



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 9. DEPARTMENT OF REHABILITATION

BASIC COMPETITIVE GRANT AWARD PROCESS

The Department of Rehabilitation (hereinafter “Department”) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department will hold a virtual public hearing on January 25, 2024, at 10:00 a.m. Attendees may participate via Zoom online meeting platform or telephone conferencing as follows.

Join Zoom Meeting

Meeting URL: <https://dor-ca-gov.zoom.us/j/84829379462?pwd=Zkx3NIJTVWpoeEU1Si9HcW00amVTUT09>

Meeting ID: 848 2937 9462

Passcode: 10Te^g%p

Join by Telephone

For higher quality, dial a number based on your current location.

- Dial: +1 408 638 0968 US (San Jose)
- +1 669 900 6833 US (San Jose)
- +1 253 215 8782 US (Tacoma)
- +1 346 248 7799 US (Houston)
- +1 312 626 6799 US (Chicago)
- +1 646 876 9923 US (New York)
- +1 301 715 8592 US (Washington DC)
- Meeting ID: 848 2937 9462
- Passcode: 72606219

Closed captioning will be available within the Zoom meeting application. The Department is providing American Sign Language interpreters for this event. The interpreters will be available within the Zoom meeting application.

As a reasonable accommodation, limited in person seating may be available at the hearing in the Department’s conference room, 721 Capitol Mall, Sacramento, California 95814. Please email [Michele Welz](mailto:Michele.Welz@dor.ca.gov) or dial (916) 558–5825 by January 18, 2024, if an accommodation is necessary.

Participants will be given instructions on how to provide oral comment once they have accessed the hearing. The hearing will continue on the date noted above until all testimony is submitted, or until 11:00 a.m., whichever is later. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony via email to the [DOR Legal mailbox](mailto:Legal@dor.ca.gov).

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to:

Department of Rehabilitation
Office of Legal Affairs and Regulations
Attention: Michele Welz, Regulations Analyst
721 Capitol Mall, Sacramento, California 95814
Facsimile: (916) 558–5806
Email: Legal@dor.ca.gov

The written comment period closes at 5:00 p.m. on January 25, 2024. The Department will consider only comments received at the Department by that time.

AUTHORITY AND REFERENCE

Welfare and Institutions Code sections 19006 and 19016 authorize the Department to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific 34 Code of Federal Regulations part 76.770.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The Department, as the designated state unit in California for vocational rehabilitation and independent living, awards grant funds where permitted by statute through a competitive solicitation process based on an evaluation of applications. (Welfare and Institutions Code, § 4357.1; 29 U.S.C. §§ 713, 721 et seq., and 3003). Federal regulations require the Department to establish procedures for reviewing and approving applications for grants funded with federal dollars. (34 C.F.R. § 76.770.) While there are existing regulations applicable to the Department’s competitive grant

awards in the California Code of Regulations, title 9, section 7334, the current regulations do not provide a description of the process. The proposed regulations will describe the Department’s competitive grant award process for the administrative review of applications, evaluation of applications, notice of intent to award, and appeals.

Anticipated Benefits of the Proposed Regulation

The broad objective of the proposed regulations is to establish a competitive grant award process that will increase consistency and promote transparency in the Department’s award of grants through a competitive process.

Evaluation of Inconsistencies and Incompatibility with Existing State Regulations

The Department has determined that the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulation that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the Department’s competitive grant award process.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: The proposed regulations clarify and standardize the Department’s competitive grant award process across its programs. The fiscal impact is difficult to quantify, given the variety of staff and the various needs of stakeholders involved in the Department’s different grant programs. There is potential for a minimal increase in staff time spent drafting, sending, and posting communications to stakeholders and grant applicants at specified points in the grant process, including the appeals processes and ensuring that application review and scoring procedures were followed before announcement of the grant award.

The Department expects that any increased staff time, as described above, will be offset by the reviews provided in proposed sections 7333.4, 7333.9, and 7333.15. By conducting these reviews, the Department will determine whether procedures were followed and resolve procedural errors prior to notice of award, thereby reducing time and resources otherwise spent on appeals and re-evaluation of grant applications. The proposed regulations will not affect any other state agency or program.

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

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

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

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

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

Significant effect on housing costs: None.

Results of the Economic Impact Analysis or Assessment

The Department concludes that it is: (1) unlikely that the proposed regulations will eliminate any jobs, (2) unlikely that the proposed regulations will create jobs, (3) unlikely that the proposed regulations will create any new business, (4) unlikely that the proposed regulations will eliminate any existing businesses, and (5) unlikely that the proposed regulations will result in the expansion of businesses currently doing business with the state.

Benefits of the Proposed Action: The proposed regulations will better inform applicants and the public of the Department’s processes for review and evaluation of grant applications, notices of intent to award, and appeals, increase consistency and transparency, and support timely award of grants that benefit the health and welfare of California residents, specifically Californians with disabilities. The state’s environment and workers safety will remain unchanged by this proposed action.

Small Business Determination: The Department has determined that these proposed regulations will not affect small businesses, as the entities that may be interested in the Department’s competitive grants do not meet the definition of small business provided in Government Code section 11342.610. Grant opportunities are open to entities, typically nonprofits, with demonstrated experience with the provision of vocational rehabilitation, independent living, or similar services to persons with disabilities. For its assistive technology lending program grant, the Department has permitted for-profit entities with assistive technology device expertise to apply.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private

persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Department of Rehabilitation
Office of Legal Affairs and Regulations
Attention: Michele Welz, Regulations Analyst
721 Capitol Mall, Sacramento, California 95814
Telephone: (916) 558-5825
Facsimile: (916) 558-5806
Email: Legal@dor.ca.gov

Please email [Lisa Niegel](mailto:Lisa.Niegel@dor.ca.gov), Chief Counsel, who is the backup contact person for these inquiries or dial (916) 558-5825.

Please email [Michele Welz](mailto:Michele.Welz@dor.ca.gov) or direct requests to the address above for copies of the Proposed Text of the Regulations, Proposed Text of the Regulations with Word Cues, Initial Statement of Reasons, Modified Proposed Text of Regulations, or other information upon which the rulemaking is based upon. These documents are also available on the Department's [website](http://www.dor.ca.gov). The Department will also provide copies of the regulation proposal in large print, braille, compact disk, or transmit copies of the regulation proposal electronically, as a reasonable accommodation upon request.

