: As stated above under the Informative Digest/Policy Statement Overview, the benefits of the regulation will increase the efficiency of the state of California in delivering services to stakeholders by providing clarity to instructor qualifications for POST-certified courses where peace officers or former peace officers have had their cer-

tifications surrendered, suspended, or revoked. Thus, 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

In accordance with Government Code section 11346.5, subdivision (a)(13), POST must determine that no reasonable alternative it considered, or that has otherwise 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 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 *Michelle Weiler*, Commission on POST, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1630 at (916) 227-4870. 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 proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to, the 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>.

ADOPTION OF PROPOSED REGULATIONS/AVAILABILITY OF CHANGED OR MODIFIED TEXT

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 availabil-

ity 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.

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. 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.

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 13. DEPARTMENT OF MOTOR VEHICLES

AMEND THE CONFLICT-OF-INTEREST CODE

NOTICE IS HEREBY GIVEN that the Department of Motor Vehicles, pursuant to the authority vested in it by Section 87306 of the Government Code, proposes to amend its Conflict-of-Interest Code. The purpose of these amendments is to implement the requirements of Sections 87300 through 87302, and Section 87306 of the Government Code.

The Department of Motor Vehicles proposes to amend its Conflict-of-Interest Code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of Section 87302 of the Government Code.

This amendment reflects the organizational structure of the Department of Motor Vehicles as of September 1, 2022 and makes other technical changes to reflect the current organizational structure of the Department. Copies of the amended code are available and may be requested from the contact person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than **March 6, 2023**, or at the conclusion of the public hearing, if a hearing is requested, whichever comes later, to the contact person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than February 20, 2023, by contacting the contact person set forth below.

The Department of Motor Vehicles has prepared a written explanation of the reasons for the proposed amendments and has available the information on which the amendments are based. Copies of the proposed amendments, the written explanation of the reasons, and the information on which the amendments are based may be obtained by contacting the contact person set forth below.

The Department of Motor Vehicles has determined that the proposed amendments:

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

In making these proposed amendments, the Department of Motor Vehicles must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected persons than the proposed amendments.

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

Randi Calkins, Regulations Analyst
Department of Motor Vehicles
Legal Affairs Division
P.O. Box 932382, MS C-128
Sacramento, CA 94232-3820
Telephone: (916) 282-7294
Email: LADRegulations@dmv.ca.gov

In the event the contact person is unavailable, inquiries should be directed to the following backup person:

Shelly Johnson Marker, Chief of Staff
Telephone: (916) 657-6469

TITLE 13. AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE PROCEDURES FOR EXEMPTION OF ADD-ON AND MODIFIED PART(S) FOR ON-ROAD VEHICLES/ENGINES SPECIFIC TO ELECTRIC VEHICLE CONVERSIONS

The California Air Resources Board (CARB or Board) will conduct a public hearing at the date and time noted below to consider approving for adoption the proposed amendments to the Procedures for Exemption of Add-On and Modified Part(s) for On-Road Vehicles/Engines specific to electric vehicle conversions.

Date: March 23, 2023

Time: 9:00 a.m.

In-Person Location:

California Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

Remote Option:

Zoom

This public meeting may continue at 8:30 a.m., on March 24, 2023. Please consult the public agenda, which will be posted ten days before the March 23, 2023, Board Meeting, for important details, including the day on which this item will be considered and how the public can participate via Zoom if they choose to be remote.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

In accordance with the Administrative Procedure Act, interested members of the public may present comments orally or in writing during the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on January 27, 2023. Written comments not submitted during the hearing must be submitted on or after January 27, 2023, and received **no later than March 13, 2023**. Comments submitted outside that comment period are considered untimely. CARB may, but is not required to, respond to untimely comments, including those raising significant environmental issues. The Board also encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action. Comments submitted in advance of the hearing must be addressed to one of the following:

Postal mail:

Clerks' Office, California Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal

<https://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Government Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

AUTHORITY AND REFERENCE

This regulatory action is proposed under the authority granted in California Health and Safety Code, sections 39600, 39601, 43000, 43000.5, 43011, and 43107 and Vehicle Code, sections 27156, 38391, and 38395. This action is proposed to implement, interpret, and make specific Health and Safety Code, sections 39002, 39003, 39500, 43000, 43000.5, 43009.5, 43011, 43107, 43204, 43205, 43205.5, and 43644; and Vehicle Code, sections 27156, 38391, and 38395.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW (Government Code, § 11346.5, subdivision (a)(3))

SECTIONS AFFECTED

Proposed amendments to California Code of Regulations (CCR), title 13, division 3, chapter 4, article 2, section 2222, subdivision (e) and section 2224, subdivision (b) and to the “Procedures for Exemption of Add-On and Modified Part(s) for On-Road Vehicles/Engines,” as adopted June 29, 2021, incorporated by reference in CCR, title 13, division 3, chapter 4, article 2, section 2222, subdivision (e) and section 2224, subdivision (b).

DOCUMENTS INCORPORATED BY REFERENCE

1. California Air Resources Board (CARB), “Procedures for Exemption of Add-On and Modified Part(s) for On-Road Vehicles/Engines,” set forth as Appendix B of the Initial Statement of Reasons.

BACKGROUND AND EFFECT OF THE PROPOSED REGULATORY ACTION

On June 29, 2021, CARB adopted the “Procedures for Exemption of Add-On and Modified Part(s) for On-Road Vehicles/Engines” (“Procedure”), effective January 1, 2022, that provides a pathway for aftermarket parts manufacturers to receive an exemption from the anti-tampering prohibitions of California Vehicle Code (VC) section 27156. VC section 27156 generally prohibits the sale, offer for sale, advertisement, or installation of any devices that alter the design or performance of any required motor vehicle pollution control device or system. CARB has the statutory authority to exempt non-original equipment components from this prohibition if it determines that such components will not reduce the effectiveness of any required pollution control device or would not cause vehicle emissions to exceed applicable standards. Under this authority, CARB previously adopted the “Procedures for Exemption of Add-On and Modified Parts,” which was last amended June 1, 1990.

An electric vehicle (EV) conversion is a set of parts that converts a previously certified gasoline-, diesel-, or alternative-fueled vehicle to an EV. Under the existing Procedure, EV conversions are currently assessed as Category IX applications, which is a “catch all” category for products that do not fall in any other category.

Although EV conversions are included in Category IX, they are unlike the other aftermarket parts covered by this category that have the potential to adversely affect the emissions of a vehicle. EV conversions are unique when compared to other aftermarket parts, as they completely replace the existing combustion engine, rather than being used in conjunction with it and therefore, removing regulated emissions. Requirements of the Procedure that are critical when assessing other aftermarket parts are of limited technical value when assessing an EV conversion due in large part to the fact that the original engine is removed from the vehicle, and assessing the effect of the EV conversion on the now-removed engine is irrelevant. As such, manufacturers of EV conversions have found the existing Procedure confusing to follow when submitting a Category IX application.

For example, the existing Procedure requires that within each application category, separate applications must be submitted for each aftermarket part based on the characteristics of the vehicle (e.g., engine size, emission control system, etc.) in which it is intended to be used. This requirement exists because the potential emissions impact of installing an aftermarket part on a vehicle could vary based on the engine and emission control system for that vehicle. For EV conversions, these concerns do not ex-

ist, because all sources of combustion emissions are removed from a vehicle when it is converted to an EV.

The proposed amendments provide clarity for manufacturers of EV conversions through the creation of a new “Category X” application category and section XI of the Procedure that are specific to EV conversions. The new category and new section will clearly identify what the requirements are for these types of parts to receive a VC section 27156 exemption, thereby helping to clarify, simplify, and streamline the application process for a manufacturer of these types of products. There is expected to be a small cost savings to manufacturers of EV conversions due to a reduction in the number of application fees paid by each manufacturer.

This rulemaking modifies only portions of the Procedure that pertain to EV conversions. The remainder of the Procedure is unmodified. The proposed amendments are solely intended to apply to EV conversions that have no source of combustion (e.g., engine, fuel-fired heater) and emit no regulated emissions. The modifications are intended to address the unique considerations when assessing applications for EV conversions. The proposed amendments do not apply to EV conversions of vehicles originally certified as EVs, hybrids, or to other types of aftermarket parts other than EV conversions.

CARB may also consider other changes to the sections affected, as listed on page 4 of this notice, or other sections within the scope of this notice, during the course of this rulemaking process.

OBJECTIVES AND BENEFITS OF THE PROPOSED REGULATORY ACTION

The overall objective of the proposed amendments to the “Procedures for Exemption of Add-On and Modified Part(s) for On-Road Vehicles/Engines” is to provide clarity and further streamline the Procedure for manufacturers of EV conversions to receive an exemption from the prohibitions of VC section 27156. No changes to the Procedure for products other than EV conversions are being proposed or considered.

These proposed amendments achieve improved clarity for manufacturers of EV conversions through the creation of a new application category, “Category X,” and a new section, section XI, in the Procedure that clearly identify all requirements that apply to these types of products. In addition, the proposed amendments may enable manufacturers of EV conversions to submit fewer applications for exemptions, thereby creating a direct cost savings to the manufacturer.

The following is a summary of the key modifications to the Procedure:

1. Adding definitions for EV, EV conversion, hybrid, and fuel-fired heater;
2. Creating a new application category, “Category X”, solely for EV conversions that have no sources of combustion and emit no regulated emissions;
3. Clarifying the criteria for Category I applications for EV conversions; and
4. Adding a new section to the Procedure, section XI, to specifically list all of the application, evaluation, and administrative requirements for EV conversions.

No changes are being proposed to the Procedure that impact smog-forming emissions, public health, or greenhouse gas emissions. The proposed amendments may have a small but unquantifiable air quality benefit. While the aftermarket parts program does not recognize emission reductions and only grants exemptions to the anti-tampering provisions of VC section 27156, the removal of each internal combustion engine and subsequent replacement with an EV conversion reduces emissions on a vehicle-by-vehicle basis. The modifications do not add any requirements in the Procedure, but the streamlining and clarification of the process is expected to facilitate EV conversion applications and allow EV conversions to get to the California market sooner. The actual air quality benefit will depend on other factors such as the market acceptance of the EV conversion kits; therefore, it is hard to quantify the emission benefit at this early stage.

The proposed amendments do not create any other unquantified benefits such as ecosystem benefits, welfare, occupational exposure, the prevention of discrimination, the promotion of fairness or social equity, the increase in openness and transparency in business and government, etc.

COMPARABLE FEDERAL REGULATIONS

The United States Environmental Protection Agency (U.S. EPA) has adopted a regulation governing voluntary aftermarket parts certification: Code of Federal Regulations, title 40, Chapter I, Subchapter C, Part 85, Subpart V “Emissions Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program.” This regulation establishes a voluntary self-certification program. In contrast, CARB’s aftermarket parts procedures require aftermarket part manufacturers that wish to market and sell product in California to receive and obtain an exemption from the anti-tampering provisions of VC section 27156 before they can offer parts for sale in California.

AN EVALUATION OF INCONSISTENCY
OR INCOMPATIBILITY WITH EXISTING
STATE REGULATIONS

(Government Code, § 11346.5,
subdivision (a)(3)(D))

During the process of developing the proposed regulatory action, CARB conducted a search of any similar regulations on this topic and concluded these regulations are neither inconsistent nor incompatible with existing state regulations.

MANDATED BY FEDERAL
LAW OR REGULATIONS

(Government Code, §§ 11346.2,
subdivision (c), 11346.9)

This Procedure is not mandated by federal law or regulation.

DISCLOSURE REGARDING THE
PROPOSED REGULATION

FISCAL IMPACT/LOCAL MANDATE
DETERMINATION REGARDING THE
PROPOSED AMENDMENTS

(Government Code, § 11346.5,
subdivisions (a)(5)&(6))

The determinations of the Board’s Executive Officer concerning the costs or savings incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below.

Under Government Code sections 11346.5, subdivision (a)(5) and 11346.5, subdivision (a)(6) the Executive Officer has determined that the proposed amendments would not create costs or savings to any State agency, would not create costs or savings in federal funding to the State, would not create costs or mandate to any local agency or school district, whether or not reimbursable by the State under Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

The only potential economic impact of the proposed amendments may be a cost savings to businesses if a business is able to submit fewer applications for EV conversions, thereby, paying fewer application fees. The application fee for an EV conversion is \$1,290.¹ This potential cost savings is not expected to be passed through to purchasers of the EV conversions. If man-

¹ California Code of Regulations, title 13, division 3, chapter 16, article 5, section 2910. <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2021/mobilesourcefee2021/fro.pdf>.

ufacturers of EV conversions are able to submit fewer applications, the amount of application fees collected by CARB will be reduced by \$1,290 per application. However, the amount of time spent by CARB staff reviewing the applications will be reduced by an amount that is proportional to the reduction in application fees. For example, if the number of applications under the proposed amendments is reduced compared to the existing Procedure, both the total application fees collected and the workload to process the applications would both be reduced by a commensurate amount, resulting in no fiscal impact on CARB overall. As explained in Section IX of the Initial Statement of Reasons (ISOR), the estimated reduction in application fees would be equal to the cost savings to manufacturers, which could be an aggregate total of \$17,000 per year or \$85,000 over a 5-year period.

