



California Regulatory Notice Register

REGISTER 2022, NUMBER 52-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

DECEMBER 30, 2022

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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.

CALIFORNIA REGULATORY NOTICE REGISTER is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by Barclays, a subsidiary of West, a Thomson Reuters Business, and is offered by subscription for \$205.00 (annual price). To order or make changes to current subscriptions, please call (800) 328–4880. The Register can also be accessed at <https://oal.ca.gov>.

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:

- Desert Community College District.
- East Turlock Subbasin Groundwater Sustainability Agency
- Las Virgenes Unified School District
- Merced Community College District
- Northern California Power Agency

A written comment period has been established commencing on December 30, 2022 and closing on February 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 February 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 Commission should be made to Daniel Vo, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 322-5660.

**TITLE 2. CIVIL RIGHTS COUNCIL/
CIVIL RIGHTS DEPARTMENT**

FAIR HOUSING REGULATIONS

The Civil Rights Council (Council) of the Civil Rights Department (CRD) proposes to amend sections 12005, 12040, 12042, 12050, 12051, 12140, 12140.1, 12141, 12179, and 12181 of Title 2 of the California Code of Regulations after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Council will hold a public hearing starting at 1:00 p.m. on February 21, 2023, at the following location:

<https://us02web.zoom.us/j/88954922012>

and/or

1-669-444-9171

Meeting ID: 889 5492 2012

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 Council requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

The meeting facilities are accessible to individuals with physical disabilities. Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in the meeting, should contact Mimi De Ville, CRD ADA Coordinator, at (844) 541-2877 (voice or via relay operator 711) or TTY (800) 700-2320 or via email: mimi.deville@dfeh.ca.gov or accommodations@dfeh.ca.gov as soon as possible or at least 72 hours before the meeting.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the Council. The writ-

ten comment period closes on **February 21, 2023 at 5:00 p.m.** The Council will consider only comments received by the end of that day. Written comments can be mailed to:

Civil Rights Council
c/o Mariel Block, Senior Fair Employment and
Housing Counsel
Civil Rights Department
555 12th Street — Suite 2050
Oakland, CA 94607
Telephone: (916) 478-7251

Comments may also be submitted by e-mail to FEHCouncil@dfeh.ca.gov.

AUTHORITY AND REFERENCE

Government Code section 12935(a) authorizes the Council to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific section 12900 et seq. of the Government Code.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

This rulemaking action clarifies, makes specific, and supplements existing state regulations interpreting the Fair Employment and Housing Act (“FEHA”) set forth in Government Code section 12900 et seq. As it relates to housing, the FEHA prohibits harassment and discrimination because of the race, color, religion, national origin, ancestry, physical disability, mental disability, genetic information, marital status, familial status, sex, gender, gender identity, gender expression, sexual orientation, source of income, military and/or veteran status of any person, or any basis prohibited by section 51 of the Civil Code.

In compliance with the Administrative Procedure Act, the Council proposes to adopt these rules as duly noticed, vetted, and authorized regulations. The overall objective of the proposed regulations is to fix typographical and grammatical errors and provide clarity regarding compliance with the fair housing regulations. This action has the specific benefit of ensuring that tenants, prospective tenants, owners, housing providers, and other relevant individuals better understand their respective rights and obligations with regard to fair housing rights and obligations. Ultimately, the proposed action furthers the mission of the CRD by protecting Californians from housing discrimination.

The Council has determined that the proposed amendments are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Council has concluded that these are the only regulations that concern fair housing and the FEHA.

DISCLOSURES REGARDING
THE PROPOSED ACTION

The Council has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: No additional costs or savings beyond those imposed by existing law.

Cost 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: No additional costs or savings beyond those imposed by existing law.

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

Cost impacts on a representative private person or businesses: No additional costs or savings beyond those imposed by existing law. Therefore, the agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Results of the economic impact assessment/analysis: The Council anticipates that the adoption of the regulations will not impact the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses within the state, or the expansion of businesses currently doing business within the state. To the contrary, adoption of the proposed amendments is anticipated to benefit the health and welfare of California residents and businesses and improve housing stability by clarifying and streamlining the operation of the law, making it easier for tenants, prospective tenants, owners, and housing providers to understand their rights and obligations, and reducing litigation costs for businesses. These regulations would not affect the environment.

Statewide adverse economic impact directly affecting businesses and individuals: The Council has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: None.

Small Business Determination: The Council anticipates that the regulations will not create additional costs or savings beyond those imposed by existing regulations. Similarly, the Council has determined that there is no impact on small businesses as a result of this proposed action because these regulations primarily serve to clarify existing law.

Business Report: The Council has determined that the proposed regulations do not require a report to be made.

CONSIDERATION OF ALTERNATIVES

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

The Council has thus far not become aware of a better alternative and invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Marriel Block, Senior Fair Employment and
Housing Counsel
Civil Rights Department
555 12th Street — Suite 2050
Oakland, CA 94607
Telephone: (916) 478-7251
E-mail: marriel.block@dfeh.ca.gov

The backup contact person for these inquiries is:

Rachael Langston, Senior Fair Employment and
Housing Counsel
Civil Rights Department
555 12th Street — Suite 2050
Oakland, CA 94607
Telephone: (916) 478-7251
E-mail: rachael.langston@dfeh.ca.gov

Please direct requests for copies of the proposed text (express terms) of the regulations, the Initial Statement of Reasons, any modified text of the proposed regulations, or other information upon which the rulemaking is based, should other sources be used in the future, to Marriel Block at the above address.

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

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

AVAILABILITY OF CHANGED
OR MODIFIED TEXT

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

AVAILABILITY OF THE FINAL
STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available on the Council's webpage: <https://calcivilrights.ca.gov/civilrightscouncil/>.