The Department shall provide, upon request, a narrative description of the proposed changes included in the proposed action, in the manner provided by Government Code section 11346.6, to accommodate a person with a visual or other disability for which effective communication is required under state or federal law. Providing the description of proposed changes may require extending the period of public comment on the proposed action for the requesting party.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address by appointment and on its website. As of the date, this notice is published in the Notice Register, the rulemaking file consists of this Notice of Proposed Rulemaking, Proposed Text of the Regulations,

and Initial Statement of Reasons. The Proposed Text of Regulations with Word Cues, indicating strikeout and underline, is also available in the rulemaking file and on the Department's website. To request copies or make an appointment to inspect the rulemaking file at the Department's office, please email Michele Welz or direct requests to the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the public hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 calendar days before the Department adopts the regulations as revised. Please email Michele Welz or direct requests to the address above for copies of any modified regulations. The Department will accept written comments on the modified regulations for 15 calendar days after the date on which they were made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by emailing *Michele Welz* or directing requests to the address above. The Final Statement of Reasons will also be available on the Department's website for 30 calendar days after approval the effective date of approval of the regulations by the Office of Administrative Law, unless the rulemaking package is withdraw pursuant to Government Code section 11349.3(c) by the Department.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, Proposed Text of the Regulations with underline and strikeout, Proposed Text of Regulations with Word Cues indicating strikeout and underline, and Initial Statement of Reasons are available on the Department's *website*.

TITLE 13. DEPARTMENT OF MOTOR VEHICLES

DRIVER'S LICENSES AND IDENTIFICATION CARDS

The Department of Motor Vehicles (department) proposes to amend Section 20.05 in Article 2.0, Chapter 1, Division 1, Title 13 of the California Code of Regulations, related to gender categories for driver's licenses and identification cards.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than fifteen (15) days prior to the close of the written comment period.

DEADLINE FOR WRITTEN COMMENTS

Any interested party or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than **January 22, 2024**, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

AUTHORITY AND REFERENCE

The department proposes to amend these regulations under the authority granted by Vehicle Code section 1651, in order to implement, interpret, or make specific Vehicle Code sections 12800, 12801.5, 12801.9, and 13000.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle Code section 12800 identifies a list of information each application for a driver's license must include, and includes, among other things, the applicant's gender category.

In 2018, the department promulgated rules to ensure compliance with the provisions of Senate Bill (SB) 179 (Atkins, Chapter 853, Statutes of 2017). SB 179 requires a driver's license or identification card applicant to choose their gender category of female, male, or nonbinary.

Current rules require a cardholder to visit a departmental field office to submit a Gender Category Request, form DL 329S, if requesting a gender category which differs from the gender category on the cardholder's documents used to establish proof of identity or on their driver's license or identification card. In previous rulemaking, the department determined an in-person field office visit ensures, through photograph verification, the applicant is the actual cardholder requesting the change to their driver's license or identification card. At the time the current rules were adopted, the department determined the in-person field office visit reduced the opportunity for fraud.

The department is proposing to amend Section 20.05 to allow holders of non-federal compliant driver's licenses or identification cards to submit their gender category change request online through the department's internet portal. Section 20.05 is also being amended to make clear that applicants who have a REAL ID-compliant driver's license or identification card are still required under federal rules to facilitate their gender change transaction in person. These applicants can complete their gender change information through the department's portal but they will be required to appear in person to complete the transaction.

The department has made significant upgrades to its website to reduce or eliminate the need for the public to visit a field office for certain transactions. Through the department's modernization efforts, an applicant's identity is verified through the department's internet portal. Online submission also allows for the applicant to receive the non-compliant driver's license or identification card sooner, as the form is submitted directly to the departmental unit responsible for the processing.

BENEFITS OF THE PROPOSED REGULATION

The proposed regulation benefits applicants holding a federal non-compliant driver's license or identification card by allowing them to submit a gender category request form online. This action will eliminate the requirement that those applicants visit a field office.

CONSISTENCY AND COMPATIBILITY WITH STATE REGULATIONS

The department conducted a review of other California regulations and has determined the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

COMPARABLE FEDERAL STATUTES OR
STATE REGULATIONS

The department has determined that there are no comparable federal statutes or state regulations.

DOCUMENTS INCORPORATED
BY REFERENCE

The proposed action will not incorporate by reference any documents.

ECONOMIC AND FISCAL IMPACT
DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- Cost or Savings to Any State Agency: None.
- Other Non–Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Effects on Housing Costs: None.
- Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500 et seq.: None.
- Cost Impact on Representative Private Persons or Businesses: This action does not impose any costs on representative private persons or businesses. This proposed action allows the gender category request to be submitted online as an alternative to being submitted in person at a field office.
- Small Business Impact: This proposed action does not impact small businesses; the proposed action only impacts driver’s license and identification card holders.
- Local Agency/School District Mandate: The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: This regulation will not have an adverse economic impact on businesses. This proposed action offers an alternative method by which an individual can submit a gender category request form to the department for certain driver’s license or identification card transactions.

RESULTS OF THE ECONOMIC
IMPACT STATEMENT

The department has made the following determinations when assessing the economic impact associated with this proposed regulation:

The department has determined that this action will not impact: 1) the creation or elimination of jobs within the State of California, 2) the creation or elimination of existing businesses within the State of California, 3) the expansion of businesses currently doing business within the State of California, or 4) worker safety or the state’s environment.

This action is intended to benefit the public by providing an alternative service method for applicants applying to the department to change the gender category designation on their non–REAL ID–compliant driver’s license or identification card.

PUBLIC DISCUSSIONS OF
PROPOSED REGULATIONS

A pre–notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

ALTERNATIVES CONSIDERED

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

CONTACT PERSON

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

Randi Calkins, Regulations Specialist
Department of Motor Vehicles
Legal Affairs Division
PO Box 932382, MS C–244
Sacramento, CA 94232–3820

Any inquiries or comments concerning the proposed rulemaking action requiring more immediate response may use:

Telephone: (916) 282-7294

Facsimile: (916) 657-6243

Email: LADRegulations@dmv.ca.gov

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

Peggy Gibson, Attorney IV

Department of Motor Vehicles

Telephone: (916) 657-6469

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an Initial Statement of Reasons for the proposed regulatory action and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the Express Terms of the proposed regulatory action using underline or italics to indicate additions to, and strike-out to indicate deletions from the California Code of Regulations.

The contact person identified in this notice shall also make available to the public, upon request, the Final Statement of Reasons and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (the Notice of Proposed Regulatory Action, the Initial Statement of Reasons, and Express Terms) may be accessed at <https://www.dmv.ca.gov/portal/about-the-california-department-of-motor-vehicles/california-dmv-rulemaking-actions/>.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the fully modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Requests for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE

CALIFORNIA ENDANGERED SPECIES ACT CONSISTENCY DETERMINATION NUMBER 2080-2023-017-05

Project: Kelt Reservoirs Project

Location: Community of Orcutt, Santa Barbara County, California

Applicant: Golden State Water Company

Background

The Golden State Water Company (GSWC) proposes to construct, operate, and maintain the Kelt Reservoirs Project (Project), which will consist of a 1.3-mile waterline segment within an existing road, two water tank reservoirs, and associated infrastructure. The Project will be located on and adjacent to Orcutt Hill Road south of the community of Orcutt in Santa Barbara County. The waterline segment will be constructed within Orcutt Hill Road. The two water reservoirs will be constructed in undeveloped lands that support annual grasslands and coyote brush scrub. An existing staging area will be used for materials and equipment storage during Project construction. The staging area is currently used and maintained by the local energy company (Pacific Coast Energy Company) and is fenced to prohibit accidental egress into adjacent habitats. The staging area includes bare ground with mixed native and imported base substrates. The Project activities will be conducted in two phases.