HOUSING COSTS

(Government Code, § 11346.5,
subdivision (a)(12))

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT DIRECTLY
AFFECTING BUSINESS, INCLUDING
ABILITY TO COMPETE

(Government Code, §§ 11346.3, subdivision (a),
11346.5, subdivision (a)(7),
11346.5, subdivision (a)(8)):

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

RESULTS OF THE ECONOMIC
IMPACT ANALYSIS/ASSESSMENT

(Government Code, § 11346.5,
subdivision (a)(10))

Effect on Jobs/Businesses:

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory

action can be found in the Economic Impact Analysis in the ISOR. There is expected to be a small cost savings to manufacturers of EV conversions due to a reduction in the number of application fees paid by each manufacturer.

Benefits of the Proposed Regulation:

The objective of the proposed amendments is to clarify and further streamline the Procedure for exempting EV conversions from the prohibitions of VC section 27156 and to assist aftermarket parts manufacturers of EV conversions in the process of submitting an application for this exemption. There is expected direct cost savings to manufacturers of EV conversions due to a reduction in the number of application fees paid by each manufacturer. There are no direct, quantifiable expected benefits to the health and welfare of California residents, worker safety, or the state's environment. However, the proposed amendments may have small but unquantifiable air quality benefits on a vehicle-by-vehicle basis from the removal of each internal combustion engine and subsequent replacement with an EV conversion kit. For a summary of the benefits of the proposed amendments, please refer to "Objectives and Benefits," under the Informative Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code section 11346.5, subdivision (a)(3) discussion on page 4.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES
(Government Code, § 11346.5, subdivision (a)(9))

In developing this regulatory proposal, CARB staff evaluated the potential economic impacts on representative private persons or businesses. CARB is not aware of any cost impacts that a representative private person would necessarily incur in reasonable compliance with the proposed action. The proposed amendments may enable manufacturers of EV conversion kits to submit fewer applications for exemptions, thereby creating a direct cost savings to the manufacturer. This potential cost savings is estimated to be approximately \$1,000 per year. (See the Economic Impact Analysis in the ISOR for a more detailed analysis.)

EFFECT ON SMALL BUSINESS
(Cal. Code Regs., title 1, § 4,
subdivisions (a) and (b))

The Executive Officer has also determined under California Code of Regulations, title 1, section 4, that the proposed regulatory action may affect small businesses. The potential cost savings for small businesses is also estimated to be approximately \$1,000 per year.

(See the Economic Impact Analysis in the ISOR for a more detailed analysis.)

CONSIDERATION OF ALTERNATIVES
(Government Code, § 11346.5, subdivision (a)(13))

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, 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 provisions of law. Staff considered two alternatives to the proposed amendments. As explained in section X of the ISOR, no alternative proposal was found to be less burdensome and equally effective in achieving the purposes of the proposed regulation in a manner that ensures full compliance with the authorizing law. Staff has not identified any reasonable alternatives that would lessen any adverse impact on small business.

ENVIRONMENTAL ANALYSIS

CARB, as the lead agency for the proposed amendments, has prepared an environmental analysis under its certified regulatory program (California Code of Regulations, title 17, sections 60000 through 60008) to comply with the requirements of the California Environmental Quality Act (CEQA); Public Resources Code section 21080.5).

CARB has determined that the proposed amendments are exempt from CEQA under the "general rule" or "common sense" exemption (Cal. Code Regs., title 14 § 15061(b)(3)). Based on CARB's review it can be seen with certainty that there is no possibility that the proposed amendments may result in a significant adverse impact on the environment; therefore, this activity is exempt from CEQA. The basis for reaching this conclusion is provided in Chapter VII of the ISOR.

SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language; and
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerks' Office

at cotb@arb.ca.gov or (916) 322-5594 as soon as possible, but no later than ten business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia;
- Documentos disponibles en un formato alterno u otro idioma; y
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al cotb@arb.ca.gov o (916) 322-5594 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

AGENCY CONTACT PERSONS

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative Shawn Daley, Manager, Aftermarket Diesel and Off-Road Section, at (951) 542-3134 or at shawn.daley@arb.ca.gov or (designated back-up contact) Sarah Carter, Staff Air Pollution Specialist, at (951) 542-3100 or at sarah.carter@arb.ca.gov.

AVAILABILITY OF DOCUMENTS

CARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Public Hearing to Consider the Proposed Amendments to the On-Road Aftermarket Parts Procedure Specific to Electric Vehicle Conversions.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on CARB's website listed below, on January 24, 2023. Please contact Bradley Bechtold, Regulations Coordinator, at Bradley.Bechtold@arb.ca.gov or (279) 208-7266 if you need physical copies of the documents. Because of current travel, facility, and staffing restrictions, the California Air Resources Board's offices have limited public access. Pursuant to Government Code section 11346.5, subdivision (b), upon request to the aforementioned Regulations Coordinator, physical copies would be obtained from the Public Information Office, California Air Resources

Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814.

Further, the agency representative to whom non-substantive inquiries concerning the proposed administrative action may be directed is Bradley Bechtold, Regulations Coordinator, at Bradley.Bechtold@arb.ca.gov or (279) 208-7266. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on CARB's website listed below, on January 24, 2023. Please contact Bradley Bechtold, Regulations Coordinator, at bradley.bechtold@arb.ca.gov or (279) 208-7266 if you need physical copies of the documents. Because of current travel, facility, and staffing restrictions, the California Air Resources Board's offices have limited public access. Pursuant to Government Code section 11346.5, subdivision (b), upon request to the aforementioned Regulations Coordinator, physical copies would be obtained from the Public Information Office, California Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed is Bradley Bechtold, Regulations Coordinator, (279) 208-7266. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may take action to approve for adoption the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also approve for adoption the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action. If this occurs, the full regulatory text, with the modifications clearly indicated,

will be made available to the public, for written comment, at least 15–days before final adoption.

The public may request a copy of the modified regulatory text from CARB’s Public Information Office, California Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814.

FINAL STATEMENT OF REASONS AVAILABILITY

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

INTERNET ACCESS

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on CARB’s website for this rulemaking at <https://ww2.arb.ca.gov/rulemaking/2023/evconversion>

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see CARB’s website (www.arb.ca.gov).

TITLE 14. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

RECYCLING AND DISPOSAL REPORTING SYSTEM REGULATORY PERMANENT REGULATIONS

AFFECTED REGULATORY SECTIONS

Title 14. Natural Resources
Division 7. Department of Resources Recycling and Recovery
Chapter 9. Planning Guidelines and Procedures for Preparing and Revising Countywide and Regional Agency Integrated Waste Management Plans
Article 9.25.
Recycling and Disposal Reporting System
Sections 18815.1 – 18815.12, excluding 18815.10

Title 14. Natural Resources
Division 7. Department of Resources Recycling and Recovery
Chapter 9. Planning Guidelines and Procedures for Preparing and Revising Countywide and Regional Agency Integrated Waste Management Plans
Article 9. Annual Report Regulations
Section 18794.2

PROPOSED REGULATORY ACTION

The Department of Resources Recycling and Recovery (CalRecycle) proposes to amend California Code of Regulations, Title 14, Article 9.25, sections 18815.1, 18815.2, 18815.3, 18815.4, 18815.5, 18815.6, 18815.7, 18815.8, 18815.9, 18815.11, and 18815.12 and Article 9, section 18794.2 in order to clarify existing language and implement new reporting requirements added by *Senate Bill (SB) 343 (Allen, Chapter 507, Statutes of 2021)* and *Assembly Bill (AB) 881 (Gonzalez, Chapter 501, Statutes of 2021)*.

PUBLIC HEARING

CalRecycle will hold a hybrid public hearing starting at **1:00 p.m., on March 15, 2023** and concluding upon submission of any public hearing comments. The public hearing will be accessible in person in the Byron Sher Room located on the 2nd floor of the CalRecycle headquarters at 1001 I Street, Sacramento, California. The Byron Sher room is wheelchair accessible. The public hearing will also be accessible virtually via Zoom. Instructions for how to access the Zoom public hearing, including the specific Zoom link, can be found on CalRecycle’s website (<https://calrecycle.ca.gov/laws/rulemaking/rdrsupdates/>).

At the public hearing, any person may present statements or arguments, orally, in writing, or in the chat of the Zoom meeting, relevant to the proposed action. CalRecycle requests, but does not require, that any person who makes oral comments also submit a written copy of their testimony at the hearing. All comments in the virtual hearing will be collected and recorded.

WRITTEN COMMENT PERIOD

The written comment period permits any interested person, or their authorized representative, to submit written comments addressing the proposed amendments to CalRecycle. Written comments, which offer a recommendation and/or objection, or support the proposed amendment, should indicate the amended section to which the comment or comments are directed. CalRecycle will only consider written comments sent to CalRecycle and received during the written com-

ment period, which begins on January 27, 2023, and ends at the conclusion of the rulemaking hearing on March 15, 2023. Additionally, CalRecycle requests that written comments reference a subsection or section of the proposed action. Written comments received by CalRecycle after the close of the public comment period will not be responded to in the rulemaking file. Submit your written comments to:

Donnet McFarlane
 Recycling and Disposal Reporting System
 Regulatory Update
 Department of Resources Recycling and
 Recovery, Regulations Unit, 1001 “I” St., MS–
 24B, Sacramento, CA 95814

During the 45–day comment period, written comments may also be emailed to: regulations@calrecycle.ca.gov

AUTHORITY AND REFERENCES

Public Resources Code sections 40502, 41781.4, 41821.5(c), and 42355.51(d)(1)(A) provide authority for the regulatory updates. The following is a list of references cited in the proposed regulations: Public Resources Code 41780, 41780.1, 41781.4, 41782, 41813, 41821, 41821.5, 41821.6, 41821.7, 41821.8, 41850, 42355.51(d)(1)(A), and 42652.5; Health and Safety Code 39730.6.

INFORMATIVE DIGEST

Summary of Existing Laws and Proposed Regulations

Existing law, *AB 901 (Gordon, Chapter 746, Statutes of 2015)* expanded CalRecycle’s authority to adopt regulations regulating the reporting of recycling and composting streams and disposal streams. After the enactment of AB 901, CalRecycle promulgated new reporting regulations and created the Recycling and Disposal Reporting System (RDRS) to gather information necessary to help the state accomplish various statewide waste and recycling mandates and goals, such as the 50% diversion mandate (*AB 939, Sher, Chapter 1095, Statutes of 1989*), a 75 percent reduction of disposal goal (*AB 341, Chesbro, Chapter 476, Statutes of 2011*), mandatory commercial organics recycling (*AB 1826, Chesbro, Chapter 727, Statutes of 2014*), and reducing short–lived climate pollutant emissions from landfills (*SB 1383, Lara, Chapter 395, Statutes of 2016*).

These proposed regulations improve and increase the data in RDRS that can be used towards those waste and recycling goals. For example, reporting in RDRS began in third calendar quarter of 2019. After a few years of this reporting, CalRecycle has determined several instances where existing regulations could be

amended to either clarify the regulations or improve the quality of the collected data. These regulations will also be updated to reflect various non–substantive changes such as correcting obsolete references and citation changes. Additionally, building upon existing statutes, *AB 881 (Gonzalez, Chapter 501, Statutes of 2021)* and *SB 343 (Allen, Chapter 507, Statutes of 2021)* became effective in 2022. These statutes direct RDRS to collect additional information related to disposal and diversion. The proposed regulations also update references to the California Public Records Act as recodified in AB 473 (Chau, Chapter 614, Statutes 2021).

Existing law, AB 881 classifies the export of mixed plastic materials as disposal for the purposes of AB 939. Mixed plastic excludes polyethylene terephthalate (resin code #1), high–density polyethylene (#2), and polypropylene (#5), and certain countries are not considered export for the purposes of the statute. However, by requiring that the export of typically less recyclable plastics (i.e., 3, 4, 6, and 7) be considered disposal, AB 881 prevents California from assuming that such materials are diverted from disposal for the purposes of calculating the state’s diversion goals and mandates.

These regulations update RDRS to collect the jurisdiction of origin for exported mixed plastics for assignment of disposed tons as disposal to that jurisdiction of origin in order to comply with AB 881.

Existing law, SB 343 also relates to recyclables, but to labeling rather than disposal calculations. Specifically, SB 343 regulates the use of the “chasing arrows” symbol on products and packaging. With some exceptions, SB 343 requires that products and packaging must be recyclable if they display the chasing arrows symbol or other labeling directing consumers to recycle the material. SB 343 does not empower CalRecycle to determine whether an affected good is recyclable. Instead, SB 343 requires CalRecycle to gather information about materials: how the materials that are obtained or processed for recovery are collected (i.e., collection method) and what materials are recovered.

These regulations update RDRS to gather the collection method for the materials that are recovered as required by SB 343.

Policy Statement Overview

The objectives of the proposed regulatory amendments are two–fold.

First, SB 343 and AB 881 require CalRecycle to update RDRS to capture additional data. SB 343 requires more specific information about material collection and the types and forms of material that are actively recovered and not considered contaminants. AB 881 requires information regarding the jurisdictions of origin for certain exported mixed plastic wastes.