Copies also may be obtained by contacting Mariel Block at the above address.

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of the regulations, any modified texts, and the Final Statement of Reasons can be accessed through the Council's webpage at <https://calcivilrights.ca.gov/civilrightscouncil/>.

TITLE 4. GAMBLING
CONTROL COMMISSION

ADVERTISING

CGCC-GCA-2022-05-R

NOTICE IS HEREBY GIVEN that the California Gambling Control Commission (Commission) is proposing to take the action described in the Informative Digest after consideration of all relevant public comments, objections, and recommendations received concerning the proposed action. Comments, objections, and recommendations may be submitted as follows:

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission at any time during the 45-day public comment period, which closes on **February 13, 2023**. Written comments relevant to the proposed regulatory action may be sent by mail, facsimile, or e-mail, directed to one of the individuals designated in this notice as a contact person. To be eligible for the Commission's consideration, all written comments must be **received at its office no later than midnight on February 14, 2023**. **Comments sent to persons and/or addresses other than those specified under Contact Persons, or received after the date and time specified above, will be included in the record of this proposed regulatory action, but will not be summarized or responded to regardless of the manner of transmission.**

PUBLIC HEARING

The Commission has not scheduled a public hearing on this matter. Any interested person, or his or her authorized representative, may request a hearing pursuant to Government Code section 11346.8. A request for a hearing should be directed to the persons listed under *Contact Persons* no later than 15 days prior to the close of the written comment period.

ADOPTION OF PROPOSED ACTION

After the close of the public comment period, the Commission, upon its own motion or at the instance of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days

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

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 19811, 19824, 19826, 19840, 19841, 19856, 19857, 19859, 19920 and 19984 of the Business and Professions Code; and to implement, interpret or make specific sections 19801, 19841, 19920 and 19984 of the Business and Professions Code, and sections 4369.2 and 4369.4 of the Welfare and Institutions Code; the Commission is proposing to adopt the following changes to Chapters 1 and 7 of Division 18 of Title 4 of the California Code of Regulations:

INFORMATIVE DIGEST AND POLICY STATEMENT

Introduction:

The Commission is proposing regulations that would implement the Commission’s mandate under the Gambling Control Act (Act)¹ to ensure the integrity of gambling in California with respect to advertising activities. Specifically, these regulations would implement Business and Professions (B&P) Code section 19841, subdivision (f), of the Act, which requires the Commission to provide for the disapproval of deceptive advertising by licensed gambling establishments, as determined by the Bureau of Gambling Control (Bureau). Notably, the statute specifies that an advertisement is presumptively deceptive if it appeals to children or adolescents, or offers gambling as a means of becoming wealthy.

To date, the Commission has found numerous examples of existing and prior advertisements that do not contain a required responsible gambling message or information and referral services for problem gamblers, which violates existing regulations. Further, the existing regulations do not specify how the information must be presented, which has resulted in some advertisements delivering the information in an unclear and inconspicuous manner. This has the result of nullifying the regulatory requirement by making it difficult, if not impossible, for the public to review and understand the required information.

Additionally, the Commission is aware that, as a current industry practice, many gambling establishments provide charitable support to local youth and community functions, such as Little League sports

teams, toy drives, and holiday tree lighting ceremonies. This includes placing a gambling establishment’s name and/or logo on the children’s uniforms, team banners, event programs and pamphlets, etc. While these sponsorships are well-intended and benefit the local community, regulations are needed to ensure this is done in a manner that does not make gambling appeal to the impressionable youth.

Some advertisements reviewed by the Commission contain untrue or misleading statements such as “Nevada style” or “Vegas style” in reference to games or gaming activities offered at a gambling establishment. Other advertisements include a name different from the actual Bureau-approved game. These types of statements can mislead the public into thinking that a gambling establishment offers house-banked games, which are prohibited from being offered pursuant to the California Constitution, Article IV, Section 19 and Penal Code Section 330.

Currently, there is no regulatory framework established to provide for the Bureau’s disapproval of an advertisement that it determines is deceptive to the public. The Bureau has no specific basis or procedures to utilize in making consistent determinations for purposes of enforcement, which this regulatory proposal seeks to establish. Furthermore, owner category licensees have little guidance and requirements to refer to in the creation and dissemination of an advertisement other than industry best practices and general state and federal laws.

EXISTING LAW AND REGULATION

Title 15, United States Code, Section 55, defines “false advertisement” to mean advertising which is materially misleading, taking into account not only representations made or suggested by a statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal material facts relating to consequences from using the item featured in the advertisement.

California Constitution, Article IV, Section 19, subdivision (e), prohibits the operation of casinos of the type (offering banking or percentage games) currently operating in Nevada and New Jersey.

B&P Code section 17508 makes it “unlawful for any person doing business in California and advertising to consumers in California to make any false or misleading advertising claim, including claims that: (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product’s effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact.”

B&P Code section 19801, subdivision (c), states that gambling can become addictive and is not an ac-

¹ Business and Professions Code, Division 8, Chapter 4, section 19800 et seq.

tivity to be promoted or legitimized as entertainment for children and families.

B&P Code section 19801, subdivision (d), states that unregulated gambling enterprises are inimical to the public health, safety, welfare, and good order. Accordingly, no person in this state has a right to operate a gambling enterprise except as may be expressly permitted by the laws of this state and by the ordinances of local governmental bodies.