Phase 1 will include installation of the waterline and development of the 2.17-acre reservoir site. One of the two water tank reservoirs will be installed during Phase 1 of the Project. Phase 2 will include the installation of the second water tank reservoir immediately adjacent to the first water tank reservoir. GSWC will construct the second reservoir when water demand necessitates the additional storage and funding is available. GSWC anticipates the second reservoir to be necessary in the next 10-12 years. The Project duration, including long-term planning of water supply needs and operations and maintenance, will be 20 years.

The Project site includes the waterline segment (the asphalt surface of Orcutt Hill Road and 2-foot buffer on both sides of Orcutt Hill Road), an existing lay-down yard that is adjacent to Orcutt Hill Road, and the reservoir site. The reservoir site includes approximately 2 acres on the south side of Orcutt Hill Road. In its entirety, the Project site includes 7.15 acres.

The Project, including installation of the waterline and development of the reservoir site, includes the following construction activities:

- Materials and equipment staging.
- Trenching, pipeline and hydrant installation, and backfill for the waterline.
- Clearing, grubbing, excavation, backfill, grading, and cover to meet required engineering standards at the reservoir site, inclusive of the access road.
- Installation of water tanks and associated underground infrastructure at the reservoir site.
- Installation of the reservoir site perimeter fence and drainage basins.

Operations and maintenance activities are anticipated to include:

- Periodic inspection and replacement of valves, pipelines, pumps, and other related equipment.
- Weed control and landscape screening.
- Catch basin maintenance including sediment removal, erosion repairs, and weed control.
- Driving and parking on the improved surfaces within the reservoir site.
- Fence repairs.

The Project will require heavy equipment (e.g., water truck, excavator, backhoe, loader, flatbed trailer), and all necessary equipment needed to complete construction.

The Project activities described above are expected to incidentally take¹ California tiger salamander (*Ambystoma californiense*) (CTS) within the West Los Alamos CTS metapopulation of Santa Barbara County where those activities take place within undeveloped areas. CTS could be incidentally taken as a result of crushing or entombment by equipment or personnel (from collapsing of burrows), or entrapment in trenches during trench excavation. CTS is designated as an endangered species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and a threatened species pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). (See Cal. Code Regs., title 14, § 670.5, subdivision. (b)(3)(G).)

The Project site lies within the historic range and federal critical habitat of CTS. The Project Site does not support any CTS breeding ponds; however, a potential CTS breeding pond, herein referred to as “ORCU–2,” is situated 150 feet east of the waterline segment and approximately 1,700 feet north of the

reservoirs site. Protocol CTS surveys have not been conducted at ORCU–2. Because of the proximity of suitable breeding pond to the Project Site, and potential upland CTS habitat within the Project Site, and the dispersal patterns of CTS, the US Fish and Wildlife Service (Service) determined that CTS is reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of CTS.

According to the Service, the Project will result in the temporary loss of 1.32 acres of CTS habitat, and the permanent loss of 0.68 acres of CTS habitat.

Because the Project is expected to result in take of a species designated as endangered under the ESA, GSWC prepared a habitat conservation plan (HCP) in support of an application for an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the ESA. The HCP describes the Project and specifies measures GSWC will take to minimize and mitigate impacts to species resulting from the taking that will likely result from the Project. On July 25, 2023, the Service issued an ITP (Service file Number ESPER3596122) to GSWC. The ITP requires GSWC to comply with terms of the HCP and incorporates additional conditions.

On October 24, 2023, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from GSWC requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITP and associated HCP are consistent with CESA for purposes of the Project and CTS. (Cal. Reg. Notice Register 2023, Number 45–Z, p. 1472.)

Determination

CDFW has determined that the ITP and its associated HCP are consistent with CESA as to the Project and CTS because the mitigation measures contained in the ITP and HCP meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of CTS will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the ITP and HCP 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 CTS. The mitigation measures in the ITP and HCP include, but are not limited to, the following:

Avoidance and Minimization Measures

1. At least 30 days prior to ground-disturbing activities, GSWC will submit the names and credentials of biologists and monitors to the Service and CDFW for approval to conduct the Avoidance and Minimization Measures (AMMs) out-

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 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”).

- lined below. No Project activities will begin until the GSWC has received approval from the Service and CDFW that the biologists and monitors are qualified to implement the AMMs.
2. The approved biologist will conduct a biological resources training program for all construction workers and their contractors to minimize potential impacts to CTS and their habitats. Training will occur prior to initial ground-disturbing activities and be repeated annually and as needed for new workers for the duration of the Project. The training program will include a description of: (1) important biological resources within the Project site, specifically CTS that have potential to occur within or adjacent to work areas; (2) the applicable AMMs; (3) the roles and responsibilities of personnel; and (4) communication protocols if CTS are detected.
 3. The approved biologist will periodically review and monitor ground disturbing activities and restoration efforts and will be responsible for ensuring that conditions of approval are being enforced and that success criteria are being met. Except for emergency situations, the approved biologist will have the authority to temporarily halt activities if permit requirements and conditions are not being met. Emergency situations that may take higher priority than the biologist's authority may include fire spreading beyond the site, situations where a human's safety is at risk, hazardous materials spill containment, a ruptured water line, or other situations that may result in an immediate threat to human safety or the environment. The monitoring biologist will notify the Service and CDFW if emergency situations result in permit non-compliance.
 4. Prior to ground-disturbing activities, GSWC will ensure that all grading limits and construction boundaries, including staging areas, parking, and stockpile areas, are delineated and clearly marked in the field. GSWC will confine all work to the demarcated Project limits.
 5. GSWC will review and modify all proposed linear routes (i.e., roads and pipelines), if necessary, in the field to minimize impacts to CTS with assistance by the on-site biologist or environmental monitor. The approved biologist will survey all portions of the Orcutt Hill Road shoulder that are adjacent to the pipeline alignment for small mammal burrows. Any small mammal burrows will be flagged by the biologist and excluded from disturbance. The biologist will immediately notify the on-site contractors to inform them that the burrow must be avoided.
 6. Personnel will limit their vehicle use to existing routes of travel. Travelling off designated roads will be prohibited.
 7. To minimize the potential for road mortality of CTS and their habitat, GSWC will minimize nighttime traffic during the ground-disturbing phase to the extent feasible; all hauling activities within habitat for covered wildlife will be restricted to daylight hours during the rainy season, defined as the hours after sunrise and before sunset.
 8. Except in areas with posted speed limits greater than 10 miles per hour, Project-related vehicle speeds will not exceed 10 miles per hour when driving within CTS habitat.
 9. Prior to moving vehicles or equipment, personnel will look under the vehicles or equipment for the presence of CTS. If a CTS or any other wildlife species is observed, the vehicle will not be moved until the animal has vacated the area on its own accord or has been relocated out of harm's way in accordance with Measure 11.
 10. The approved biologist will conduct pre-activity surveys of CTS habitat within Project disturbance boundaries immediately prior to the onset of any ground disturbance associated with the Project to determine if any CTS individuals are present. The approved biologist will monitor ground disturbing activities in the vicinity of habitats to be avoided. Upon completion of initial ground disturbance, the approved biologist or monitor will periodically (minimum twice per week) visit the Project site throughout the ground-disturbing period to ensure that impacts to the Project site are in compliance with the permit. After periods of rain, the approved biologist will conduct daily pre-activity surveys to ensure no CTS have migrated into the work area prior to ground-disturbing activities resuming. No construction work will be initiated until the approved biologist determines that the work area is clear of CTS. Should any CTS be observed within harm's way, the animal will be allowed to vacate the area on its own accord or be relocated in accordance with Measure 11.
 11. Any CTS or individuals of other wildlife species will be allowed to vacate the Project areas on its own accord under the observation of the approved biologist or monitor. If any CTS or individuals of other wildlife species do not relocate on their own, or if they are in harm's way, they will be relocated out of harm's way to nearby suitable habitat, similar to that in which it was found and outside the Project area. Only the approved biologist will relocate CTS. The biologist conducting re-