Second, CalRecycle wants to improve the quality of data already collected in RDRS by altering some existing regulations. The proposed updates will clarify how entities should register and report, as well as capture greater detail for certain reportable activities.

The proposed amendments will provide several benefits. New data collected pursuant to SB 343 will provide information that will improve understanding of the recyclability of various products. Data associated with AB 881 will help CalRecycle more accurately assess disposal in state. Likewise, improving the quality of existing datasets will help CalRecycle and local governments better devise strategies to achieve California's waste management and recycling goals and mandates, such as reducing waste (AB 939, AB 341, AB 1826) and increasing sustainability of the economy (e.g., *SB 1335, Allen, Chapter 610, Statutes of 2018; SB 54, Allen, Chapter 75, Statutes of 2022*).

Existing Comparable Federal Regulation or Statute

There are no federal statutes or regulations that are comparable to the proposed regulations.

Consistency with State Regulations

After conducting an evaluation of any regulations relating to this area, CalRecycle has found that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The proposed regulations only amend existing requirements for RDRS.

MANDATE ON STATE AGENCIES, LOCAL AGENCIES, OR SCHOOL DISTRICTS

CalRecycle has determined that the proposed regulations do not impose a mandate on state agencies, local agencies, or school districts.

FISCAL IMPACT

Costs or savings to any state agency

CalRecycle estimates that the proposed regulations will impose costs but not generate savings for the state. CalRecycle believes that these costs can be covered by normal operating expenses. These expenses may comprise a new Information Technology Associate position for one year (\$164,667, including overhead).

Reimbursable costs to local agencies or school districts

The proposed regulations may impose a cost on local agencies that operate facilities subject to the regulations. However, CalRecycle concluded that the costs of the proposed regulations are not reimbursable by the state. Reimbursable costs are those that mandate a new program or higher level of service. The proposed regulations do not mandate a new program or higher level of service, and the associated costs are not unique to local governments.

Non-discretionary cost or savings imposed upon local agencies

As mentioned above, the proposed regulations will impose a cost on government-run facilities and operations. CalRecycle estimates that the total cost to such entities in the first, second, and third years of the regulations will be, respectively, \$852,717, \$836,276, and \$836,276. The first year has a higher cost due to initial training required to understand the new regulations.

Costs or savings in Federal funding to the state

The proposed regulatory updates do not affect any federally funded State agency or program.

EFFECT ON HOUSING COSTS

CalRecycle has determined that the proposed regulations will not significantly affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES, INCLUDING ABILITY TO COMPETE

CalRecycle has determined that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The average cost to businesses is expected to be \$3,772 per year, which should not significantly affect California businesses. This result is discussed further in Appendix A to the Economic and Fiscal Impact Statement (STD 399).

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

CalRecycle determined that the proposed regulations do not constitute a major regulation according to Government Code section 11342.548. Thus, CalRecycle conducted an Economic Impact Assessment.

Creation or Elimination of Jobs

CalRecycle anticipates that the updated regulations will not significantly affect jobs within California. The economic analysis revealed that only approximately 70 new full-time positions would be necessary to satisfy the requirements of the regulations. Not all these positions may be created, since some businesses may satisfy the new requirements using existing staff. Regarding loss of jobs, since the new regulations are unlikely to cause business closure, the regulations will likely not eliminate positions within California.

Creation or Elimination of Businesses

The regulatory changes will neither create nor eliminate businesses. For business creation, the regulatory updates do not incentivize the creation of businesses.

Rather, the changes alter and increase reporting for operations within the waste and recycling industries. Regarding the elimination of businesses, the estimated annual cost of the regulations for an average operation was \$3,772. This cost is small enough that it should not cause any affected businesses to cease operations.

Expansion of Businesses

Other than facilities that hire more staff to meet the additional requirements that the updated regulations create, the new regulations should likely not expand existing businesses in California. The new regulations change data collection and reporting requirements for businesses. The regulations do not incentivize businesses to increase their operations, or require businesses to acquire, process, and transfer more materials.

Benefits of the Proposed Action

The proposed changes to the RDRS regulations will improve the state’s environment and the health and welfare of California residents. The updates will improve the quality and increase the detail of data collected within RDRS, particularly regarding the material type of recycled or otherwise recovered materials, jurisdiction of origin for solid waste and exported mixed plastic, and source sector. These datasets will help the public evaluate products pursuant to the labeling requirements of SB 343, improve the information available to jurisdictions regarding their disposal and progress towards disposal mandates, and provide enhanced granularity of the source sector of solid waste. In combination, these datasets will also help CalRecycle create strategies for reducing statewide disposal and moving the state towards a circular economy. There are no anticipated benefits to worker safety.

DESCRIPTION OF COSTS THAT A REPRESENTATIVE PERSON OR BUSINESS WILL INCUR

The proposed regulations will require reporting entities to gather, transfer, and submit to CalRecycle disposal and recycling information, including the types, quantities, and destinations of materials that are disposed of, sold, or transferred inside or outside of the state. The cost impacts of the regulations will stem from the time needed for: 1) training on how to comply with the regulations, 2) collecting the new data required by the regulations, 3) sharing new data among entities, and 4) reporting new data to CalRecycle within RDRS.

FINDING ON NECESSITY OF REPORTS

California Government Code section 11346.3(d) provides that regulations that require reporting behavior “shall not apply to businesses, unless the state agency...[finds] that it is necessary for the health,

safety, or welfare of the people of the state.” While the proposed regulatory updates do address reporting requirements, the proposed regulations do not create these requirements. Rather, sections 41821.5(c) and 42355.51(d)(1)(A) of the Public Resources Code create the reporting requirements and direct CalRecycle to adopt regulations to implement them, including by prescribing the practices and procedures for creating a reporting system. Neither the existing regulations nor the proposed updates require additional reporting beyond what is reasonable and necessary to implement statutory requirements. Moreover, the proposed regulations add specificity and detail, which will enable CalRecycle to fulfill its various statutory mandates as well as to create strategies to accomplish the state’s waste diversion and circular economy goals. Accordingly, even if the proposed regulations constitute a reporting requirement pursuant to Government Code section 11346.3(d), they satisfy the requirement that they are necessary for the health, safety, and welfare of the people of the state.

EFFECT ON SMALL BUSINESS

CalRecycle has determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses. However, the Department has also determined the proposed regulations will not have a significant, statewide adverse impact on small businesses and will not impede the ability of small businesses to compete in other states.

CONSIDERATION OF ALTERNATIVES

CalRecycle must determine that no reasonable alternative considered by CalRecycle, or that was otherwise identified and brought to the attention of CalRecycle, 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 provisions of law than the proposed action.

CONTACT PERSON

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

Donnet McFarlane
 1001 I Street, MS-24B
 Sacramento, CA 95812
 Email: Regulations@calrecycle.ca.gov
 Telephone: (916) 327-0089

The backup contact person is:

Craig Castleton
1001 I Street, MS-24B
Sacramento, CA 95812
Email: Regulations@calrecycle.ca.gov
Telephone: (916) 327-0089

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

As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulation, the Initial Statement of Reasons, the Economic Impact Statement, the Fiscal Impact Statement, and the appendices to the impact statements. The rulemaking file and all information that provides the basis for the proposed regulation will be available for inspection and copying throughout the rulemaking process at the following address: 1001 I Street, Sacramento, CA 95814.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

CalRecycle may adopt the proposed regulations substantially as described in this Notice. If CalRecycle makes modifications that are sufficiently related to the originally proposed text pursuant to Government Code section 11346.8(c), it will make the modified text, with changes clearly indicated, available to the public for at least 15 days before CalRecycle adopts the regulations as revised. Requests for the modified text should be made to the contact persons named above. CalRecycle will transmit the modified text to anyone who testifies at the public hearing, submits a written comment at the public hearing, provides a comment during the comments period, or otherwise requests to be notified. CalRecycle will accept written comments on the modified regulation for at least 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

The Final Statement of Reasons will be available at 1001 I Street and the rulemaking website, <https://calrecycle.ca.gov/laws/rulemaking/rdrsupdates/>.

INTERNET ACCESS

For more timely access to the rulemaking file, and in the interest of waste prevention, interested parties are encouraged to access the Department's Internet webpage for the rulemaking at <https://calrecycle.ca.gov/laws/rulemaking/rdrsupdates/>. All rulemaking files can be downloaded directly from the website.

**TITLE 14. FISH AND
GAME COMMISSION**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 203, 203.1, 265, 1050 and 4902 of the Fish and Game Code and to implement, interpret or make specific sections 1050, 3950 and 4902 of said Code, proposes to amend Section 362, Title 14, California Code of Regulations, relating to Nelson bighorn sheep hunting.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Current regulations in Section 362 provide definitions, hunting zone descriptions, season opening and closing dates, tag quotas (total number of hunting tags to be made available), and bag and possession limits for Nelson bighorn sheep hunting. Individuals are awarded a bighorn sheep hunting tag through the Department's Big Game Drawing. A limited number of fundraising tags are also available for purchase, usually by auction, via non-governmental organizations that assist the Department with fundraising.

Harvest of a Nelson bighorn sheep is authorized for an individual with a tag for a respective hunt zone and season. Tag quotas are established based on a variety of factors including population density and abundance, age and sex composition, and distribution. The Department has identified the following areas in which bighorn sheep hunting opportunities need to be reduced.

The proposed changes to Section 362 includes amending subsection 362(d) to modify the hunt tag quota for the general lottery in the Marble and Clipper Mountains Hunt Zone 1 and a pertinent fundraising tag. Currently, the Marble and Clipper Mountains public tag quota is 5 tags, and 1 for the Marble, Clipper, and South Bristol Mountains Fundraising tag. For 2023, the proposed tag allocation for the Marble and Clipper Mountains is [0-5] tags for the public tag quota, and [0-1] rams for the Marble, Clipper, and South Bristol Mountains Fundraising Tag.

The Marble and Clipper Mountains populations have been subject to extreme drought, low recruitment, and respiratory disease in recent years, and the most recent population estimates suggest a decline. Specifically, the Department's 2022 population estimate from the summer of 2022 was only 25 to 83 adult male sheep such that the mature (2-yrs+) population available for hunting could be less than 25 rams. Therefore, the current tag quota of 5 tags may exceed the 15% threshold. Furthermore, annual surveys during 2015-2022 indicated between 0 and 0.18 lambs per ewe survived from the previous year to be counted as yearlings

(i.e., recruitment). The minimum recruitment rate for a sustainable population is on the order of 0.20. Low recruitment rates are attributed to impacts from severe drought, and to impacts of a respiratory disease-causing pathogen (*Mycoplasma ovipneumoniae*) first detected in the Marble Mountains population in 2013. For these reasons, a tag quota range is proposed that will allow consistency with management unit plan recommendations and prevent a possible violation of Fish and Game Code. Due to concerns regarding the low population and reproduction estimates, the Department is taking a precautionary approach by proposing the option of reducing the total tag quota by up to six tags for next year's season. The Department will consider minimum population viability recommendations in unit planning documents for the Marble and Clipper Mountains units, and the desert bighorn sheep population statewide when recommending harvest tag quotas.

Benefit of the Regulations:

The proposed regulatory action is designed to help achieve management objectives related to current environmental, biological, and social conditions, as outlined in the Marble and Clipper Mountains Management Plans, and to comply with the 15 percent threshold identified in Fish and Game Code 4902(b) (2).