B&P Code section 19841, subdivision (f), requires the Commission adopt regulations to provide for the disapproval of advertising by licensed gambling establishments that is determined by the Bureau to be deceptive to the public. Advertisements that appeal to children or adolescents or that offer gambling as a means of becoming wealthy are presumptively deceptive. Additionally, this statute requires that the proposed advertising regulations be “consistent with” (not identical to) the advertising regulations adopted by the California Horse Racing Board (CHRB) and the Lottery Commission (the Lottery). While the Lottery has not adopted any advertising regulations, CHRB has several regulations related to advertising. However, many of CHRB’s advertising regulations are inapplicable to advertising a controlled game or gaming activity, such as the requirements prohibiting the use of symbols or markings on uniforms and prohibiting the use of a stable name registration for advertising purposes (Title 4, CCR, Div. 4, Art. 12).

California Horse Racing Board

The proposed regulations are consistent with those regulations adopted by CHRB that are also relevant to advertising a controlled game or gaming activity, specifically in the following areas:

- *Underage gambling.* Both CHRB and the Commission prohibit and discourage gambling by persons under 21. For example, CHRB regulations in CCR, Title 4, Division 4, Section 2066(d), require that all advertisements “contain a statement that persons under 21 are not allowed access to the minisatellite wagering site.” Similarly, the proposed language in Section 12097(c)(2) provides that advertisements must include a “statement that participants must be 21 or older to gamble.”
- *Problem Gambling.* The Commission’s proposed regulations are consistent with the regulations adopted by the CHRB in that they both require advertisements to contain contact information for problem gambling support. CHRB regulations in CCR, Title 4, Division 4, Sections 2066(d), 2071(h), and 2072(h), require that all advertisements must “contain contact information for a recognized problem–gambling support organization.” Similarly, the proposed language in Section

12097(c)(3) requires that all advertisements include a responsible gambling message and a reference to one of the referral services for problem gamblers approved by the Office of Problem Gambling.

California State Lottery Commission

Presently, there are no regulations by the Lottery that relate to the Commission’s proposed regulations that provide for the disapproval of advertising. A majority of the Lottery’s requirements pertaining to advertising are located within statute and not regulation. For example, Government Code section 8880.24 requires the Lottery to comply with both the letter and spirit of the laws governing false and misleading advertising, including B&P Code section 17500 et seq.

Notably, California Lottery Regulations section 7.5.7 requires retailers to post “Play Responsibly” signage and other related point-of-sale materials at play centers, including maintaining and making available to players, responsible gaming awareness brochures and related publications supplied by the Lottery. This requirement is similar in nature to the Commission’s existing and proposed regulations in Sections 12097 and 12461.

B&P Code section 19841, subdivision (o), allows the Commission to adopt regulations that restrict, limit, or otherwise regulate any activity that is related to the conduct of controlled gambling.

B&P Code section 19920 states that it is the policy of the State of California to require that all establishments wherein controlled gambling is conducted in this state be operated in a manner suitable to protect the public health, safety, and general welfare of the residents of the state. Responsibility for the employment and maintenance of suitable methods of operation rests with the owner licensee, and willful or persistent use or toleration of methods of operation deemed unsuitable by the Commission or by local government shall constitute grounds for license revocation or other disciplinary action.

Penal Code section 330 prohibits gambling establishments from offering certain types of games including any banking or percentage games. Specifically, this provision provides that every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan–tan, seven–and–a–half, twenty–one, hokey–pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of those prohibited games, is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment in the

county jail not exceeding six months, or by both the fine and imprisonment

Title 4, CCR, Division 18, Section 12461, requires the posting problem gambling information and referral services on websites and advertisements operated by or on behalf of any cardroom business licensee or TPPPS business licensee. Additionally, this section contains exceptions for digital materials and promotional items with size and space limitations.

Title 11, CCR, Division 18, Section 2072, subsection (e), requires that each licensed gambling establishment submit a biannual report to the Bureau which includes, among other things, copies or transcripts of all advertisements within the prior six months used to promote a gaming activity offered at a gambling establishment.

EFFECT OF REGULATORY ACTION

The proposed regulations would implement the Commission’s mandate in B&P Code section 19841, subdivision (f), by establishing new definitions as well as general and specific requirements pertaining to gambling–related advertisements produced by or for any cardroom owner type licensee or third–party provider of proposition player services (TPPPS) owner type licensee (collectively known and hereinafter referred to as owner category licensees). The new requirements would provide a regulatory framework for the Bureau to utilize in determining its disapproval of a deceptive advertisement that solicits participation in controlled gambling at a gambling establishment and procedures for notifying the responsible party(ies). Further, the proposed regulations contain mechanisms for enforcement and include the potential disciplinary actions that may be exercised as a result of a failure to correct a deceptive advertisement.

ANTICIPATED BENEFITS OF PROPOSED REGULATION

Implementing the proposed regulations will fulfill the Commission’s statutory mandate, better protect the health, safety, and general welfare of the public, and maintain integrity within the cardroom industry. The proposed requirements will establish criteria necessary for the Bureau to use in determining if an advertisement is deceptive and will provide the cardroom industry guidance with standards (including specific safe harbors and prohibited statements) concerning the content, dissemination, and control of an advertisement. Further, this proposal provides additional protection to the more impressionable youth by explicitly prohibiting advertisements from being displayed, broadcasted, or disseminated on the premises of any day care center, youth center, preschool, K–12

school, or at any function primarily held for persons under the age of 21. These regulations are anticipated to dissuade and reduce dissemination of gambling advertisements that are determined by the Bureau to be deceptive to the public. This includes advertisements that inappropriately appeal to persons under the age of 21, entice participation in gambling as a means of becoming wealthy, make false or misleading claims, or refer to a game prohibited by Penal Code section 330.

SPECIFIC PROPOSAL

This proposed action will make changes within the California Code of Regulations, Title 4, Division 18 as follows:

CHAPTER 1. GENERAL PROVISIONS. ARTICLE 1. DEFINITIONS AND GENERAL PROCEDURES.

Amend Section 12002. General Definitions.

This section provides general definitions for this division. New definitions are proposed to be added for purposes of applicability in the proposed regulations. Non–substantive changes have been applied throughout to renumber the existing definitions accordingly.