- location activities will follow the Declining Amphibian Task Force Fieldwork Code of Practice (https://www.fws.gov/southwest/es/NewMexico/documents/SP/Declining_Amphibian_Task_Force_Fieldwork_Code_of_Practice.pdf). The approved biologist will relocate any CTS found within the Project footprint to an active rodent burrow system located no more than 300 feet outside of the Project area unless otherwise approved by the Service and CDFW. Captured individuals will be relocated immediately; individuals will not be stored for lengthy periods or in heated areas. The approved biologist will monitor relocated CTS until they enter a burrow and are concealed underground or otherwise deemed safe in the relocation area by the biologist. Relocation areas will be identified by the approved biologist based on the best suitable habitat available. The approved biologist will document both the capture and relocation sites by photographs and Global Positioning System (GPS) locations. CTS will be photographed and measured (snout-vent) for identification purposes prior to relocation. All documentation will be provided to the Service and CDFW within 24 hours of relocation. The approved biologist or monitor shall report all observations of CTS and other special-status species to the California Natural Diversity Database (CNDDDB).
12. Small mammal burrows that have potential to be occupied by CTS and that occur in the disturbance area will be excavated using hand tools or through gentle excavation using construction equipment, under the direct supervision of the approved biologist, until it is certain that the burrows are unoccupied. “Gentle excavation” is an excavation technique involving slow and shallow single passes with a backhoe/excavator bucket perpendicular to the burrow alignment that allows for burrow inspection for individuals after each pass. Individual CTS that are encountered will be allowed to vacate the area on their own accord or be relocated out of harm’s way in accordance with Measure 11.
 13. GSWC will install exclusionary silt fencing (or other suitable fence material) at the discretion of the approved biologist to minimize the potential for CTS to enter the worksite. GSWC will maintain exclusionary fencing for the duration of the Project. If a CTS or other wildlife species is observed within an enclosed worksite, a portion of the fencing will be removed to allow the individual to vacate the area on its own. Alternatively, the animal may be relocated out of harm’s way in accordance with Measure 11.
 14. GSWC will ensure all construction and sediment control fencing is inspected each workday during construction activities to ensure they are functioning properly, and that CTS are not being exposed to hazards.
 15. GSWC will ensure steep-walled excavations (e.g., trenches) that may act as pitfall traps are inspected for wildlife at least once per day and immediately before backfilling. In lieu of daily inspections (weekends, etc.), exclusionary fencing, covers, ramps, or similar measures will be taken to prevent wildlife entrapment.
 16. GSWC will ensure open pipe segments are capped or sealed with tape (or equivalent material) nightly, or otherwise stored at least 3 feet aboveground. Should a pipe segment become occupied by a CTS or any other wildlife species, the animal will be allowed to vacate the pipe on its own or will be removed and relocated in accordance with Measure 11. If the animal is in danger of injury or mortality, the pipe may be moved once to get it out of harm’s way so the animal can then vacate on its own terms.
 17. GSWC shall conduct initial grading activities within the reservoir site in the dry season (June 1–October 31), to the extent practicable. If the area is amidst drought and rain is not forecast to occur for 1 week, outside of the dry season, the Permittee may request the Service and CDFW to authorize work to occur before June 1 or after October 31 and until seasonal rains are forecasted to occur. Initial grading activities in the reservoir site may not occur when greater than 0.5 inch of precipitation is forecast to occur within 48 hours of the scheduled grading.
 18. Work shall not occur during rain events, 48 hours prior to significant rain events (>0.5 inch), or during the 48 hours after these events, to the extent practicable. If work must occur 48 hours prior to significant rain events (>0.5 inch) or during the 48 hours after these events, the approved monitor shall conduct a pre-activity survey to ensure that the work area is clear of dispersing amphibians.
 19. The GSWC will ensure that all staging areas, equipment storage areas, stockpile sites, and refueling areas are located at least 100 feet from surface water bodies and wetland habitats to minimize the potential for releases into surface water or wetland habitat. In lieu of the 100-foot buffer, secondary containment measures may be employed to prevent contamination of soil and water.
 20. Prior to Project implementation, GSWC shall prepare an Erosion Control and Site Restoration Plan (Restoration Plan) for submittal and approval by the CDFW prior to initial site disturbances. The

Restoration Plan shall include the methods and materials required to restore the temporarily disturbed portions of the reservoir site. The Restoration Plan shall include finish grading the temporary disturbance areas to match the adjacent undisturbed contours; application of a hydroseed mix that includes soil binding mulch and locally consistent native annual and perennial grasses, forbs, and shrubs; and a 5–year maintenance, monitoring, and invasive species management plan. GSWC shall implement the Restoration Plan immediately following completion of the water tank installation. GSWC shall implement the monitoring and invasive species management actions for a minimum of 5 years.

Monitoring and Reporting Measures

21. Upon locating CTS individuals that may be dead or injured as a result of Project–related activities, GSWC shall notify the Service Ventura Field Office within 72 hours. In addition, upon locating a dead, injured, or entrapped CTS, GSWC will notify CDFW and submit a CNDDDB record within 72 hours.

Mitigation and Security

GSWC has completed the purchase of 2.20 CTS conservation credits from the La Purisima Conservation Bank as documented by an August 28, 2023 Bill of Sale provided to CDFW. Because the bank credit purchase is complete, security is not required for this 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 CTS, provided GSWC implements the Project as described in the ITP and its associated HCP, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the ITP and its associated HCP. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the ITP or its associated HCP, GSWC shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish & G. Code, §§ 2080.1, 2081, subdivisions (b) and (c)).