Consistency and Compatibility with Existing Regulations:

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. Commission staff has searched the California Code of Regulations and has found no other state regulations that address the tag quotas (total number of hunting tags to be made available), and bag and possession limits for bighorn sheep hunting. The Commission has reviewed its own regulations and finds that the proposed regulations are consistent with other big game mammal regulations in Title 14, CCR, and therefore finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

PUBLIC PARTICIPATION

COMMENTS SUBMITTED
BY MAIL OR EMAIL

It is requested, but not required, that written comments be submitted on or before April 6, 2023 at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on April 14, 2023. If you would like copies of any mod-

ifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, P.O. Box 944209, Sacramento, CA 94244-2090.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Natural Resources Headquarters Building Auditorium, 715 P Street, Sacramento, California, which will commence at 8:30 a.m., on Wednesday, February 8, 2023, and may continue at 8:30 a.m. on Thursday, February 9, 2023, or as soon as thereafter as the matter may be heard. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing which may commence at 8:30 a.m. on Wednesday, April 19, 2023, and may continue at 8:30 a.m., on Thursday, April 20, 2023. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

AVAILABILITY OF DOCUMENTS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Executive Director, Fish and Game Commission, 715 P Street, P.O. Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Melissa Miller-Henson or Maurene Trotter at FGC@fgc.ca.gov or at the preceding address or phone number. **Regina Vu, Department of Fish and Wildlife, (Regina.Vu@wildlife.ca.gov or (916) 516-2132), has been designated to respond to questions on the substance of the proposed regulations.**

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 265 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in sections 11343.4, 11346.4, 11346.8 and 11347.1 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

**IMPACT OF REGULATORY ACTION/
RESULTS OF THE ECONOMIC
IMPACT ASSESSMENT**

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Commission estimates that five hunting guides that contract with bighorn sheep tag holders to provide guide services will lose the opportunity to compete for contracts for trips with five hunters with drawn tags and one hunter with a fundraising tag due to the proposed reduction in tags. However, in sum, the proposed regulation is not anticipated to have a significant statewide adverse economic impact directly affecting business broadly, including the ability of California businesses to compete with businesses in other states. This regulatory action will not impose cost impacts that a representative

individual hunter would necessarily incur in reasonable compliance with the proposed regulation.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:

The Commission does not anticipate the creation of jobs and anticipates the elimination of up to 1 full-time-equivalent (FTE) job comprised of 15 temporary (3.5 week) jobs for hunting guide aids (sub-guides) within the state. No significant impacts to the creation of new business, the elimination of existing businesses, or the expansion of businesses in California are anticipated. The Commission does not anticipate direct benefits to the general health and welfare of California residents or to worker safety, but anticipates benefits to the environment.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission estimates that five bighorn sheep guides will lose the opportunity to compete for contracts for hunting trips with four public tag hunters and one fundraising tag hunter due to the proposed reduction in tags for the affected hunt zone. The hunt guides receive an estimated average of \$9,000 per public drawn hunt and an average of \$14,500 for a fundraising tag hunt and with the loss of six hunts the combined loss to all bighorn sheep guides is estimated to be approximately \$59,500 over the hunting season ($\$9,000 \times 5$) public tags + ($\$14,500 \times 1$) fundraising tag = \$59,500 or approximately \$11,900 per guide in income opportunity losses.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The Department anticipates an estimated decline of \$73,534 in tag sales revenue with the implementation of the proposed regulation.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs Mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

- (h) Effect on Housing Costs:

None.

PUBLIC HEARING

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

At this time, no public hearing has been scheduled concerning the proposed regulations. If any interested person or the person’s representative requests a public hearing, they must do so in writing no later than February 27, 2023.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, 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.

SECTIONS AFFECTED

The proposed regulatory action adds Section 100006 to Chapter 5 of Title 17 of the California Code of Regulations.

TITLE 17. CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE

TITLE 17. – PUBLIC HEALTH
DIVISION 4 – CALIFORNIA INSTITUTE
FOR REGENERATIVE MEDICINE

CHAPTER 1, SECTION 100006

Date: January 27, 2023
Deadline for Submission of Written Comment:
March 13, 2023 –5:00 p.m.
Public Hearing Date: None Scheduled

Subject Matter of Proposed Regulation:
Conflict-of-Interest Rules Applicable to
Non-ICOC Members of the Treatments and
Cures Accessibility and Affordability
Working Group

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

The California Institute for Regenerative Medicine (“Institute” or “CIRM”) was established in 2004 after the passage in 2004 of Proposition 71 (Prop 71), the California Stem Cell Research and Cures Initiative. The statewide ballot measure established a new state agency to make grants and provide loans for stem cell research, research facilities and other vital research opportunities. The Independent Citizens’ Oversight Committee (“ICOC”) is the 35– member governing board for the Institute. The ICOC members are public officials, appointed on the basis of their experience earned in California’s leading public universities, non–profit academic and research institutions, patient advocacy groups, and the biotechnology industry. The goal of CIRM is to sponsor and facilitate research in regenerative medicine that will advance scientific understanding and result in the development of therapies and treatments for a wide range of devastating diseases. Under Prop 71, the ICOC receives guidance from three working groups delving into ethical standards, grants review, and facilities funding. Health & Safety Code, § 125290.50. Each of the working groups has patient advocates from the ICOC, as well as outside experts, among its members.

Proposition 14 (2020) authorized the state to issue \$5.5 billion worth of bonds to fund CIRM and enable it to continue its operations. It also created a fourth working group, the Treatments and Cures Accessibility and Affordability Working Group. *Id.*, § 125290.75.

Because the working groups are purely advisory and have no final decision–making authority, members of the working groups shall not be considered public officials, employees, or consultants for purposes of the Political Reform Act (Title 9 (commencing with Section 81000) of the Government Code), Sections 1090 and 19990 of the Government Code, and Sections 10516 and 10517 of the Public Contract Code. *Id.*, § 125290.50(e)(3). Health and Safety Code section 125290.50(e) requires the Board to adopt

SUBMITTAL OF COMMENTS

Any interested party may present comments in writing about the proposed regulations to the agency contact person named in this notice. Written comments must be received no later than March 13, 2023. Comments regarding this proposed action may also be transmitted via email to comments@cirm.ca.gov or by facsimile transmission to (415) 396–9141.

conflict-of-interest rules to govern non-ICOC members of the working groups. *See* Cal. Code Reg. title 1, §§ 100001–100004.

Health and Safety Code section 125290.40(m) also authorizes CIRM to adopt interim regulations to take effect immediately and to remain in effect for 270 days unless they are superseded by regulations adopted pursuant to the Administrative Procedure Act prior to this time. In December of 2022, the ICOC determined to establish an interim regulation establishing a conflict-of-interest policy applicable to non-ICOC members of the AAWG, to go into effect January 15, 2023, to ensure the work of the AAWG moves forward under COI rules while the agency pursues permanent adoption of those rules via formal APA process. This policy is modeled on the regulations of existing CIRM working groups, primarily that of the Grants Working Group (Cal. Code Reg. title 1, § 100003) but tailored to the specifics of the AAWG members, which are not composed of individual scientists who may engage in collaborative research.

This proposed regulation prohibits non-ICOC members of the AAWG from receiving a benefit from CIRM funding and requires disclosure and disqualification. They are modeled on the working group conflict-of-interest rules found in Title 1, section 100003 of the California Code of Regulations.

The proposed language identifies three types of potential conflicts of interest: 1) Financial; 2) Professional; and 3) Personal.

Financial conflicts of interest rules seek to identify circumstances where a financial benefit may accrue to the non-ICOC member or his or her immediate family as a result of a given outcome on an application or contract before the working group. Here, the member will have a conflict if they have an employee of or otherwise has a financial interest in the applicant institution, subcontractor, or other key person on the application. The member also will have a conflict if the member is under consideration for employment with the applicant or key parties on the application or stands to benefit in any amount from the applicant under review. Key terms such as “Subcontractor,” “Partner,” “Key Personnel,” and “Financial Interest” are defined in the policy and are identical to their usage in the Grants Working Group (“GWG”) context, as well.

Professional Conflicts of Interest –A non-ICOC member will have a professional conflict-of-interest if the member and key person on the application are engaged in or planning to be engaged in a joint project. This rule follows the rule as applied in the GWG context but is modified to exclude rules that reached research collaborations unique to the types of reviewers on the GWG.

Personal Conflicts of Interest –Finally, a non-ICOC member of the AAWG will have a personal COI in two circumstances: 1) where a family member or close friend is a key person on the application; and 2) where there member and a key person have been on opposing sides of a lawsuit or similar dispute. This provision is identical to the rule applied to the work of the GWG.

Disclosures

To aid in implementing the COI rules, each non-ICOC member will be asked to disclose to CIRM, confidentially, companies, institutions and real property in which the member has an interest that could present a conflict. The categories mirror those of the GWG, and include income or gifts received from a California-based academic or non-profit research organization, income from or investments in a publicly-held biotechnology or pharmaceutical company, income from a privately-held biotechnology company, and certain real property interests in California.

Exceptional Circumstances

In alignment with the Institute’s COI policies applicable to the other working groups and advisory panels, the proposed policy allows CIRM’s President/CEO to allow participation by an otherwise conflicted member where the need for special expertise of the reviewer outweighs any possible bias. Under such circumstances, the member will be permitted to participate in the discussion but not permitted to vote or participate in the scoring.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

The purpose and intent section of Proposition 14 provides that by “enacting this Initiative, it is the purpose and intent of the people of the State of California to continue to support stem cell research to mitigate and/or cure chronic disease and injury and thereby reduce or mitigate human suffering and the cost of care and improve the health and productivity of Californians” including by “[r]equiring strict accountability and transparency, including rigorous conflict-of-interest rules that are updated every four years. Proposition 14, § 3D. This regulation will ensure that members of the AAWG abide by rigorous conflict-of-interest rules as intended by the voters.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

This proposed regulation is the first regulation concerning the AAWG, established by Proposition 14 in 2020. *See* Health & Safety Code, § 125290.75.

The proposed regulation is also consistent with the Political Reform Act and Fair Political Practices Com-

mission’s (FPPC) conflict-of-interest regulations. Those regulations generally exempt purely advisory bodies from conflict-of-interest rules unless the body to which they report routinely adopts the advisory body’s recommendations without substantive change. In this case, Proposition 14 expressly recognizes that CIRM’s working groups are advisory and hence not subject to the Political Reform Act, so instead, Proposition 14 required CIRM to adopt this proposed regulation.

This proposed regulation is consistent with existing CIRM regulations regarding conflicts of interest. Health and Safety Code section 125290.50, subdivision (e), provides the ICOC shall adopt conflict-of-interest rules to govern the participation of non-ICOC working group members. CIRM previously promulgated regulations on conflict-of-interest rules for members of the working groups. Cal. Code Reg. title 1, §§ 100001–100004. This proposed regulation models these rules.

Therefore, the proposed regulation is not inconsistent nor incompatible with any other existing state regulations.

INCORPORATED BY
REFERENCE DOCUMENTS

None.

DISCLOSURES REGARDING
THE PROPOSED AMENDMENTS:

CIRM has made the following initial determinations:

Mandate on local agencies and school districts: None.

Effect on Small Business: CIRM has determined that the proposed regulation will have no impact on small businesses. The regulation proposes conflict-of-interest rules for non-ICOC members of the AAWG. As such, the proposed regulation is not expected to adversely impact small business as defined in Government Code Section 11342.610.

Impact on Local Agencies or School Districts: CIRM has determined that the proposed regulation does not impose a mandate on local agencies or school districts, nor do they require reimbursement by the state pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed regulation do not constitute a “new program or higher level of service of an existing program” within the meaning of Section 6 of Article XIII of the California Constitution. CIRM has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulation.

Costs or Savings to State Agencies: CIRM has determined that no savings or increased costs to any agency will result from the proposed regulation.

Effect on Federal Funding to the State: CIRM has determined that no costs or savings in federal funding to the state will result from the proposed regulation.

Effect on Housing Costs: CIRM has determined that the proposed regulation will have no effect on housing costs.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses: CIRM has made an initial determination that the proposed regulation 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.

Cost Impacts on Representative Private Persons or Businesses: CIRM has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. CIRM is not aware of any cost impacts that a representative private person or business would incur in reasonable compliance with the regulation.

Results of Economic Impact Analysis: CIRM does not anticipate that this proposed regulation will have any economic impact, including on the creation of elimination of jobs or businesses within the State of California or any impact on the expansion of business in the State of California, nor any impact on the health and welfare of California residents, worker safety, or the state’s environment. This analysis is based on that fact that the proposed regulation does not impose new requirements on existing business operations or functions of other agencies or individuals but implements a conflict-of-interest policy for non-ICOC members of the AAWG. However, to the extent that the amendments ensure a fair and thorough process for screening conflicts of interest, and thereby ensure the integrity of the grant evaluation process, the welfare of California residents is enhanced. In addition, to the extent that the applications for funding are evaluated not on the basis of bias but on the basis of scientific merit, and to the extent that the regulation ensures that is the case, the welfare of California residents is enhanced by ensuring that only the best scientific proposals receive funding, which ultimately may lead to the reduction of suffering if the research projects are ultimately successful and help California patients.

Consideration of Alternatives: In accordance with Government Code section 11346.5, subdivision (a)(13), CIRM 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law than the proposal described in this Notice. CIRM invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

Availability of Statement of Reasons and Text of Proposed Regulations: CIRM has prepared an Initial Statement of Reasons and has available the express terms of the proposed regulation and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which CIRM relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

Availability of Changed or Modified Text: After considering all timely and relevant comments, CIRM may adopt the proposed regulation substantially as described in this notice. If CIRM makes modifications that are sufficiently related to the originally proposed text of the amendments, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before it adopts the regulations as amended. Requests for the modified text should be addressed to the agency contact person named in this notice. CIRM will accept written comments on any changes for 15 days after the modified text is made available.

Agency Contact: Written comments about the proposed regulatory action; requests for a copy of the Initial Statements of Reasons, the proposed text of the amendments; and inquiries regarding the rulemaking file, and questions on the substance of the proposed regulatory action may be directed to:

C. Scott Tocher
Counsel for the California Institute for
Regenerative Medicine
stocher@cirm.ca.gov
(510) 340-9101

Ben Huang
Deputy General Counsel for the California
Institute for Regenerative Medicine
bhuang@cirm.ca.gov
(510) 340-9101

The Notice of Proposed Regulatory Amendment, the Initial Statement of Reasons and any attachments, and the proposed text of the amendments and exist-

ing regulation are also available on CIRM's website, www.cirm.ca.gov.