Subsection (b) adds the definition of “advertise” or “advertising” to mean the publication, dissemination, or causing the publication or dissemination of an “advertisement.” Adding this definition allows the use of the verb form of “advertisement” throughout the regulations.

Subsection (c) adds the definition of “advertisement.” Providing the definition is necessary to clarify and specify the meaning of the term used throughout the proposed regulations. The definition includes the following components of what constitutes an advertisement:

- *“Any written or verbal statement, illustration, or depiction...”* This language targets a broad range of instances in which a gambling activity is portrayed through written or spoken words, images, or graphics.
- *“...that is disseminated to the public...”* This language provides that the requirements do not apply to advertisements under development or in draft form, which have not yet been released to the public.
- *“... which is calculated to induce participation in a controlled game or gaming activity at one or more gambling establishment...”* This language adds further specificity to the definition to target only advertising intended to solicit, encourage, or promote participation in gambling.

- “...without limitation, any written, printed, graphic, or other material, billboard, sign, or other outdoor display, periodical literature, publication, or in a radio or television broadcast, social media business page, or in any other media.” This language captures the various media by which an advertisement may be disseminated to the public.
- **Paragraph (c)(1)** provides additional clarity and specificity to the definition of an advertisement by expressly providing what does not constitute an advertisement. The advertising requirements are not to apply to the following:
 - **Subparagraph (A):** “The solicitation of activities, events, or services that do not relate to the conduct of or participation in a controlled game or gaming activity and may otherwise be provided on the licensed premises including, but not limited to, restaurant dining, concerts, trade shows, business conferences, and non-gambling related promotions and contests.” The term “licensed premises” has the same meaning as “gambling establishment” pursuant to the definition provided in B&P Code section 19805, subdivision (o). These terms are used to describe one or more rooms where any controlled gambling or activity directly related thereto occurs (as specified). The express language provides that advertisements used to solicit non-gambling related activities at a gambling establishment (e.g. restaurant dining, concerts, trade shows, etc.) are not subject to the same regulatory restrictions and requirements as those that fall under the definition of an advertisement.
 - **Subparagraph (B):** “Use of the name, nickname, alias, or any other name by which the gambling establishment is commonly known, including its logo or trademark, exclusive of any other content.” This language provides that the sole display or use of a gambling establishment’s name(s), logo, or trademark is not considered an advertisement, as defined for the purposes of the regulations.
 - **Subparagraph (C):** “Any editorial or other reading material, such as a news release, in any periodical, publication, or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any owner category licensee, and which is not written by or at the direction of the owner category licensee.” This language broadly exempts reading materials about a gambling establishment written independently and without direction or compensation from an owner category licensee (e.g., news articles, business listings, information identifying charitable contributions, etc.). The language was adapted from the definition of an advertisement in Cannabis Law (B&P Code section 26150(b)(2)).
 - **Subparagraph (D):** “The distribution of informational material that is not targeted at persons under 21 years of age for purposes of recognizing a donation, gift, or charitable contribution. The information provided may include the name, logo, and trademark of a gambling establishment and may be provided in informational material including, but not limited to, a program pamphlet or informational handout for an event, a posting on a charitable organization’s website, etc.” This provision exempts materials that may recognize a gambling establishment for its donation, gift, or charitable contribution so long as the material does not target persons under 21 years of age.
 - **Subparagraph (E):** “Any job postings for employment opportunities.” This provision clarifies that job postings for employment would not be subject to the requirements for advertisements.
 - **Subparagraph (F):** “Any notices or postings otherwise required by the Act, this Division, or Title 11, Division 3 of the California Code of Regulations, such as posted game rules.” This provision exempts content requirements for notices and postings that are contained in other regulatory sections from falling under the definition of an advertisement, such as the Bureau’s regulations in Title 11 that require the posting of game play rules.
- **Paragraph (c)(2)** clarifies that anything meeting the definition of an advertisement that is included with or attached to the items exempted under paragraph (c)(1) above, must comply with the requirements for advertisements in Article 5.

ARTICLE 5: ADVERTISING

Adopt Section 12095. General Requirements.

Section 12095 provides new general advertising requirements and responsibilities for all owner category licensees.

Subsection (a) applies the requirements within this article to all owner category licensees and specifies that the requirements are mandatory.

Subsection (b) clarifies that any act, omission, or failure to comply with this article by an advertising agent, representative, contractor, or any other person retained by the owner category licensee, will be deemed an act, omission, or failure of the owner category licensee. This provision holds owner category licensees responsible for advertising done through a contracted third-party providing advertising and marketing services.

Adopt Section 12096. Specific TPPPS Business Requirements.

Section 12096 provides new specific advertising requirements and responsibilities for all TPPPS business licensees.

Subsection (a) contains requirements exclusive to a TPPPS business licensee, as discussed below:

- **Paragraph (a)(1)** specifies a TPPPS business licensee will not create, purchase, place, or disseminate any advertisement for a cardroom business licensee unless it has a TPPPS contract with that cardroom business licensee and the advertisement costs and scope of advertising services to be performed are included in the TPPPS contract. This requirement is consistent with current regulations, which require that all financial arrangements between the cardroom business licensee and TPPPS business licensee, including advertising, must be disclosed in the TPPPS contract.
- **Paragraph (a)(2)** requires the TPPPS business licensee to provide the cardroom business licensee copies of all advertisements used to promote a gaming activity that the TPPPS business licensee has, or has caused to be, created, purchased, placed, or disseminated for the cardroom business licensee. The phrase “or has caused to be” makes the requirement applicable to advertising done through the services of a third-party advertising company. This provision is consistent with existing Bureau regulations in Title 11, CCR, Section 2072, subdivision (e), which requires each licensed gambling establishment to submit a biannual report to the Bureau that includes copies or transcripts of all advertisements used to promote a gaming activity in the prior six months.