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

NOTICE OF PROPOSED SETTLEMENT

THIS NOTICE OF PROPOSED SETTLEMENT is published on December 8, 2023, for the property located at 2007 Laura Avenue, Huntington Park, El Segundo, Los Angeles County California (the “Site”).

In accordance with Health and Safety Code sections 25100 et. Seq. (the Hazardous Waste Control Act), 25300 et seq. (the Hazardous Substance Account Act), 58009 and 58010, the Department of Toxic Substances Control (“DTSC”) has authority to enter into agreements whereby DTSC covenants not to sue or assert claims for environmental remediation against prospective owners and certain long term lessees of environmentally–impacted properties if such agreements are sufficiently in the public interest.

Notice is hereby given that DTSC proposes to enter into an Agreement and Covenant Not to Sue, also known as a Prospective Purchaser Agreement (“PPA”), associated with the Site located at 2007 Laura Avenue, Huntington Park, California. The PPA would resolve certain potential claims of DTSC against the potential prospective owner of the Site upon its acquisition of the Site and resulting change in status to owner. The potential prospective owner is Vandelay Brothers Industries, LLC (Vandelay).

Vandelay intends to use the 0.58–acre Site in Los Angeles County [Assessor’s Parcel Numbers 6321–001–015] for commercial/industrial uses.

Corrective action to address releases of hazardous wastes and hazardous constituents at the Site have been conducted under the oversight of DTSC and United States Environmental Protection Agency, Region 9. Vandelay agrees to cooperate fully with DTSC in its oversight of the investigation and cleanup, and agrees to comply with the land use controls and to provide ongoing access to DTSC for the oversight of O&M activities at the Site.

The Prospective Purchaser Agreement is in the public interest because:

1. The Site will be investigated and cleaned up to make it safe for its intended commercial/industrial use.
2. The beneficial reuse of the Site will allow for the potential employment of an estimated 30 construction–related jobs.
3. The project will generate approximately \$700,000 in annual property taxes and other revenue.

DTSC will hold a 30–day comment period on the above referenced PPA. Written comments on this

proposed settlement must be submitted on or before 5:00 p.m., January 8, 2024. To ensure timely receipt by DTSC and Vandelay, you are requested to transmit your comments by overnight mail to:

Department of Toxic Substances Control

Attention: Jose Diaz
 9211 Oakdale Avenue
 Chatsworth, California 91311
Jose.Diaz@dtsc.ca.gov

And,

Mr. Jonathan Scott
 Vandelay Brothers Industries LLC
 500 Church Street, Suite 600
 Nashville, Tennessee 37219
 Email: Scottbrothers@global.com

If you have any questions regarding the Prospective Purchaser Agreement, or wish to obtain a copy, please call the DTSC contact identified above.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

“Editorial Note: The following Occupational Safety and Health Standards Board’s Notice of Public Meeting and Business Meeting was originally published in the October 27, 2023 California Regulatory Notice Register 2023, Number 43–Z. The Board has updated the Meeting ID and Access Code numbers for both the Public and Business Meeting below:”

NOTICE OF PUBLIC MEETING AND BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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 **December 14, 2023**, at 10:00 a.m.
 at the Robert H. Miller III Rotary Clubhouse
 7150 Baldwin Dam Road, Folsom, California

as well as via the following:

- Video-conference at www.webex.com (meeting ID 1469 63 6425)
- Teleconference at (844) 992–4726 (Access code 1469 63 6425)

- 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 **December 14, 2023**, at 10:00 a.m.

at the Robert H. Miller III Rotary Clubhouse
 7150 Baldwin Dam Road, Folsom, California

as well as via the following:

- Video-conference at www.webex.com (meeting ID 1469 63 6425)
- Teleconference at (844) 992–4726 (Access code 1469 63 6425)
- 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.

STATE FIRE MARSHAL

CHANGES TO WEBSITE LINK
LOCATION OF RULEMAKING
AND OTHER DOCUMENTS FOR
PREVIOUSLY PUBLISHED NOTICE

CONCERNING ABOVEGROUND
PETROLEUM STORAGE ACT PROGRAM

The Office of the State Fire Marshal (OSFM) Notice of Proposed Action (NOPA) for OSFM’s amendments concerning regulations relating to Aboveground Petroleum Storage Act (APSA) program element of the California Unified Program was originally published in the Notice Register 2023, Number 44–Z, November 3, 2023, page 1418.

<https://osfm.fire.ca.gov/what-we-do/code-development-and-analysis/title-19-development>

Due to a website upgrade, the website link location of the rulemaking and other OSFM hosted documents has changed to the above link. These links were previously published in the Notice of Proposed Action (NOPA), and the Initial Statement of Reasons, pages 4–5, “Documents Relied Upon.” Websites hosted by other agencies were not included in this upgrade.

The Written Comment Period and Public Hearing dates have remained the same and are not impacted.

Written Comment Period: November 3, 2023 — January 19, 2024

Public Hearing: January 19, 2024, 9:00 a.m. to 12:00 p.m.

Please use the updated links in this NOTICE OF GENERAL INTEREST to access the rulemaking information and “Documents Relied Upon” as hosted by the OSFM.

Rulemaking Information: Documents and Public Hearing

Documents:

The complete text of the Notice, the Initial Statement of Reasons, the Express Terms (TEXT), and any other materials concerning this rulemaking are available on the Office of the State Fire Marshal’s website for this rulemaking at:

<https://osfm.fire.ca.gov/what-we-do/code-development-and-analysis/title-19-development>

Public Hearing:

Meeting ID: 240 154 319 261 Passcode: y2dfQe
[https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2F%2Fmeetup-join%2F19%3Ameeting_ZDcyZDk0MzktMmE0Ny00YmE0LWJiYTItZjg0YmQyMzZmYmE5%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%2522447a4ca0-5405-](https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2F%2Fmeetup-join%2F19%3Ameeting_ZDcyZDk0MzktMmE0Ny00YmE0LWJiYTItZjg0YmQyMzZmYmE5%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%2522447a4ca0-5405-454d-ad68c98a520261f8%2522%252c%2522Oid%2522%253a%252255dd5151-2626-4f47-82ff-87b7f7bc788f%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=c6675992-8f5a-48bd-b712-ceebba1ddc9e&directDI=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true%20)

[454d-ad68c98a520261f8%2522%252c%2522Oid%2522%253a%252255dd5151-2626-4f47-82ff-87b7f7bc788f%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=c6675992-8f5a-48bd-b712-ceebba1ddc9e&directDI=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true%20](https://osfm.fire.ca.gov/what-we-do/code-development-and-analysis/title-19-development)

“Documents Relied Upon”: as hosted by the OSFM: Previously published in the ISOR page, Pages 4 through 5.