Availability of Final Statement of Reasons: Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code Section 11346.9, subdivision (a), may be obtained from the contact person named above.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE

CALIFORNIA ENDANGERED SPECIES ACT

CONSISTENCY DETERMINATION NO. 2080-2022-016-05

Project:

Los Angeles River Bikeway and Greenway Project

Location: Los Angeles County

Applicant: City of Los Angeles

BACKGROUND

The City of Los Angeles (Applicant) proposes to construct a new bikeway and pedestrian path along 2.9 miles of the existing Los Angeles River Bikeway (River Bikeway) located along the Los Angeles River (River). The Los Angeles River Bikeway and Greenway Project (Project) includes the following activities:

- Demolition of existing asphalt maintenance paths;
- Site preparation, including vegetation removal and clearing, grading, soil scarification, and soil re-compacting;
- Construction of the 2.9-mile bikeway and pedestrian path, two new pedestrian bridges over the River, six River channel undercrossings, and four microparks;
- Installation of landscaping and drought-tolerant plants to create greenways and bioswales parallel to the new bikeway and pedestrian path; and
- Installation of fencing, gates, retaining walls, and architectural finishings such as seating, water fountains, waste receptacles, lighting, and signage.

Bridges and undercrossings will connect the new bikeway and pedestrian path, as well as communities on the north and south sides of the River. Two new pedestrian bridges will be constructed over Caballero Creek where it enters the River. Construction of the

two bridges will require approximately 19 concrete piles driven up to 80 feet below ground. No piles will be installed into Caballero Creek. Six undercrossings will be constructed under existing pedestrian or motor vehicle bridges. Construction of the undercrossings will require cutting into the trapezoidal concrete River channel. Elsewhere, Project activities will generally occur outside of the River channel along the existing asphalt maintenance path.

The 2.9-mile reach of the River Bikeway within the Project area extends from Vanalden Avenue to Balboa Boulevard. The Project site is characterized by nine segments. Along the most downstream segment (the terminus of the 2.9-mile Project area) – the 0.58-mile Orange Line Busway bridge and Balboa Boulevard segment – the River has a soft-bottom channel. Elsewhere, the River has a concrete channel.

The Project activities described above are expected to incidentally take¹ least Bell’s vireo (*Vireo bellii pusillus*) where those activities will take place within the Orange Line Busway bridge and Balboa Boulevard segment. The soft-bottom channel between the Orange Line Busway bridge and Balboa Boulevard supports approximately 12 acres of black willow (*Salix gooddingii*) habitat for least Bell’s vireo. Least Bell’s vireo could be incidentally taken as a result of Project activities, including during construction of the bikeway, pedestrian path, and Orange Line Busway bridge undercrossing. Construction will result in elevated levels of noise, ground vibrations, human activity, and dust. The Applicant is unable to construct the proposed Orange Line undercrossing outside of the least Bell’s vireo nesting season (March 15 through September 15). Thus, noise from construction of the undercrossing during the nesting season could adversely affect least Bell’s vireos by reducing and disrupting foraging, courtship, or breeding behavior, or by causing adults to abandon nests, resulting in the loss of fertile eggs or nestlings. In addition, least Bell’s vireo could be forced from their breeding territory into adjacent habitat that may be less suitable, where they would be at risk of predation, starvation, or other injury. Least Bell’s vireo is designated as an endangered species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and as an endangered species pursuant to the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.). (See Cal. Code Regs., title 14, § 670.5, subdivision (a)(5)(l).)

¹ Pursuant 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”).

During protocol-level surveys for least Bell’s vireo in 2021, two breeding pairs were documented in black willows growing in the soft-bottom channel. One pair was observed constructing a nest. Construction of the bikeway, pedestrian path, and Orange Line Busway bridge undercrossing will occur immediately adjacent to a breeding territory for least Bell’s vireo. Because the Applicant is unable to work outside of the least Bell’s vireo nesting season, and because least Bell’s vireo typically returns to established breeding territories year after year, the Project, by causing disruptions and interruptions to breeding behavior, will likely result in reproductive suppression or cause least Bell’s vireo to avoid an established breeding territory. The United States Fish and Wildlife Service (Service) determined that least Bell’s vireo is reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of least Bell’s vireo.

Because the Project is expected to result in take of a species designated as endangered under the ESA, the United States Army Corps of Engineers (Corps) consulted with the Service as required by the ESA. On February 7, 2022, the Service issued a biological opinion (Preliminary BO) (Service file No. 08EVEN00-2021-F-0459) to the Corps. On September 8, 2022, the Service issued a revised biological opinion (Revised BO) to the Corps (Service file No. 2022-0000696), which incorporates by reference the terms and conditions of the Preliminary BO, incorporates additional measures, and extends the timeline for mitigation measures to be completed from 18 months to 24 months from the start of construction. The Revised BO describes the Project and requires the Applicant to comply with terms of the Revised BO and its incidental take statement (ITS).

On October 4, 2022, 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 2080.1 that the ITS, along with its accompanying Revised BO, is consistent with CESA for purposes of the Project and least Bell’s vireo. (Cal. Reg. Notice Register 2022, No. 42-Z, pp. 1241-42.)

DETERMINATION

California Department of Fish and Wildlife (CDFW) has determined that the ITS, along with its accompanying Revised BO, is consistent with CESA as to the Project and least Bell’s vireo because the mitigation measures contained in the BO and ITS meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of least Bell’s vireo will be incidental to

an otherwise lawful activity; (2) the mitigation measures identified in the ITS and Revised BO will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of least Bell's vireo. The mitigation measures in the ITS and Revised BO include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- 1) The Applicant will retain a Service-approved biologist who will be present, daily, for all work within 500 feet of suitable least Bell's vireo habitat.
- 2) A Service-approved biologist will immediately stop any activity that could impact least Bell's vireo.
- 3) A Service-approved biologist will flag or otherwise delineate environmentally sensitive areas before performing work.
- 4) The Applicant will maintain all flagging, stakes, or signage used to delineate environmentally sensitive areas for the duration of the Project. The Applicant will remove all temporary protective materials after the bike path and Orange Line Busway bridge undercrossing is complete.
- 5) A Service-approved biologist will conduct an environmental training session for all construction personnel employed or otherwise working in the Project area before performing work. The training will include a description of least Bell's vireo and habitat; environmentally sensitive areas; designated staging areas; designated access points; and specific measures that are being implemented to avoid adverse effects to the subspecies during the proposed action.
- 6) The Applicant will prevent construction personnel employed or otherwise working on the Project to enter and gather within environmentally sensitive areas for the duration of construction activities.
- 7) The Applicant will prevent construction personnel to enter soft-bottom portions of the River.
- 8) The Applicant will not remove or trim vegetation within the River.
- 9) For work that occurs during the nesting season (March 15 to September 15):
 - a) The Applicant will construct the Orange Line Busway bridge undercrossing in one calendar year.
 - b) A Service-approved biologist will perform a pre-construction survey for least Bell's vireo at the site of proposed activities,

from Orange Line Busway bridge to Balboa Boulevard, no more than three days before starting initial activities. After the initial survey, the biologist will continue monitoring at least three times a week, or as needed.

- c) The biologist will monitor noise levels, daily, near active least Bell's vireo territories using a handheld meter. If noise exceeds 60 decibels (dB), construction activities will be adjusted (if possible) or the biologist will document and report bird behaviors. The biologist will account for attenuation and ambient noise levels.
- 10) At the Orange Line Busway bridge to Balboa Boulevard segment, all refueling, maintenance, and staging of equipment and vehicles will occur only in designated staging areas, outside of environmentally sensitive areas (see Attachment 1 to the Preliminary BO). Personnel will return all construction equipment at the end of each workday to the staging area.
 - 11) To fully mitigate for the Project's impact on least Bell's vireo, the Applicant will restore/enhance or preserve riparian forest or riparian woodland habitat suitable for least Bell's vireo. The Applicant will complete the required habitat restoration/enhancement or habitat preservation, including any required land acquisition, protection, transfer, and record of conservation easements, no later than 24 months from start of construction, as modified by the Revised BO. The Applicant will restore or preserve habitat for least Bell's by implementing one of the following:
 - a) *Option 1 – Habitat Restoration/Enhancement.* The Applicant will restore/enhance one acre of suitable habitat for least Bell's vireo in Los Angeles County. The Applicant will implement activities which will include, at a minimum, the following: (1) invasive species removal, (2) planting of native species meeting least Bell's vireo habitat requirements, (3) stewardship and maintenance for at least five years, (4) in-fill planting as needed for at least five years, and (5) annual monitoring and reporting for at least five years. Monitoring will include the planting survivorship and status at restoration site as well as for least Bell's vireo.
 - b) *Option 2 – Habitat Acquisition and Protection.* The Applicant will acquire two acres of Habitat Management (HM) lands in Los Angeles County supporting suitable habitat for least Bell's vireo.
 - 12) The Applicant will obtain written approval from CDFW and the Service for habitat restoration/

- enhancement or habitat acquisition/protection prior to the Applicant committing to mitigation. Service approval is necessary to ensure that mitigation activities are consistent with the analysis contained in the BO. If the Applicant is unable to meet mitigation requirements through implementation of Option 1 or 2, the Applicant will consult with CDFW to identify options that CDFW determines, in its sole discretion, will fully mitigate for the Project's impact on least Bell's vireo. The Applicant will still complete mitigation requirements within 24 months from start of construction, as modified by the Revised BO.
- 13) The Applicant will develop and submit any documentation CDFW, in its sole discretion, requires from the Applicant to demonstrate that the Applicant has met mitigation requirements. The Applicant will resolve all of CDFW's comments and concerns prior to finalizing all documents. The Applicant will obtain CDFW's written approval of all documents. The Applicant will submit the following documents, at a minimum, for CDFW's review and approval:
- a) *Habitat Restoration/Enhancement.* A Habitat Restoration and Stewardship Plan that will include a detailed map, location and description of the restoration site; restoration and stewardship goals and objectives; detailed description of restoration activities to achieve those goals and objectives; work plans and schedules; planting palette; propagule collection and growing methods; planting methods; invasive species control plan; planting and invasive species control success criteria; contingency measures; monitoring plan; and annual reporting criteria and requirements.
 - i. The Applicant will also provide a Long-term Management Plan for HM lands. At a minimum, the Long-term Management Plan will include infrastructure repair and replacement (e.g., fencing, signage, gates), continuing trash removal, site monitoring, vegetation and invasive species management, and monitoring of least Bell's vireo.
 - ii. For Habitat Restoration/Enhancement, the Applicant will provide CDFW with annual reports for at least five years documenting the status of habitat restoration/enhancement. After the Applicant submits its final annual report, CDFW, in its sole discretion, will determine if the Applicant may be released from annual monitoring and reporting obligations.
 - iii. If deemed necessary by CDFW and depending on the mitigation, the Applicant will implement additional year(s) of maintenance, stewardship, annual monitoring, and reporting, not to exceed five years if success criteria for habitat restoration/enhancement have not been met.
- 14) To provide for the acquisition and protection and management of the HM lands, the Applicant will:
- a) *Fee Title/Conservation Easement.* The Applicant will record a conservation easement over the HM lands where CDFW will be expressly named as a third-party beneficiary. The Applicant will obtain CDFW written approval of any conservation easement before its execution or recordation. No conservation easement will be approved unless it complies with California Government Code sections 65965–65968, as amended, and includes provisions expressly addressing California Government Code section 65966, subdivision (j) and section 65967, subdivision (e).
 - b) *HM Lands Approval.* The Applicant will obtain CDFW's written approval of the HM lands before acquisition and/or transfer of the land at least three months before acquisition and/or transfer of the HM lands.
 - i. *Land Manager.* Under California Government Code section 65967(c), the Applicant will exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to serve as the land manager to effectively manage and steward land, water, or natural resources on mitigation lands.
 - ii. *Endowment Fund.* After obtaining CDFW approval of the HM lands, the Applicant will provide long-term management funding for the management of the HM lands by establishing a long-term management fund (Endowment). The Endowment provides funds for the management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan(s) required by Measure 13(a)(i). *Note: Timeframe of management of the HM lands will be approved by CDFW.*
 - iii. *Endowment Funds Deposit.* To calculate the Endowment Amount, the

Applicant will prepare a Property Analysis Record (PAR) to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Applicant will submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager. *Note: Timeframe of management of the HM lands will be approved by CDFW.*

Monitoring and Reporting Measures

- 1) The biologist will submit weekly reports and data (i.e., photographs, maps, and datasheets) to the Service’s Ventura Office and CDFW documenting least Bell’s vireo survey results, including negative detections, noise levels, modifications to construction (if possible) in response to noise levels exceeding 60 dB, bird behaviors, and compliance with avoidance and minimization measures.
- 2) The biologist will submit a post-construction report to the Service’s Ventura Office and CDFW within 30 days of completion of Project activities within the Orange Line Busway bridge and Balboa Boulevard segment.