Adopt Section 12097. Advertising Content and Dissemination.

This section establishes content and dissemination requirements for gambling advertisements. This section also provides criteria for the Bureau to justify its determination to disapprove an advertisement that is deceptive to the public.

Subsection (a) provides general criteria applicable to presenting the required information in a clear and conspicuous manner in all advertisements and spec-

ifies that the required information must legible and readable or audible and intelligible.

Subsection (b) specifies that the required statement that participants must be 21 or older to gamble and the problem gambling statement must be presented in the same language as all of the languages used in the advertisement.

Subsection (c) sets forth the following specific content requirements for all advertisements:

- **Paragraph (c)(1)** requires that all advertisements include the name, nickname, alias, or any other name by which the gambling establishment is commonly known.
- **Paragraph (c)(2)** requires that advertisements include a statement that participants must be 21 or older to gamble, which aligns with the existing requirements in B&P Code section 19921.
- **Paragraph (c)(3)** references the requirements of Section 12461(b)(1) and (3), which provides advertisements must contain a responsible gambling message and reference one of the information and referral services approved by the Office of Problem Gambling (or its successor).
- **Paragraph (c)(4)** provides three approved ways to reference games within an advertisement. The game advertised must be referred to in accordance with one of the three clauses discussed below.
 - **Subparagraphs (A) and (B)** contain requirements for referencing Bureau-approved games within advertisements. Subparagraph (A) requires that when an advertisement references a game, the name of the Bureau-approved game or Bureau-approved alternative game name must be included. Subparagraph (B) allows for the potential use of alternative game names in the future, pending a policy and approval process that would first need to be established by the Bureau before alternative game names could be allowed.
 - **Subparagraph (C)** contains requirements that allow an advertisement to refer to a game or group of games using any name if certain safe harbor statements identified under clauses (i) through (iv) are included.
- **Paragraph (c)(5)** provides two options for referencing gaming activities within an advertisement. The gaming activity advertised must be referred to in accordance with one of the two clauses discussed below.
 - **Subparagraph (A)** requires the use of the Bureau-approved gaming activity name. The approved gaming activity name can be used to obtain the approved gaming

activity rules from the Bureau or the gambling establishment.

- **Subparagraph (B)** provides that any gaming activity name may be used if the Bureau–approved identification number is provided with it. The identification number can be used to obtain the approved gaming activity rules from the Bureau or the gambling establishment.

Subsection (d) provides specific exemptions for certain types of advertisements that are currently located in Section 12461(c)(1) and (2), which are being proposed to be relocated and amended as follows:

- **Paragraph (d)(1)** contains express language that provides the requirements of paragraphs (c)(2) through (5) do not apply to any small tangible items upon which the information would be impracticable to print, display, or present, including, but not limited to: apparel, hats, pens, key chains, dishware, drinking glasses, coffee mugs, etc.
- **Paragraph (d)(2)** provides the requirements of paragraphs (2) and (3) of subsection (c) do not apply to any digital material where the inclusion would be impracticable due to limited characters or spaces if the advertisement includes a link to a website that complies with Section 12461(b).

Subsection (e) states that an advertisement must not be deceptive to the public and specifies what constitutes a deceptive advertisement. This subsection provides owner category licensees a set of guidelines for what to avoid in the creation of an advertisement.

- **Paragraph (e)(1)** provides that any advertisement is deceptive if it depicts gambling as a means to become wealthy or resolve a financial burden.
- **Paragraph (e)(2)** provides that any advertisement is deceptive if it specifically targets or appeals to children or adolescents or encourages persons under 21 years of age to engage in controlled gambling and provides specific examples in the subparagraphs that follow. The provisions in this paragraph specify how licensees may ensure their advertising is tailored to appropriate audiences and not minors.
 - **Subparagraph (e)(2)(A)** specifies that an advertisement is deceptive if it uses depictions, images, appearances, or voice–over services of anyone less than 21 years old².
 - **Subparagraph (e)(2)(B)** specifies that an advertisement is deceptive if it uses objects such as

toys, inflatables, movie characters, cartoon characters, or any other display, depiction, or image designed in a manner to appeal to minors or anyone under 21 years of age³.

- **Subparagraph (e)(2)(C)** prohibits advertising, as defined in Chapter 1, on the premises of any day care center, youth center, preschool, or kindergarten through 12th grade school or related function thereto, or at any function that is being primarily held for persons under 21 years old.
- **Paragraph (e)(3)** specifies what terms are prohibited from being used to describe any games or gaming activities. This provision provides the owner type licensee specific guidance in the development of an advertisement and gives the Bureau specific criteria to cite if it disapproves of an advertisement.
- **Paragraph (e)(4)**, in alignment with B&P Code section 17508, provides that an advertisement is deceptive if it makes any false or misleading claim. This provision maintains the Bureau’s discretion concerning its disapproval and avoids creating any implication of civil liabilities resulting from a violation of the statute.

Paragraph (e)(5) provides that an advertisement is deceptive if the advertisement depicts, illustrates, portrays, or references a prohibited game as specified in Penal Code section 330. The provision provides the Bureau essential discretion and flexibility to make such a determination, especially for advertisements that may not explicitly advertise the name of a prohibited game, but may imply a prohibited game is offered at a gambling establishment through the use of illustrations or pictures.

Adopt Section 12098. Age Confirmation in Advertising.

This section establishes age confirmation requirements for advertising involving direct communication or dialogue and for accessing gambling establishment websites and social media landing pages.

Subsection (a) requires the owner category licensee to use age affirmation to verify that the recipient is 21 years of age or older prior to any advertising involving direct communication or dialogue. Further, this provision specifies what forms of communication must utilize age verification methods (communication through in–person, telephone, physical mail, or electronic).