OSFM Informational Bulletins, IB 14–005 and IB 14005–A: Under the 2014 tab:

<https://osfm.fire.ca.gov/resources/information-bulletins>

1. IB: 14–005 7/25/14
Underground Fuel Storage Tanks Prohibited for Use as Aboveground Fuel Storage Tanks (PDF)
2. IB: 14–005–A 1/29/15
Addendum — Underground Fuel Storage Tanks Prohibited for Use as Aboveground Fuel Storage Tanks (PDF)

OSFM Advisory Committee Meeting materials: 2023 Meetings

<https://osfm.fire.ca.gov/committees/aboveground-petroleum-storage-act-apsa-advisory-committee>

3. Meeting: April 11, 2023
4. Meeting: June 20, 2023
5. Meeting: July 31, 2023
6. **Laird, John. “Legislative Intent — Assembly Bill Number 1130.” Letter to Dotson Wilson.** 11 Sept. 2007. Journal of the Assembly, Legislature of the State of California, 2007–2008 Regular Session. Vol. 3. Sacramento: Chief Clerk of the California State Assembly, 2007–2008. 3427–3428. (ADA Compliant PDF)

<https://34c031f8-c9fd-4018-8c5a-4159cdf6b0d-cdn-endpoint.azureedge.net/-/media/osfm-website/what-we-do/pipeline-safety-and-hazardous-materials/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/laird-letter-ab1130-2007-ada.pdf>

Please reach out to the Agency Contacts for any questions or assistance:

Jennifer Lorenzo, Senior Environmental Scientist
(Supervisor)
CAL FIRE/Office of the State Fire Marshal OSFM
“CUPA” Programs
715 ‘P’ Street, Suite 900 Sacramento, CA 95814
jennifer.lorenzo@fire.ca.gov
Phone: (916) 247–0159

PETITION DECISION

BOARD OF PAROLE HEARINGS

RESPONSE TO PETITION TO ADOPT, AMEND, OR REPEAL A REGULATION PURSUANT TO GOVERNMENT CODE SECTIONS 11340.6 AND 11340.7

BPH PETITION RESPONSE 2023–02

The Board of Parole Hearings (Board or BPH) received a petition to adopt, amend, or repeal a regulation under California Government Code sections 11340.6 and 11340.7 from petitioner Henry Mitchell on *October 26, 2023*. In accordance with subdivision (a) of section 11340.7, this document serves as the Board’s response to the petition.

The following information is provided with the response in compliance with subdivision (d) of Government Code section 11340.7:

1. NAME OF AGENCY:

Board of Parole Hearings

2. PARTY SUBMITTING THE PETITION:

Henry Mitchell (V16058)

3. PROVISIONS OF THE CALIFORNIA CODE OF REGULATIONS REQUESTED TO BE AFFECTED:

Petitioner requests the Board to adopt sections 2850 and 2851 to the California Code of Regulations, title 15, division 2, thereby reinstating certain provisions previously contained in repealed section 2817, concerning the Board’s executive clemency procedures to refer persons sentenced to life without the possibility of parole (“LWOP”) to the Governor for a commutation.

4. REFERENCE TO AUTHORITY TO TAKE THE ACTION:

Petitioner cited to title 15 of the California Code of Regulations and Penal Code sections 3041, 3052, and 5076.2. The Board has general rulemaking authority under Government Code section 12838.4 and Penal Code sections 3052 and 5076.2 to promulgate, amend, or repeal regulations in division 2 of title 15 of the California Code of Regulations.

5. REASONS SUPPORTING THE AGENCY’S DECISION:

Petitioner requests the Board to add section 2850 and 2851 to division 2 of title 15 of the California Code of Regulations, thereby reinstating provisions previously contained in section 2817, which was repealed in 1994.

Petitioner’s request is denied. Petitioner’s request would reinstate section 2817, which was repealed in 1994. Section 2817 required the Board to consider persons convicted of a single felony and convicted to LWOP for possible referral to the Governor for a commutation or other action. The procedures included factors that should be considered by psychological evaluators and the deputy commissioner when interviewing the incarcerated person.

Re-adopting regulations that existed before 1994 would reinstate antiquated policies in trying to predict future risk, and would not reflect current procedures and standards the Board of Parole Hearings applies. Since the repeal of section 2817, the science for assessing a person’s risk of violence has developed significantly. Today, Board commissioners are trained to use science-based risk analysis to assess a person’s risk of violence, and commissioners are provided resources to aide in this assessment. The primary resource is the Comprehensive Risk Assessment, which is prepared by a forensic clinical psychologist in the Board’s Forensic Assessment Division. The Board’s psychologists use evidence-based risk assessment tools to guide their structured professional judgment concerning the person’s risk for violence. The risk assessments further are based on both static and dynamic factors, evaluating an individual’s criminogenic risk factors, and determining whether the risk factors are currently relevant for that individual. Readopting section 2817 violates key pillars of the Board’s mission to “protect and preserve public safety, while ensuring due process to all persons who come under the Board’s jurisdiction” as the process would not be based on the most relevant science-based risk assessment methods. Therefore, the Board denies this request.

Petitioner requests the Board to explain why section 2817 was repealed.

Section 2817 was repealed on January 19, 1994. In support of the repeal, the Board explained in its rulemaking that the procedures outlined in section 2817, such as an investigation and hearing process, were not necessary to effectuate Penal Code section 4801. Specifically, Penal Code section 4801, subdivision (a), provides that the Board “may report to the Governor, from time to time, the names of any and all persons imprisoned in any state prison who, in its judgment, ought to have a commutation of sentence” The broad, permissive authority outlined in section 4801 did not require the Board to institute or maintain procedures mandating consideration for persons convicted of a single felony and sentenced to LWOP, nor did it require specific procedures. Accordingly, the Board repealed section 2817, which became a burdensome process during a time of fiscal shortfall.

Petitioner asserts that persons sentenced to LWOP are excluded from parole consideration by

the Board, but not persons sentenced to LWOP who qualify as youth offenders.

Petitioner cites to Penal Code section 3051, subdivision (b)(4) to support Petitioner’s claim. Section 3051, subdivision (b)(4) provides a parole consideration hearing to a person convicted of their controlling offense before reaching 18 years of age and sentenced to LWOP. The Supreme Court has held that it is a violation of the Eighth Amendment to impose a sentence of LWOP for a person under the age of 18 at the time of crime. (*Miller v. Alabama* (2012) 132 S.Ct. 2455). The U.S. Supreme Court retroactively applied this ruling to juvenile offenders serving LWOP, which allowed them to request resentencing. (*Montgomery v. Louisiana* (2016) 136 S.Ct. 718.) After the *Montgomery* decision, the California legislature passed Senate Bill 394 (2017–2018 Reg. Sess.), which amended Penal Code section 3051 to provide parole consideration hearings to juveniles serving LWOP. Contrary to Petitioner’s allegation, the Board does not unilaterally treat persons sentenced to LWOP differently than those who qualify as youth offenders; instead, the Board is following the law as enacted by the legislature and settled by case law¹.