Security

- 1) The Applicant will proceed with the Project only after the Applicant has ensured funding (Security) to complete least Bell’s vireo habitat restoration/enhancement or habitat preservation activities required by CDFW that has not been completed before the Project begins. The Applicant will provide Security as follows:
 - a) *Security Amount.* The Security amount will be in the amount of \$100,000.
 - b) *Security Form.* The Security will be in the form of an irrevocable letter of credit to be held by CDFW.
 - c) *Security Timeline.* The Security will be provided to CDFW before the Project begins.
 - d) *Security Drawing.* The Security will allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Applicant has failed to comply with mitigation requirement to restore or preserve riparian forest or riparian woodland habitat that support or could support least Bell’s vireo.
- 2) The Security (or any portion of the Security then remaining) will be released to the Applicant after CDFW has conducted an on-site inspection (if appropriate) and/or received confirmation that all secured requirements have been satisfied, as evidenced by proof of payment, documentation

that the recipient has received funds in the full amount, and/or execution/record of a conservation easement.

Conclusion

Pursuant to Fish and Game Code section 2080.1, additional take authorization under CESA is not required for the Project for incidental take of least Bell’s vireo, provided the Applicant implements the Project as described in the Revised BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the ITS and Revised BO. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the ITS and Revised BO, 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, 2081, subdivision. (b) and (c).)

CDFW’s determination that the ITS and Revised BO are consistent with CESA is limited to least Bell’s vireo.

By:

/s/

Date: 10/31/2022

Joshua Grover, Deputy Director
Ecosystem Conservation Division
California Department of Fish and Wildlife

DEPARTMENT OF FISH AND WILDLIFE

CALIFORNIA ENDANGERED SPECIES ACT

CONSISTENCY DETERMINATION

NO. 2080–2022–017–01

Project: Elk Creek Bridge Replacement Project

Location: Mendocino County

Applicant: California Department of Transportation

BACKGROUND

The California Department of Transportation (Applicant) proposes to replace the Elk Creek Bridge in Mendocino County on State Route 1 at post mile 31.4 by removing the existing 122-foot-long concrete bridge and pier walls, and constructing a new 140-foot-long, single span bridge supported on abutments only. The Elk Creek Bridge Replacement Project (Project) will occur within Applicant’s right of way as well as temporary construction easements on adjacent, privately owned parcels including approximately 400 feet north of the Elk Creek Bridge to 500 feet south of the bridge. The Project also includes Elk

Creek and adjacent wetlands within the vicinity of the bridge. Project activities include vegetation removal, construction of temporary access roads, installation of a temporary clear water diversion and dewatering of the construction site, demolition, pile driving, installation of temporary abutments and temporary bridge, falsework and new bridge construction, removal of existing rock slope protection, drainage modifications, guardrail installation, erosion control, and onsite revegetation. The Project also includes restoration activities to improve habitat conditions and to mitigate for take of listed species. Specific restoration actions include removing an existing unvegetated rock slope protection from the north bank of Elk Creek and installing a bioengineered rootwad bank revetment in its place.

The Project activities described above are expected to incidentally take¹ coho salmon (*Oncorhynchus kisutch*), of the Central California Coast (CCC) evolutionarily significant unit (CCC coho salmon) where those activities take place within the bed, bank, and channel of Elk Creek.² In particular, CCC coho salmon could be incidentally taken as a result of the temporary stream diversion, dewatering 0.19 acres of Elk Creek, and the fish collection and relocation process prior to construction. CCC coho salmon are designated as an endangered species pursuant to both the federal Endangered Species Act (ESA), 16 U.S.C. § 1531 et seq., and the California Endangered Species Act (CESA), Fish and Game Code, § 2050 et seq. and California Code of Regulations, Title 14, § 670.5(a)(2)(N).³

CCC coho salmon is presumed present at the Project site based on several reports and surveys. A 2001 California Department of Fish and Game Elk Creek Stream Inventory Report referenced historical data indicating that coho had been present within Elk Creek in the past. Coho salmon were observed in the action area during snorkel surveys in August of 2020 and during emergency project dewatering in 2016. Upstream presence/absence surveys across multiple years have documented presence of coho within the Elk Creek watershed. According to National Marine Fisheries Service (NMFS), the Project will result in

the temporary loss of 0.19 acres of stream habitat for CCC coho salmon. Construction of the Project will not result in the permanent loss of CCC coho salmon habitat because the components of the replacement bridge structure will be permanently installed outside of the stream channel.

Because the Project is expected to result in take of a species designated as endangered under the federal ESA, the Applicant consulted with NMFS as required by the ESA. On May 2, 2022, NMFS issued a biological opinion (Service file No. WCRO–2021–032188) (BO) to the Applicant. On June 22, 2022, NMFS and Applicant discovered an error in the amount of area to be dewatered and fish relocation estimates. The increase in take of CCC coho led to reinitiation because there were additional adverse effects to the listed fish. On August 5, 2022, NMFS issued a revised BO (Service file No. WCRO–2022–01533) (Revised BO) to the Applicant, correcting the error in the amount of area to be dewatered and fish relocation estimates. The Revised BO describes the Project, requires the Applicant to comply with terms of the Revised BO and its incidental take statement (ITS), and incorporates additional measures.

The take exemption conferred by the ITS is based upon the proposed action occurring as described in the Revised BO and in more detail in the Biological Assessment (BA) and thus requires the Applicant to implement and adhere to the measures contained therein.

On October 7, 2022, 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 2080.1 that the ITS, along with its accompanying Revised BO, is consistent with CESA for purposes of the Project and CCC coho salmon. (Cal. Reg. Notice Register 2022, No. 42–Z, p. 1242.)

DETERMINATION

CDFW has determined that the ITS, along with its accompanying Revised BO, is consistent with CESA as to the Project and CCC coho salmon because the mitigation measures contained in the ITS, and its associated Revised BO and the conditions in the BA, 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 CCC coho salmon will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the ITS and its associated Revised BO and BA will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance minimization and mitigation measures and

¹ Pursuant 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”).

² Although the Project is expected to also adversely affect Northern California steelhead (*Oncorhynchus mykiss*), it is not a CESA-listed species and is thus not covered or otherwise further discussed in this determination under Fish and Game Code section 2080.1.

³ Coho salmon south of Punta Gorda (Humboldt County), California is listed as endangered under CESA. CCC coho salmon is included within this group.

to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of CCC coho salmon. The measures in the ITS and its associated Revised BO and BA include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- 1) *Fish Relocation.* The Applicant will collect and relocate fish in the work areas prior to and during dewatering to avoid CCC coho salmon stranding and exposure to construction activities. Before and during dewatering of the construction site, juvenile CCC coho salmon will be captured by a qualified biologist using one or more of the following methods: dip net, seine, thrown net, block net, and electrofishing. Relocation activities will occur during the summer low-flow period after emigrating smolts have left and before adults have immigrated for spawning. Mostly juvenile CCC coho salmon are expected to be in the action area during the construction period. NMFS expects capture and relocation of listed CCC coho salmon will be limited to primarily pre-smolting and young-of-the-year juveniles. CCC coho salmon will be handled with extreme care and kept in water to the maximum extent possible during rescue activities. All captured CCC coho salmon will be kept in cool, shaded, aerated water protected from excessive noise, jostling, or overcrowding any time they are not in the stream, and CCC coho salmon will not be removed from this water except when released. To avoid predation, the biologists will have at least two containers and segregate young-of-the-year from larger age classes and other potential aquatic predators. Captured CCC coho salmon will be relocated, as soon as possible, to a suitable instream location in which suitable habitat conditions are present to allow for adequate survival of transported fish and fish already present. If any CCC coho salmon are found dead or injured, the biological monitor will contact NMFS staff. All CCC coho salmon mortalities will be retained until further direction is provided by NMFS biologist. Any pumps used to divert live stream flow will be screened and maintained throughout the construction period to comply with NMFS' Fish Screening Criteria for Anadromous Salmonids (2000).
- 2) *Stream Diversion and Dewatering.* The Applicant will construct cofferdams or a bladder dam, and a series of pipes will be used to temporarily divert flows around the work site during construction. Dewatering of the channel is estimated to affect up to 221 linear feet of Elk Creek with a total estimated area of 0.19 acres. NMFS anticipates temporary changes to instream flow within, and

downstream of, the Project site during installation of the diversion system and during dewatering operations. These fluctuations in flow are anticipated to be small, gradual, and short-term, but are expected to cause a temporary loss, alteration, and reduction of aquatic habitat. The diversion will remain in place during the instream work period for two consecutive seasons. Diversions will be installed on or after June 15 and removed prior to October 15 during each year of construction. The timing of diversion avoids the late fall-winter migration period for adult salmonoids that may pass through the Project area to spawn, and most of the spring-early summer smolt out-migration. The diversion will allow CCC coho salmon passage downstream for any late smolt out-migrants after June 15.

- 3) *Increased Sedimentation and Turbidity.* Deconstruction of the existing bridge and construction of the new bridge, installation of temporary stream diversions and construction of instream restoration will disturb soils which could potentially be transported to the wetted channels during storm events. NMFS expects any sediment or turbidity generated by the Project will not extend more than 100 feet downstream of the worksites, based on site conditions and methods used to control sedimentation and turbidity. The Project's proposed soil and channel stabilization measures will be implemented to avoid and/or minimize sediment mobilization. Additionally, the Applicant proposed additional Avoidance and Minimization Measures (AMMs) and Best Management Practices (BMPs) specifically aimed at reducing erosion, scour, and sedimentation in storage and staging areas, and from dewatering (Caltrans 2021). Thus, NMFS does not anticipate harm, injury, or behavioral impacts to CCC coho salmon associated with exposure to minor elevated suspended sediment levels that could reduce their survival chances.
- 4) *Pollution from Hazardous Materials and Contamination.* The equipment needed to complete the Project has the potential to release debris, hydrocarbons, concrete, and similar contaminants into surface waters at both work sites. These effects have the potential to harm or injure exposed fish and temporarily degrade habitat. However, AMMs proposed by the Applicant will substantially reduce or eliminate the potential for construction materials and debris to enter waterways. Limiting the work window to the dry season (June 15 to October 15) will limit hazardous material exposure to juvenile CCC coho salmon and eliminate potential for containments to adversely affect the most sensitive life stages (i.e., eggs,

alevin, and fry). Equipment will be checked daily to ensure proper operation and avoid any leaks or spills. Proper storage, treatment, and disposal of construction materials and discharge management is expected to substantially reduce or eliminate contaminants entering both waterways via runoff. A Stormwater Pollution Prevention Plan and a Post-Construction Stormwater Control Plan will be implemented to maintain water quality during and after construction within Elk Creek and render the potential for the Project to degrade water quality and adversely affect CCC coho salmon improbable. The Applicant will also construct permanent bio retention structures and develop a maintenance program for these structures for long-term management of stormwater. Due to these measures, permanent structures, and long-term management plan, conveyance of toxic materials into active waters at the work site, both during and after Project construction, is not expected to occur, and potential for the Project to degrade water quality and adversely affect CCC coho salmon is improbable.

- 5) *Post Construction Water Quality.* The new bridge resulting from Project construction may expose CCC coho salmon to the degradation product of tires (6PPD-quinone) which has been identified as the causal factor in CCC coho salmon mortality at concentrations of less than one part per billion (Tian et al. 2022, Tian et al. 2021). The exposure will be minimized through post-construction stormwater BMPs intended to address water quality concerns associated with road Projects such as where there is an increase in impervious surfaces. These changes in peak stormwater runoff rates will be offset through permanent design measures, such as the new bridge not containing scuppers that drain water directly into the creek, directing flows through new drainage systems, and through restoring riparian vegetation and replacing wetland and non-wetland roadside ditches.
- 6) *Habitat Enhancement.* Applicant will create and enhance habitat for CCC coho salmon by removing existing unvegetated rock slope protection from the north bank of Elk Creek and in its place install a bioengineered rootwad bank revetment that will stabilize and revegetate the embankment and restore and enhance available natural bank and instream habitat complexity. The design will incorporate and reuse some of the existing rock slope protection material to protect the new north abutment of the proposed bridge structure, and the installation of at least eight large conifer rootwads with attached trunk. The rootwad system will be constructed along approximately 120 feet

of the north stream bank and will incorporate plantings of native riparian plant and tree species.

- 7) *Invasive Species Eradication.* Applicant will eradicate an infestation of cape ivy (*Delairea odorata*) on the south bank of Elk Creek. This is intended to prevent further spread of this invasive species and promote diversity and growth of native species, which in turn will improve CCC coho salmon habitat and maintain shade cover over the stream, both at the Project site and within adjacent riparian areas. In addition, specific restoration details to replace affected shaded riverine aquatic cover will be incorporated into the Revegetation Plan.