Subsection (b) provides an exemption to age verification requirements if the owner category licensee can verify that the recipient has already undergone a method of age affirmation and has been verified to be

² This provision was adapted from the Distilled Spirits Council of the United States — 2021 Code of Responsible Practices for Beverage Alcohol Advertising and Marketing. <https://www.distilledspirits.org/wp-content/uploads/2021/03/2021-DIS-CUS-Code-of-Responsible-Practices-for-Beverage-Alcohol-Advertising-and-Marketing.pdf>

³ This provision was adapted from the United States Federal Trade Commission v R.J. Reynolds Tobacco, Docket Number 9285, 1997. <https://www.ftc.gov/sites/default/files/documents/cases/1997/05/d9285cmp.pdf>

21 or older, and the communication is sent only to the intended recipient.

Subsection (c) provides that age verification or self-attestation is required prior to adding a potential customer to a mailing list or subscription to receive direct communications (targeted marketing) controlled by the owner category licensee.

Subsection (d) provides age gating requirements, when possible, for visiting gambling websites and social media landing pages operated by or for an owner category licensee, which is consistent with the requirements for other age-restricted industries.

Adopt Section 12099. Disapproval of Advertising.

This section explains the procedure for the Bureau to notify an owner category licensee if the Bureau determines an advertisement is deceptive and provides potential disciplinary and enforcement actions that a licensee may be subject to for failing to correct an advertisement. This section does not expand nor diminish the Commission or Bureau’s existing authority and is consistent with current processes for dealing with other violations.

Subsection (a) provides the Bureau may issue a notice of disapproval to the owner category licensee for an advertisement that is not compliant with this article. If the Bureau decides to issue a notice of disapproval, at a minimum, the notice must provide: (1) A legal citation of the violation, (2) A description of each part of the advertisement that is not compliant with the regulations, and (3) A specific deadline for correcting the advertisement. This provision specifies a mechanism whereby the Bureau may document and notify the owner category licensee of an advertisement that has been determined to be in violation of the regulations. Further, it requires the Bureau to provide the owner category licensee information to identify what it must correct in the advertisement and when it must be corrected before disciplinary action is taken.

Subsection (b) provides if a notice of disapproval is issued in accordance with subsection (a) and the noncompliant advertisement is not corrected by the deadline specified by the Bureau, the Bureau may take additional disciplinary action it deems appropriate. This provision provides the Bureau with enforcement options if the licensee fails to take corrective action pursuant to the issuance of a notice of disapproval.

Subsection (c) requires that the following be included in the Bureau’s report to the Commission for consideration during an owner category licensee’s initial or renewal license application:

- Any notice of disapproval and failure to correct;
- Any instances of repeated violations pursuant to the requirements of the article; and,
- Any subsequent actions by the owner category licensee and or Bureau.

The provision further specifies that the above items may be considered a factor in determining the suitability for licensure of an applicant.

Subsection (d) provides references to the Bureau’s existing authority for filing a disciplinary action under Chapter 10 of this division and/or under B&P Code sections 19930 and 19931.

Subsection (e) clarifies that it is not the intention of these regulations to imply or create a private cause of action based on any actions of the Bureau or Commission regarding the creation of, and/or failure to timely correct, an advertisement found to be deceptive by the Bureau.

CHAPTER 7. CONDITIONS
OF OPERATION FOR
GAMBLING ESTABLISHMENTS.
ARTICLE 9. PROGRAM FOR
RESPONSIBLE GAMBLING.

Amend Section 12461. Posting Referral Information.

This section contains requirements for posting problem gambling information and referral services on websites and advertisements operated by or on behalf of any cardroom business licensee or TPPPS business licensee. Additionally, this section contains exceptions for digital materials and promotional items with size and space limitations.

Subsection (b) requires a responsible gambling message and a hyperlink to the Office of Problem Gambling to be displayed on websites operated by or on behalf of any owner category licensee.

In this subsection, “on behalf of” is being replaced with “under the control of.” Further, this section is being amended to add social media landing pages to the types of advertising media required to contain problem gambling information. Additional amendments are proposed to require the information be displayed in a clear and conspicuous manner and presented in all languages used in the advertisement, as specified in subsections (a) and (b) of Section 12097.

Further, the subsection is being updated and expanded upon in paragraphs (1) through (3) to include additional information and referral services that are currently available for problem gamblers and to provide the public more direct and readily accessible ways to get immediate help with a gambling addiction problem, rather than having to navigate to the Office of Problem Gambling website to search for the same information.

Subsection (c) provides problem gambling information and referral requirements for advertisements distributed by television, radio, outdoor display, flyer, mail or digitally. This section is being repealed due to the amendments proposed to subsection (b) and

the more specific and extensive advertising content requirements being added in Article 5. The requirements that were previously in this section have been modified, clarified, and expanded upon to reduce ambiguity.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Commission has evaluated this regulatory action and determined that the proposed regulations are neither inconsistent nor incompatible with any other existing state regulations.

COMPARABLE FEDERAL LAW

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

FISCAL IMPACT ESTIMATES

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:

The proposed action is estimated to have no fiscal impact to the Commission.

Additionally, the proposed action would only adjust the current enforcement practices of the Bureau and result in an absorbable increase in compliance and enforcement staff workload. Specifically, the Bureau indicated an absorbable annual increase in workload of 1,456 hours for compliance staff and 1,144 hours for enforcement staff. The Bureau has determined that the regulations will not require additional positions and has identified a fiscal impact of \$0.

There are no costs or savings in Federal funding to the State.

NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES:

None.

MANDATE IMPOSED ON ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT:

None.

COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT:

None.