Petitioner asserts that certain persons sentenced to LWOP are excluded from clemency consideration by the Board, but not female prisoners sentenced to LWOP who suffered from Battered Woman Syndrome (BWS).

Petitioner cites to section 2830 of the Board’s regulations to support Petitioner’s allegation. This section states, “[T]he Board shall investigate cases with information or evidence that the prisoner suffered Battered Woman Syndrome.... If the investigation substantiates that the criminal behavior was the result of that victimization, the Board shall then decide whether further action, which may include a recommendation to the Governor that the prisoner’s sentence be commuted pursuant to Penal Code section 4801....”

Subsequent to the adoption of section 2830, the legislature enacted Assembly Bill 394 (2005–2006 Reg. Sess.), which amended Penal Code section 4801 to replace the term “battered woman syndrome” with “intimate partner battering.” Penal Code section 4801 now states, “For purposes of this section, ‘intimate partner battering and its effects’ may include evidence of the nature and effects of physical, emotional, or mental abuse upon the beliefs, perceptions, or behavior of victims of domestic violence....” Section 4801 is not restricted to women; it applies to any victim of domes-

tic violence and reasonably falls within the application of section 2830 of the Board’s regulations.

The Board has consistently interpreted section 2830 to apply to any person who suffered from intimate partner battering and has conducted numerous investigations to determine if those cases warrant referral to the Governor. However, the Board also acknowledges the terminology change in the Penal Code is not reflected in the Board’s regulations, and this may confuse the incarcerated population. Therefore, the Board will update all references in the California Code of Regulations, title 15, division 2, from “battered woman syndrome” to “intimate partner battering.”

Petitioner asserts that persons with a single felony and sentenced to LWOP do not receive equivalent consideration of commutation applications by the Board as persons with multiple felonies and sentenced to LWOP because the Governor is only required to forward to the Board commutation applications of persons with multiple felonies.

There are two avenues by which a person can be referred and considered for a commutation by the Governor. The first is where the Board, on its own motion, reviews a case and refers it to the Governor for consideration of a commutation of sentence. (Pen. Code, § 4801, subdivision (a).) In doing so, the Board may refer “the names of any and all persons imprisoned in any state prison,” which includes both persons convicted of a single felony and persons convicted of multiple felonies. (Pen. Code § 4801, subdivision (a).) As explained above, however, the Board’s processes for referring persons convicted of a single felony were removed from the Board’s regulations, because the processes (e.g., conducting an investigation and holding a hearing) were not necessary to implement the Board’s statutory authority in Penal Code section 4801 to refer cases to the Governor. The lack of regulations on the matter, however, does not prohibit the Board from reviewing cases of both persons convicted of a single felony and persons convicted of multiple felonies, and referring them to the Governor.

The second avenue for consideration of a commutation is where a person directly applies to the Governor and requests a commutation of sentence. In this scenario, the Governor *may* refer the application to the Board for an investigation if the person is convicted of a single felony; no recommendation by the Board is required. For those convicted of multiple felonies, the Governor *must* refer the application to the Board for an investigation and recommendation by a majority of the Board’s commissioners. (Pen. Code, §§ 4802, 4813; Cal. Code Regs., title 15, § 2818.) Because the Board is statutorily required to conduct an investigation and provide a recommendation for commutation applications of persons convicted of multiple felonies, the Board has regulations on relevant procedures. Again,

¹ The California Supreme Court is reviewing whether allowing parole consideration to those sentenced to LWOP for a crime committed when they were under 18, but not to those who were under 26 at the time of the commitment offense, is an equal protection violation. (*People v. Hardin*, review granted Jan. 11, 2023, S277487, argument scheduled Dec. 5, 2023.)

the lack of regulations specifying procedures for persons convicted of a single felony does not preclude the Board from investigating those cases. The Governor has referred numerous commutation applications to the Board for both persons convicted of a single felony and persons convicted of multiple felonies. Therefore, Petitioner’s claim that only commutation applications for persons with multiple felonies are forwarded to the Board is inaccurate.

Petitioner also misunderstands the legislative intent behind California’s clemency process. A person with multiple felony convictions has demonstrated a pattern of criminal behavior that endangers public safety. Thus, the legislature requires a multi-layered review to ensure a commutation is in the best interests of public safety. Accordingly, the Governor *must* forward the application to the Board, and a majority of the Board’s commissioners is required to consider the application en banc and provide a recommendation to the Governor regarding the commutation. (Cal. Code Regs., title 15, § 2818.) The Governor may only grant a commutation application upon the review and recommendation of the California Supreme Court. (Cal. Const., article V, § 8; Pen. Code, § 4852.)

Penal Code 4812 also allows the Governor to request an investigation and recommendation by the Board for persons convicted of a single felony and sentenced to LWOP. The Governor has invoked this authority, and the Board has investigated and provided recommendations on many cases involving persons convicted of a single felony. However, these cases do not need to undergo the additional layer of review by a majority of the Board’s commissioners and the Supreme Court. In sum, many persons convicted of a single felony and sentenced to LWOP receive similar opportunities for consideration of their application as those sentenced to LWOP, and contrary to Petitioner’s allegation, experience a less-burdensome path to receive a commutation.

6. BOARD CONTACT PERSON:

Chancellor Veal
 Staff Attorney
 Board of Parole Hearings
 P. O. Box 4036
 Sacramento, CA 95812-4036
 Office: (916) 445-4072
BPH.Regulations@cdcr.ca.gov

7. NOTICE TO INTERESTED PERSONS:

Under subdivision (d) of Government Code section 11340.7, the Board will provide a copy of this decision to the Office of Administrative Law for publication in the California Regulatory Notice Register. Any interested persons have the right to obtain a copy of the petition that is the subject of this decision by sending a request to the Board. In submitting such a request,

please reference **BPH PETITION RESPONSE 2023-02** in the request.

DATE OF DECISION: November 22, 2023

**AVAILABILITY OF
 PRECEDENTIAL
 DECISIONS INDEX**

**DEPARTMENT OF RESOURCES
 RECYCLING AND RECOVERY**

**NOTICE OF AVAILABILITY OF
 PRECEDENTIAL DECISIONS AND
 DECISION INDEX**

NOTICE IS HEREBY GIVEN that the Department of Resources, Recycling and Recovery, pursuant to section 11425.60 of the Government Code, maintains and index of precedential decisions. The index and text of precedential decisions is available to the public on the Department’s website at [Precedent Decisions – CalRecycle Home Page](#)

For additional information, contact:

Kristine Beckley,
 Assistant Chief Counsel
 Department of Resources, Recycling and
 Recovery
 1001 I Street, 24th floor
 Sacramento, CA 95834
 Telephone: (916) 341-6650
 Email: kristine.beckley@calrecycle.ca.gov

**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.

Fish and Game Commission

File # 2023-1116-01

Recreational California Halibut Emergency

This emergency rulemaking action by the Fish and Game Commission (“Commission”) readopts, without amendment, reductions to the daily bag and possession limits of California halibut taken in waters north of a line extending due west magnetic from Point Sur, Monterey County, from three to two fish.