Monitoring and Reporting Measures

- 1) *Biological Monitor:* The Applicant or the contractor will retain qualified biologists with expertise in anadromous CCC coho salmon biology, including handling, collecting, and relocating CCC coho salmon; CCC coho salmon/habitat relationships; and biological monitoring of CCC coho salmon. The Applicant shall ensure that all fisheries biologists are qualified to conduct CCC coho salmon collections in a manner which minimizes all potential risks to ESA-listed CCC coho salmon. Electrofishing, if used, shall be performed by a qualified biologist and conducted according to the National Oceanic and Atmospheric Administration (NOAA) Fisheries Guidelines for Electrofishing Waters Containing Salmonids Listed under the Endangered Species Act. The biologist will monitor the construction sites during placement and removal of cofferdams and channel diversions to ensure that any adverse effects to CCC coho salmon are minimized. The biologist will be on site during all dewatering events to capture, handle, and safely relocate CCC coho salmon to an appropriate location. The biologist will notify NMFS staff one week prior to capture activities to provide an opportunity for NMFS staff to observe the activities. During fish relocation activities, the fisheries biologist shall contact NMFS staff if mortality of federally listed salmonids exceeds three percent of the total steelhead collected, at which time NMFS will stipulate measures to reduce the take of salmonids. A report summarizing fish relocation activities will be submitted to NMFS and must include the following contents:
 - a. Construction Related Activities, as described in the BO.
 - b. Fish Relocation, as described in the BO.
- 2) *Hydroacoustic Monitoring Plan.* Hydroacoustic monitoring will be conducted during construction activities that could potentially produce impulsive

sound waves within Elk Creek. This will include work requiring land-based pile driving and hoe-ramming or jackhammering associated with bridge demolition and construction, both in and adjacent to the stream channel. A plan will be prepared by a qualified hydroacoustic specialist prior to construction. NMFS will be provided the Hydroacoustic Monitoring Plan by the Applicant for review prior to initiation of any pile driving or demolition work. The Hydroacoustic Monitoring Plan will describe the monitoring methodology, frequency of monitoring, positions that hydrophones will be deployed, techniques for gathering and analyzing data, quality control measures, and reporting protocols. Cumulative sound pressure levels will remain below hydroacoustic injury thresholds (cum SEL 183 dB) where CCC coho salmon may occur.

- 3) *Revegetation Plan and Mitigation and Monitoring Plan.* A Revegetation Plan and Mitigation and Monitoring Plan will be submitted to permitting agencies prior to implementation. The Applicant will prepare and submit reports documenting post-Project conditions of vegetation installed at the site annually on January 15 for the first five years following Project completion, unless the site is documented to be performing poorly, then monitoring requirements will be extended.
- 4) *Rootwad Monitoring.* Applicant will ensure the rootwad bank revetment will be monitored for a minimum of five years and a detailed monitoring plan will be submitted to CDFW for review and approval prior to Project activities that may impact CCC coho salmon.
- 5) *Project Reports.* The Applicant will submit reports and survey information to NMFS and must include Post-Construction Vegetation Monitoring and Reporting.

The Revised BO requires the Applicant to submit monitoring reports to the NMFS. Although not a condition of the revised BO, for all reporting requirements, CDFW requests a copy of all monitoring reports as well.

Financial Security

Applicant has provided funding security for mitigation requirements in the amount of \$210,000 in compliance with the Master Funding Agreement entered into by CDFW and the Applicant on September 3, 2021, to ensure that it has adequate funding to complete the mitigation measures. Prior to construction, Applicant will create a separate project identified by a new expenditure authorization number (EA #) for the principal purpose of funding security for mitigation and associated monitoring and adaptive management

requirements for the rootwad revetment, referred to as a Child EA mitigation project.

CONCLUSION

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of CCC coho salmon, provided the Applicant implements the Project according to the ITS and its associated Revised BO and BA. If there are any substantive changes to the Project, including changes to the mitigation measures, or if NMFS amends or replaces the ITS, Revised BO, or BA, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW.

CDFW’s determination that the ITS and its associated Revised BO and BA are consistent with CESA is limited to CCC coho salmon.

By:

/s/

Date: 11/7/2022

Joshua Grover, Deputy Director
Ecosystem Conservation Division
California Department of Fish and Wildlife

DEPARTMENT OF FISH AND WILDLIFE

CALIFORNIA ENDANGERED SPECIES ACT

CONSISTENCY DETERMINATION

NO. 2080-2022-018-05

Project: Mabury Tentative Tract Map No. 18163

Location: Orange County

Applicant: Milan REI X, LLC

BACKGROUND

Milan REI X, LLC (Applicant) proposes to construct 22 single-family homes and two new streets northwest of the intersection of Cannon Street and Santiago Canyon Road in the City of Orange, County of Orange. The Mabury Tentative Tract Map No. 18163 Project (Project) includes vegetation clearing, construction of a six-foot retaining wall along the southern boundary of the residential lots, inclusion of a landscaped fuel modification buffer and a ten-foot-wide passive recreational trail, as well as a new 0.06-acre storm drain outlet in Santiago Creek. Additionally, a temporary earthen crossing will be constructed across Santiago Creek from the south to connect with the Project site. An existing degraded crossing will be removed and

the temporary earthen crossing will be removed upon completion of construction.

The Project activities described above are expected to incidentally take¹ least Bell's vireo (*Vireo bellii pusillus*) where those activities will take place along Santiago Creek. In particular, least Bell's vireo could be incidentally taken as a result of construction noise and human disturbance. Least Bell's vireo is designated as an endangered species pursuant to both the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 *et seq.*) and the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 *et seq.*). (See Cal. Code Regs., title 14, § 670.5, subdivision (a)(5)(I).)

The presence of least Bell's vireo individuals has been documented within the Santiago Creek corridor on the Project site and there is suitable least Bell's vireo habitat within and adjacent to the Project site. Because of the presence of least Bell's vireo within the Project site, dispersal patterns of least Bell's vireo, and the presence of suitable least Bell's vireo habitat within the Project site, the United States Fish & Wildlife Service (Service) determined that least Bell's vireo is reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of least Bell's vireo.

According to the Service, the Project will result in the temporary loss of 0.16 acre of riparian least Bell's vireo habitat, and 0.11 acre of unoccupied upland habitat, totaling 0.27 acre of temporary habitat loss. Construction of the Project will also result in the permanent loss of 0.04 acre of riparian least Bell's habitat and 10.85 acres of unoccupied upland habitat, totaling 10.89 acres of permanent habitat loss.

Because the Project is expected to result in take of a species designated as endangered under the ESA, the United States Army Corps of Engineers (Corps) consulted with the Service, as required by the ESA. On September 7, 2022, the Service issued a biological opinion (Service file No. FWS-OR-22-0029849-S7-F) to the Corps. On October 19, 2022, the Service issued a minor correction to the biological opinion to the Corps (Service file No. FWS-OR-22-0029849-S7-TA) to provide clarification to a sentence in the biological opinion's conclusion that could have been interpreted as inconsistent with the incidental take statement (ITS). The biological opinion and minor correction are hereby collectively referred to as the "BO." The BO describes the Project, requires the Ap-

plicant to comply with terms of the BO and its ITS, and incorporates additional measures.

On December 13, 2022, 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 2080.1 that the ITS and accompanying BO are consistent with CESA for purposes of the Project and least Bell's vireo. (Cal. Reg. Notice Register 2022, No. 52-Z, p. 1550-51.)

DETERMINATION

CDFW has determined that the ITS, along with its accompanying BO, is consistent with CESA as to the Project and least Bell's vireo because the mitigation measures contained in the BO and ITS meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of least Bell's vireo will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the ITS and BO will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance, minimization, and mitigation measures and to monitor compliance with, and effectiveness of, those measures; and (4) the Project will not jeopardize the continued existence of least Bell's vireo. The mitigation measures in the ITS and BO include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- 1) The Applicant will offset 0.2 acre of impacts to vireo habitat (0.04 acre permanent and 0.16 acre of temporary) by removing the existing pipe and at-grade crossing from Santiago Creek and restoring the area (following removal of the temporary earthen crossing) with 0.141 acre of riparian habitat, 0.035 acre of open water, and 0.067 acre of riparian/upland transition habitat as described in the Mitigation Plan (ESA 2021). In addition, 0.01 acre of open water habitat and 0.011 acre of riparian habitat will be created, and 0.075 acre of riparian habitat dominated by *Arundo donax* will be restored with native riparian species. Temporary impact areas will be graded to match the surrounding habitat and revegetated with native riparian species.
- 2) The Applicant will retain a 4.9-acre buffer between the residential development and Santiago Creek with a fuel modification zone and recreational trail. About 0.43 acre of the buffer will consist of a "wet zone" with specific landscaping that has high fire resistance. The remaining 4.5 acres of the buffer will include a 10-foot-wide recreational trail and landscaping with native

¹ Pursuant 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.").

upland species consistent with Orange County Fire Authority regulations. The plant palette used in the buffer will avoid the species listed in the California Invasive Plant Council's Invasive Plant Inventory. The Applicant will submit a draft plant palette for the revegetation areas to the Wildlife Agencies for review and approval prior to Project initiation. The Applicant will record an open space easement or other protective mechanism over the 4.9-acre buffer area. The draft easement will be submitted to the Wildlife Agencies for approval at least 60 days prior to initiating Project impacts. Proof of recordation of the approved easement will be provided to the Wildlife Agencies prior to release of the financial assurance summarized in Conservation Measure (CM) 2 of the BO.

- 3) Clearing and grubbing of wetland/riparian habitat will occur between September 16 and March 14 to avoid the vireo breeding season. Clearing and grubbing may occur before September 16 if nesting surveys determine that all nesting is complete.
- 4) The Applicant will implement the following measures during Project construction:
 - a. Silt fencing, siltation basins, gravel bags, or other controls necessary to stabilize soil in cleared and graded areas, will be installed within the outer limits of grading to minimize erosion and siltation during initial vegetation clearing and Project construction. Erosion control measures will be maintained in good condition until completion of construction;
 - b. All native or sensitive habitats outside and adjacent to Project impact limits will be designated as Environmentally Sensitive Areas (ESAs) on Project maps. ESAs will be temporarily fenced during construction with orange plastic snow fence, orange silt fencing, or in areas of flowing water, with stakes and flagging. No personnel, equipment, or debris will be allowed within the ESAs. Fencing and flagging will be installed in a manner that does not impact habitats to be avoided and such that it is clearly visible to personnel on foot and operating heavy equipment. Temporary construction fencing and markers will be maintained in good repair and removed upon completion of construction;
 - c. All equipment maintenance, staging, and dispersion of fuel, oil, coolant, or any other such activities will be clearly designated on construction plans and will be restricted to designated areas within the fenced grading

limits. These designated areas will not be located within waterways or riparian areas and will be located in such a manner as to prevent runoff from entering preserved native vegetation;

- d. A water truck or water buffalo with adequate hoses for fire control will be maintained on the site during all habitat clearing and construction activities;
 - e. Smoking will be allowed only in designated areas equipped with sand boxes for disposal of cigarette butts; and
 - f. Trash will be stored properly (inaccessible to scavengers, including crows and raccoons) or removed from the construction site on a daily basis.
- 5) Applicant will ensure construction occurs during daylight hours only.
 - 6) Applicant will ensure that, during all excavation and grading, the construction contractors will equip construction equipment, fixed or mobile, with properly operating and maintained mufflers, consistent with manufacturers' standards to reduce construction equipment noise to the maximum extent possible. The construction contractor will place all stationary construction equipment so that emitted noise is directed away from vireo habitat in Santiago Creek, and stage equipment in areas that will create the greatest distance between construction-related noise sources and Santiago Creek. Noise from construction activities will be limited to the extent possible through the maximum use of technology available to reduce construction equipment noise.
 - 7) Applicant will ensure the Project is designed to minimize exterior night lighting while remaining compliant with City ordinances related to street lighting. Any necessary lighting, both during construction and after the development has been completed, will be shielded or directed away from Santiago Creek and is not to exceed 0.5 foot-candles. Monitoring by a qualified lighting engineer will be conducted as needed to verify light levels are below 0.5 foot-candles required within vireo habitat. If the 0.5 foot-candle requirement is exceeded, the lighting engineer will make operational changes and/or install a barrier to alleviate disruption associated with these light levels during the vireo breeding season.
 - 8) As part of the Covenants, Conditions, and Restrictions (CC&Rs), the Homeowners Association will be responsible for providing educational materials to the homeowners describing the sensitivity of the avoided habitat areas and Santiago Creek. Signage will be posted adjacent

to the riparian habitat in Santiago Creek and conservation areas to alert the public as to the sensitivity of the habitat. The CC&Rs will: (1) prohibit landscaping with plants identified by the California Invasive Plant Council as an invasive risk in southern California; (2) prohibit homeowners from allowing domestic cats outside; (3) prohibit the use of broadcast rodenticides known to affect avian species, including second generation anti-coagulant(s), zinc phosphide, brodifluralin, and cholecalciferol beyond the development footprint, as defined in Figure 1; (4) require that subsequent installed lighting will be shielded so as not to illuminate the conservation area; and (5) discuss appropriate trash management to prevent the attraction of predators common to urbanized areas (e.g., raccoons, opossum, skunks, and rats).