EFFECT ON HOUSING COSTS:

None.

IMPACT ON BUSINESS:

The Commission has made a determination that the proposed regulatory action would have no significant

statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This determination is based on the following facts or evidence/documents/testimony:

This proposed action implements requirements for gambling establishment advertisements pursuant to the Commission's statutory mandate in B&P Code section 19841(f). The proposed regulations provide advertising standards to ensure that only responsible gambling advertisements are disseminated to the public and problem gambling information and referral services are posted on all advertisements, websites, and social media landing pages.

The total statewide dollar costs that businesses may incur to comply with this regulation over its lifetime includes an initial one-time cost of \$2,791,593 for cardroom businesses and \$839,135 for TPPPS businesses in the first year, and an ongoing cost of \$631,350 for cardroom businesses and \$191,958 for TPPPS businesses annually in each subsequent year. This results in an initial industry-wide cost of \$3,630,728 in the first year and an ongoing cost of \$823,308 per year thereafter. These costs will not inhibit a California business from competing with business in other states as the gambling industry does not cross state lines and the amounts involved are not significant enough to effect industry competitiveness.

Cost Impact on Representative Private Person or Business:

The proposed action will amend existing content and dissemination requirements for gambling advertisements, provide age confirmation requirements for advertisements involving direct communication or dialogue (direct marketing), and establish age gating requirements for accessing websites and social media landing pages operated by or for an owner category licensee. The proposed action also amends existing requirements for posting problem gambling information and referral services on websites operated by or for an owner category licensee, by adding social media landing pages to this requirement. The average initial cost in the first year is estimated to be higher than in subsequent years because businesses will need to revise and/or replace any current gambling advertisements that do not comply with the new requirements.

The Commission estimates that the proposed action will have an average initial cost of \$62,488 per typical business in the first year and an average ongoing cost of \$16,500 per typical business in each subsequent year.

Effect on Small Business:

The Commission has made a determination that the proposed regulatory action would have a similar impact on small businesses to comply with the proposed regulations, as noted above. The Commission esti-

mates that the proposed action will have an average initial cost of \$42,085 per small business in the first year and an average ongoing cost of \$8,997 per small business in each subsequent year.

RESULTS OF ECONOMIC IMPACT
ASSESSMENT/ANALYSIS

Impact on Jobs/New Businesses:

The Commission has determined that this regulatory proposal will not have a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California. For this purpose, the federal Small Business Administration (SBA) definition of a small business was utilized. An average annual gross gaming revenue of \$30 million per year was used as the threshold, as specified in the North American Industry Classification System Code section 713210 and referenced by the SBA. Cardroom business licensees and TPPPS business licensees having a three-year average annual gross gaming revenue of no more than \$30 million were identified as small businesses. Due to mandatory closures resulting from the COVID-19 pandemic, 2019 was the last full year of operation; information from 2020 and 2021 was not used.

The basis for this determination is that this proposed action only establishes requirements for the cardroom industry to follow concerning the content, publication, dissemination, and control of advertisements that are calculated to induce participation in a controlled game or gaming activity and provides the Bureau with criteria and a process to use in determining its disapproval of an advertisement. The proposed action is responsive to the Commission’s mandate in B&P Code section 19841, subdivision (f), and does not encroach on the industry’s constitutionally protected forms of commercial speech.

Benefits of Proposed Regulation:

The proposed regulation will benefit the health, safety, and welfare of the public by ensuring that only responsible gambling advertisements are disseminated to the public and problem gambling information and resources are posted on all gambling related advertisements, websites, and social media landing pages. Implementing the proposed regulations will fulfill the Commission’s statutory mandate and maintain integrity within the controlled gambling industry.

Health and Welfare of California Residents:

It has been determined that the proposed action will protect the health, safety, and general welfare of California residents by dissuading and reducing the dissemination of gambling advertisements that are determined by the Bureau to be deceptive to the public. This includes advertisements that inappropriately ap-

peal to persons under the age of 21, entice gambling as a means of becoming wealthy, make false or misleading claims, or refer to a game prohibited by Penal Code section 330. Additionally, the proposed action provides updates to existing requirements concerning the posting of information and referral services for problem gamblers, as approved by the Office of Problem Gambling.

Worker Safety:

It has been determined that the proposed action will not affect worker safety because it does not pertain to working conditions or worker safety issues.

State’s Environment:

It has been determined that the proposed action will not affect the State’s environment because it does not pertain to environmental issues.

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.

INITIAL STATEMENT OF REASONS,
INFORMATION AND TEXT OF PROPOSAL

The Commission has prepared an Initial Statement of Reasons and the exact language for the proposed action and has available all the information upon which the proposal is based. Copies of the language and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Commission at 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231.

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

All the information upon which the proposed action is based is contained in the Rulemaking File that will be available for public inspection and copying at the Commission’s office throughout the rulemaking process. Arrangements for inspection and/or copying may be made by contacting the primary contact person named below.

You may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a writ-

ten request to one of the contact persons named below or by accessing the Commission's Website listed below.

CONTACT PERSONS

All comments and inquiries concerning the substance of the proposed action should be directed to the following *primary* contact person:

Alex Hunter, Legislative and Regulatory Specialist
Legislative and Regulatory Affairs Division
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220,
Sacramento, CA 95833-4231
Telephone: (916) 263-1301
Fax: (916) 263-0499
E-mail: ahunter@cgcc.ca.gov

Requests for a copy of the Initial Statement of Reasons, proposed text of the regulation, modified text of the regulation, if any, or other technical information upon which the proposed action is based should be directed to the following *backup* contact person:

Joshua Rosenstein, Legislative and Regulatory Specialist
Legislative and Regulatory Affairs Division
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220,
Sacramento, CA 95833-4231
Telephone: (916) 274-5823
Fax: (916) 263-0499
Email: jrosenstein@cgcc.ca.gov

WEBSITE ACCESS

Materials regarding this proposed action are also available on the Commission's Website at www.cgcc.ca.gov.