Title 14

Amend: 28.15

Filed 11/22/2023

Effective 11/30/2023

Agency Contact: David Haug (916) 902-9286

Department of Corrections and Rehabilitation

File # 2023-1020-02

Correctional Clinical Case Management System

This action by the Department of Corrections and Rehabilitation (“CDCR”) adopts section 3999.31 as a pilot program for the Correctional Clinical Case Management System — Cuesta Camp Pilot Program, which will allow specified inmates to participate in the Conservation Camp Program while housed at the California Men’s Colony and assigned to Cuesta Conservation Camp. This filing is exempt from Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code (“APA”) pursuant to Penal Code section 5058.1 and is not subject to review by the Office of Administrative Law (“OAL”). This action is effective on filing with the Secretary of State pursuant to Penal Code section 5058.1 and remains in effect for two years.

Title 15

Adopt: 3999.31

Filed 11/22/2023

Effective 11/22/2023

Agency Contact: Sarah Pollock (916) 445-2308

Fish and Game Commission

File # 2023-1024-02

San Bernardino Kangaroo Rat

This action by the Fish and Game Commission (“Commission”) adds the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) to the list of “endangered” mammal species and subspecies under the California Endangered Species Act (“CESA”), Fish and Game Code Section 2050 et seq. This action is exempt from the procedural and substantive requirements of the Administrative Procedure Act (“APA”) pursuant to Section 2075.5, subdivision (e)(2).

Title 14

Amend: 670.5

Filed 11/22/2023

Effective 11/22/2023

Agency Contact: Jennifer Bacon (916) 902-9285

Fair Political Practices Commission

File # 2023-1025-01

Settlement of Monetary Penalties

This action adopts regulations governing conditions and procedures for entering into settlement agreements on behalf of the Commission with respect to monetary penalties. OAL’s review of Fair Political Practices Commission proposed regulations is limited to the provisions of the APA as it was enacted on June 4, 1974, when voters adopted the California Political Reform Act. (Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, (April 27, 1992, C010924 [nonpublished opinion].) Thus, our review is limited to determining if the proposed regulations comply with “the form and style prescribed by the Secretary of State. If the department approves the regulation or order of repeal for filing, it shall endorse on the certified copy thereof its approval for filing and shall transmit such copy to the Secretary of State.” (Former Gov. Code, sec. 11380.2, repealed by Stats. 1979, ch. 567, § 2.)

Title 02

Adopt: 18318

Filed 11/27/2023

Effective 12/27/2023

Agency Contact: Amanda Apostol (916) 322-5660

Board of Forestry and Fire Protection

File # 2023-1012-02

Maximum Sustained Production Amendments, 2023

In this regular rulemaking, the Board of Forestry and Fire Protection is amending regulations to allow for consideration of fire risk and fire protection as factors that impact maximum sustained production of high quality timber products in areas where (1) a Sustained Yield Plan (“SYP”), a Nonindustrial Timber Management Plan (“NTMP”), or a Working Forest Management Plan (“WFMP”) has not been approved for an ownership or (2) a SYP, NTMP, or WFMP is submitted for an ownership.

Title 14

Amend: 913.11, 933.11, 953.11

Filed 11/28/2023

Effective 01/01/2024

Agency Contact:

Andrew Lawhorn

(916) 628-8090

Board of Forestry and Fire Protection
 File # 2023–1012–03
 Tractor Operations and Cable Yarding Amendment,
 2023

In this rulemaking action, the Board of Forestry and Fire Protection amends its regulations to clarify that foresters may propose exceptions to the limitations on non–tethered tractor operations (excluding yarding operations).

Title 14
 Amend: 914.2, 934.2, 954.2
 Filed 11/28/2023
 Effective 01/01/2024
 Agency Contact:
 Andrew Lawhorn (916) 628–8090

Civil Rights Department
 File # 2023–1010–04
 Fair Employment and Housing Act Regulations

This action makes grammatical and typographical corrections and other edits to fair housing regulations in order to better facilitate compliance. This action also adopts new regulations against discrimination in housing accommodations because of source of income.

Title 02
 Adopt: 12140.1
 Amend: 12005, 12040, 12042, 12050, 12051,
 12140, 12141, 12179, 12181
 Filed 11/22/2023
 Effective 01/01/2024
 Agency Contact: Mariel Block (916) 208–6210

Department of Real Estate
 File # 2023–1103–01
 Regulations to Implement SB 1495

This action amends the requirements for Department of Real Estate (Department) approval of material changes by private vocational schools to approved courses of study necessary to qualify for a real estate license. The action establishes that changes which reflect the revised education requirements of Business and Professions Code (BPC) section 10153.2 are material changes which must be approved by the Department. The action waives the Department’s fee for approval of material changes which reflect the revised education requirements of BPC section 10153.2 for applications received prior to January 1, 2024. The action also defines the term “interactive participatory component” used in BPC section 10153.2.

Title 10
 Adopt: 3002.2
 Amend: 3002
 Filed 11/29/2023
 Effective 01/01/2024
 Agency Contact: Jeanine Clasen (916) 576–3783

Professional Fiduciaries Bureau
 File # 2023–1016–06
 Fee Increase and Initial License Period

In this action, the Professional Fiduciaries Bureau increases the Professional Fiduciary’s license application fee, the initial license fee, the renewal license fee, the reinstatement of an inactive license to active status fee, and the reinstatement of a retired license to active status fee. The action also conforms the length of the initial license period to the governing statute.

Title 16
 Amend: 4428, 4568, 4575, 4580
 Filed 11/27/2023
 Effective 01/01/2024
 Agency Contact: Angela Cuadra (916) 574–7498

California Horse Racing Board
 File # 2023–1019–03
 Apprentice Jockey/Apprentice Allowance

This action by the California Horse Racing Board amends two sections to align with proposed language for the Association of Racing Commissioners International model rule by specifying general license eligibility and to include modified allowance requirements for an apprentice jockey.

Title 04
 Amend: 1500, 1619
 Filed 11/29/2023
 Effective 01/01/2024
 Agency Contact:
 Nicole Lopes–Gravely (916) 263–6397

Emergency Medical Services Authority
 File # 2023–1010–03
 Administration of Medications

This action adds three pain relieving medications (ketamine, ketorolac, and acetaminophen IV), and one new medication to slow bleeding after major trauma (tranexamic acid) to the list of medications that may be administered by paramedics.

Title 22
 Amend: 100146
 Filed 11/22/2023
 Effective 01/01/2024
 Agency Contact: Ashley Williams (916) 591–3266

**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.