Monitoring and Reporting Measures

- 1) If maintenance of the riparian restoration/enhancement area is necessary between March 15 and September 15, a biologist with at least 40 hours of independent vireo observation in the field and documented experience of at least 20 hours of locating and monitoring vireo nests will survey for vireos within the restoration/enhancement area, access paths to it, and other areas susceptible to disturbances by site maintenance. Surveys will consist of three visits separated by 2 weeks starting March 15 of each maintenance/monitoring year. Work will be allowed to continue on the site during the survey period. However, if vireos are found during any of the visits, the biologist will notify and coordinate with the Wildlife Agencies to identify measures to avoid and/or minimize effects to the vireo (e.g., nests and an appropriate buffer will be flagged by the biologist and avoided by the maintenance work).
- 2) The restoration/enhancement areas will be maintained and monitored for a period of at least 5 years or longer if required for the performance standards to have been achieved, as described in the Mitigation Plan. Annual monitoring reports will be submitted to the Wildlife Agencies by March 1 of every year until sign-off on successful restoration.
- 3) Annual reports for the brown-headed cowbird activities detailed in Avoidance, Minimization, and Mitigation Measure number 3, above, will be submitted to the Wildlife Agencies by March 1 during each year of trapping.
- 4) A Carlsbad Fish and Wildlife Office (CFWO)-approved biologist with documented experience of at least 20 hours of conducting surveys for vireo and locating vireo nests (Biological Monitor)

will be on site: (1) during clearing and grubbing; and (2) weekly during all Project construction within 500 feet of vireo habitat to ensure overall compliance with all CMs included in the BO. The Applicant will submit the biologist's name, address, telephone number, qualifications, and work schedule on the Project to the CFWO at least 14 working days prior to initiating Project impacts. The CFWO will review the proposed biologist's qualifications and, if minimum qualifications are met, provide approval within 14 days. The contract of the Biological Monitor will allow direct communication with the Wildlife Agencies at any time regarding the proposed Project. The Biological Monitor will be provided with a copy of this consultation. The Biological Monitor will be available during pre-construction and construction phases to review grading plans, address protection of sensitive biological resources, monitor ongoing work, and maintain communications with the construction contractor to ensure that issues relating to biological resources are appropriately and lawfully managed. The Biological Monitor will perform the following duties:

- a. Perform a minimum of three focused surveys, on separate days, to determine the presence of vireo nesting activities or behavior within 500 feet of any Project construction proposed during the breeding season. The surveys will begin a maximum of 7 days prior to Project construction and one survey will be conducted the day immediately prior to the initiation of work. Additional surveys will be done once a week during Project construction in the breeding season. These additional surveys may be suspended as approved by the Wildlife Agencies. The Applicant will notify the Wildlife Agencies at least 7 days prior to the initiation of surveys and within 24 hours of locating any vireos;
- b. If active vireo nesting is detected within 500 feet of Project construction, the Biological Monitor will contact the Wildlife Agencies to discuss: (1) the best approach to avoid/minimize impacts to nesting birds (e.g., sound walls, noise monitoring); and (2) a nest monitoring program acceptable to the Wildlife Agencies. Nest monitoring will occur according to a schedule approved by the Wildlife Agencies. After initial identification of the nest, the Biological Monitor will not approach within 25 feet, and will monitor the nest with binoculars from a distance to minimize disturbance. If the Biological Monitor determines that bird activity is

- being disrupted, the Corps/Applicant will coordinate with the Wildlife Agencies to review any additional feasible avoidance/minimization measures. Nest monitoring will continue until fledglings have dispersed or the nest has been determined to have failed, based on coordination with the Wildlife Agencies;
- c. Oversee installation and inspect erosion control measures (CM) and ESA fencing (CM 6b in the BO) a minimum of once per week to ensure that any breaks in erosion control measures and fencing are repaired immediately;
 - d. Periodically monitor the work area to ensure that work activities do not generate excessive amounts of dust;
 - e. Train all contractors and construction personnel on the biological resources associated with the Project and ensure that training requirements are implemented by construction personnel. At a minimum, training will include: (1) the purpose for resource protection; (2) a description of the vireo and its habitat; (3) the CMs in the BO that should be implemented during Project construction including strictly limiting activities, vehicles, equipment, and construction materials to the fenced Project footprint to avoid sensitive resource areas (i.e., avoided areas delineated on maps or on the Project site by fencing); (4) environmentally responsible construction practices; (5) the protocol to resolve conflicts that may arise at any time during the construction process; and (6) the general provisions of the Act, the need to adhere to the provisions of the Act, and the penalties associated with non-compliance with the Act;
 - f. Request that the construction contractor halt work, if necessary, and confer with the Wildlife Agencies to ensure the proper implementation of species and habitat protection measures. The Biological Monitor will report any noncompliance issue to the Wildlife Agencies and Corps within 24 hours of its occurrence;
 - g. Monitor the Project site immediately prior to and during construction to identify the presence of invasive weeds and recommend measures to avoid their inadvertent spread in association with the Project. Such measures may include inspection and cleaning of construction equipment and use of eradication strategies. All heavy equipment will be washed and cleaned of debris prior to entering sensitive habitat areas to minimize the spread of invasive weeds;
 - h. Submit weekly email reports (including photographs of impact areas) to the Wildlife Agencies during clearing of, and construction within, 500 feet of vireo habitat. The weekly reports will document that authorized impacts were not exceeded and general compliance with all conditions. The reports will also outline the location of construction activities, the type of construction that occurred, and equipment used. These reports will specify numbers, locations, and sex of vireos (if observed), their observed behavior (especially in relation to construction activities), remedial measures employed to avoid and minimize impacts to the species, and the suspected outcome of all nests within 500 feet of construction. Raw field notes should be available upon request by the Wildlife Agencies; and
 - i. Submit a final report to the Wildlife Agencies within 60 days of Project impacts that includes: photographs of habitat areas that were to be avoided and other relevant summary information documenting that authorized impacts were not exceeded and that general compliance with all CMs in the BO was achieved. As-built construction drawings with an overlay of habitat that was impacted and avoided will be provided as well once they have been completed.

Security

The Applicant will post a performance bond or letter of credit with CDFW for the cost of restoration and enhancement described in BO condition CM 1, including 5 years of maintenance and monitoring. This security is to guarantee the successful implementation of the required wetland restoration and enhancement activities. The Applicant will submit a draft security instrument with an itemized cost list to the Service and CDFW (collectively the Wildlife Agencies) for review and approval at least 60 days prior to initiating Project impacts. The Applicant will submit the final security instrument for the amount approved by the Wildlife Agencies within 30 days of receiving approval of the draft instrument. The security instrument will be released once the Wildlife Agencies have provided written sign-off that the restoration/enhancement success criteria have been met and the open space easement for the 4.9-acre buffer area has been recorded per BO condition CM 5.

A non-wasting endowment will be required as part of the conservation easement for the Conservation

Area to fund the long-term management of 2.3 acres of Santiago Creek. The endowment amount will be based on a Property Analysis Record or similar cost estimation. This cost estimation will be included in the long-term management plan reviewed and approved by the Wildlife Agencies as required by BO condition CM 3(b).

Conclusion

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of least Bell’s vireo, provided the Applicant implements the Project as described in the ITS and its associated BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the ITS and BO. If there are any substantive changes to the Project, including changes to the mitigation measures and other conditions described in the ITS and BO, or if the Service amends or replaces the ITS and BO, 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, 2081, subdivisions (b) and (c)).

CDFW’s determination that the Service BO and ITS are consistent with CESA is limited to least Bell’s vireo.

By:

/s/

Date: 1/12/2023

Joshua Grover, Deputy Director
Ecosystem Conservation Division

California Department of Fish and Wildlife

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY

AIR TOXICS HOT SPOTS PROGRAM

NOTICE OF PUBLIC COMMENT
PERIOD AND WORKSHOPS ON DRAFT
REFERENCE EXPOSURE LEVELS FOR
TRIMETHYLBENZENES (TMB)

The Office of Environmental Health Hazard Assessment (OEHHA) is releasing a document for public review, summarizing the toxicity and derivation of proposed Reference Exposure Levels (RELs) for trimethylbenzenes (TMB). RELs are airborne concentrations of a chemical that are not anticipated to result in adverse non-cancer health effects for specified ex-

posure durations in the general population, including sensitive subpopulations.

OEHHA is required to develop guidelines for conducting health risk assessments under the Air Toxics Hot Spots Program (Health and Safety Code Section 44360(b)(2)). The draft TMB RELs were developed using the most recent “Air Toxics Hot Spots Program Technical Support Document for Derivation of Non-cancer Reference Exposure Levels,” finalized by OEHHA in 2008.

The draft TMB RELs document is available starting today on the OEHHA website at <http://www.oehha.ca.gov>. **The posting of the document will commence a 45-day public review period that will end on March 13, 2023.** Public workshops will be held in Northern and Southern California at the following locations and times.

Northern California

March 02, 2023
9:00 a.m. – 12:00 p.m.
George Alexeeff Environmental
Health Library
1515 Clay St., 16th Floor
Oakland, CA 94612

**Southern California
(To be determined)**

After the close of the public comment period, the document will be revised as appropriate by OEHHA, and peer reviewed by the state’s Scientific Review Panel on Toxic Air Contaminants.

The public is encouraged to submit written information via OEHHA’s website, rather than in paper form. Comments may be submitted electronically through the following link: <https://oehha.ca.gov/comments>.

Hard-copy comments may be mailed, faxed, or hand-delivered to the address below:

Dr. Kannan Krishnan
Chief, Air and Site Assessment and Climate
Indicators Branch
Office of Environmental Health Hazard
Assessment
1001 I Street, 12th Floor
Sacramento, CA, 95814
Email: Kannan.Krishnan@oehha.ca.gov
Telephone: (916) 323-2627

Information about dates and agenda for meetings of the Scientific Review Panel can be obtained from the California Air Resources Board website at <http://www.arb.ca.gov/srp/srp.htm>.

OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT

CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY

SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65)

NOTICE TO INTERESTED PARTIES

CHEMICALS LISTED

EFFECTIVE JANUARY 27, 2023

AS KNOWN TO THE STATE OF

CALIFORNIA TO CAUSE CANCER:

1-BROMO-3-CHLOROPROPANE, 1-BUTYL
GLYCIDYL ETHER, AND GLYCIDYL
METHACRYLATE

Effective January 27, 2023, the Office of Environmental Health Hazard Assessment (OEHHA) is adding 1-bromo-3-chloropropane (CAS RN 109-70-6), 1-butyl glycidyl ether (CAS RN 2426-08-6), and glycidyl methacrylate (CAS RN 106-91-2) to the list of chemicals known to the State of California to cause cancer for purposes of Proposition 65¹. The listing of these chemicals is pursuant to the “Labor Code” listing mechanism².

The basis for the listings was described in a *public notice* published in the December 2, 2022, issue of the California Regulatory Notice Register (Register 2022, No. 48-Z). The title of the notice was “Notice of Intent to List Chemicals by the Labor Code Mechanism: 1-Bromo-3-Chloropropane; 1-Butyl Glycidyl Ether; and Glycidyl Methacrylate.” The publication of the notice initiated a public comment period (December 2, 2022 – January 9, 2023). No comments were received during the comment period.

A complete, updated Proposition 65 chemical list is available on the OEHHA website.

¹ The Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5, et seq.

² Health and Safety Code section 25249.8(a) and Cal. Code of Regs., title 27, section 25904.

OCCUPATIONAL SAFETY AND
HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING AND
BUSINESS MEETING

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting and Business Meeting:

PUBLIC MEETING:

On **March 16, 2023**, at 10:00 a.m. in the Auditorium of the Ronald Reagan State Building
300 South Spring Street, Los Angeles, California

as well as via the following:

- Video-conference at www.webex.com (meeting ID 268 984 996)
- Teleconference at (844) 992-4726 (Access code 268 984 996)
- Live video stream and audio stream (English and Spanish) at <https://videobookcase.com/california/oshsb/>

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

BUSINESS MEETING:

On **March 16, 2023**, at 10:00 a.m. in the Auditorium of the Ronald Reagan State Building
300 South Spring Street, Los Angeles, California

as well as via the following:

- Video-conference at www.webex.com (meeting ID 268 984 996)
- Teleconference at (844) 992-4726 (Access code 268 984 996)
- Live video stream and audio stream (English and Spanish) at <https://videobookcase.com/california/oshsb/>

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE: Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of

the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

**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.

Board of Equalization
File # 2023-0112-01
Exclusion from Change in Ownership –
Intergenerational Transfers

This is the first readoption of emergency action no. 2022-0707-01E, which modified the property tax re-assessment exclusions for certain transfers between parents and their children or grandparents and their grandchildren.

Title 18
Amend: 462.520
Filed 01/18/2023
Effective 01/18/2023
Agency Contact: Honey Her (916) 274-3523

Board of Equalization
File # 2023-0112-02
Change in Ownership – Base Year Value Transfers

This is the first readoption of emergency action no. 2022-0707-02E which amended regulations for base year value transfers in response to Senate Bill 539 (Stats. 2021, ch. 427) which codified the provisions of Proposition 19 (2020) that authorized any person who is over 55 years of age, any severely and permanently disabled person, or a victim of wildfire or natural disaster who resides in property that is eligible for the homeowner's exemption or the disabled veteran's exemption to transfer the taxable value of that property to a replacement dwelling that is purchased or newly constructed as a principal residence.

Title 18
Amend: 462.540
Filed 01/18/2023
Effective 01/18/2023
Agency Contact: Honey Her (916) 274-3523

**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 oal.ca.gov.