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

DEFINITIONS AND REIMBURSEMENTS FOR TRAINING

Regulation 1015

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 their 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 February 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) 227-4547, by email to *Steve Harding*, or by letter to:

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

Authority and Reference

This proposal is made pursuant to the authority vested by Penal Code section 13503 (authority of the Commission on POST) and Penal Code section 13506 (POST authority to adopt regulations). This proposal is intended to interpret, implement, and make specific Penal Code section 13503(e), which authorizes POST to develop and implement programs to increase law enforcement's effectiveness, including training and education courses.

Informative Digest/Policy Statement Overview

Agencies participating in the POST Reimbursable Program and/or POST-approved training presenters shall be reimbursed from the State Penalty Fund or other approved funding sources approved by the state for allowable expenditures incurred for training in POST-certified courses only as defined in Commission Regulation 1001. Commission Regulation 1015 (Reimbursements for Training) identifies the procedures and rates for submitting for reimbursement.

This rulemaking action updates the rates for reimbursement. It also amends the regulation to replace back-fill reimbursement with salary offset.

Currently, Commission Regulation 1015 lists reimbursement rates that have not been amended since 2006. These amendments will enable agencies of the POST program to be reimbursed at the most current rate.

The proposed amendments to Commission Regulation 1015 in this rulemaking action will update reimbursement rates for POST-certified training. It also includes amendments to simplify the reimbursement process.

Anticipated Benefits of the Proposed Amendments:

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

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

POST has determined that these proposed amendments are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, POST has concluded that these are the only regulations that concern the perishable skills and continuing professional training requirements for peace officers in California.

Disclosures Regarding the Proposed Action

POST has made the following initial determinations:

Mandate on local agencies and 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 current reimbursement

rates for training and simplifying the reimbursement process. Thus, law enforcement standards are maintained and effective in preserving peace, protecting 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 *Steve Harding*, Commission on POST, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1630 at (916) 227-2816. General questions regarding the regulatory process may be directed to *Katie Strickland* at (916) 227-2802.

Text of Proposal

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

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 availability of such changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date that the revised text is made available.

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.

GENERAL PUBLIC INTEREST

**DEPARTMENT OF
FISH AND WILDLIFE**

**CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION
NUMBER 2080-2022-011-06**

Project: Desert Harvest Solar Project

Location: Riverside

Applicant: EDF-RE Renewable Energy

Notifier: Devin Muto, Director

Background

This consistency determination replaces Consistency Determination Number 2080-2013-002-006 for the Desert Harvest Solar Project (Project), originally issued by the California Department of Fish and Wildlife (CDFW) on April 3, 2013, pursuant to the California Endangered Species Act (CESA) and attached hereto as Exhibit A.

The Project experienced unanticipated delays, with project construction not commencing construction until Fall 2019 and not concluding construction until January 2021. At the completion of construction, the final project footprint was less than that originally anticipated and reflected in both the original Incidental Take Statement (ITS) and accompanying Biological Opinion (BO) issued by the United States Fish and Wildlife Service (Service) to the Bureau of Land Management (BLM) and the original Consistency Determination issued by CDFW to EDF-RE Renewable Energy (Applicant). As described more fully below, this change to the original project resulted in an amendment to the ITS and BO to document the reduction in project acreage, to adjust the minimum compensatory mitigation acreage, and to modify the original compensatory mitigation timeline requirements. Applicant has request-

ed a new and revised consistency determination from CDFW commensurate with the amendment to the ITS and BO.

Current Project Description¹

The Project involves the construction, operation, maintenance, and decommissioning of a commercial solar power generating facility on approximately 1,076.6 acres land managed by BLM. The Project includes a 150-megawatt (MW) alternating current (AC) solar photovoltaic (PV) energy-generating facility, located approximately five miles north of the community of Desert Center in the County of Riverside.

The Project has a minimum expected lifetime of 30 years, with an opportunity of 50 years or more with equipment replacement, re-powering, and an extension of the applicable permits, approvals, and authorizations. The Project consists of a main generation area, an operations and maintenance (O&M) facility either on or off the solar facility site, an onsite substation, a switchyard, and site security. Construction components include pre-construction surveys; exclusion fencing; clearing and construction of a lay-down yard, parking area, and pad mounts for transformers; and all construction activities for the northeastern and southwestern solar facilities. The solar facilities will consist of arrays of PV modules on a single axis tracking system. All of the solar field will be impacted by some form of soil disturbance, including compaction, micro-grading, or disc-and-roll grading. Each array will consist of PV modules, a power conversion station, and a transformer.

The Project activities described above are expected to incidentally take² Agassiz's desert tortoise (*Gopherus agassizii*) (desert tortoise). Desert tortoise is designated as a threatened species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and a threatened species and candidate for endangered pursuant to CESA (Fish & Game Code, § 2050 et seq.). (See Cal. Code Regs., title 14, § 670.5, subdivision (b)(4)(A), and see 2020 Cal. Reg. Notice Register, Number 44-Z, pages 1445-1446 (October 30, 2020).) During construction and long-term O&M, incidental take may take place within the Project boundary, along the gen-tie line, associated access roads, in areas where exclusion fencing will be installed, and within recipient sites. In particular, the

¹ The project description below is taken from the original Consistency Determination Number 2080-2013-002-006 issued by CDFW on April 3, 2013, with the exception of an updated description of the reduced acreage of the Project footprint.

² 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").

desert tortoise could be incidentally taken as a result of moving individuals out of harm's way, from translocation and subsequent health assessments, and from crushing, trampling, or burial of sub-adults, adults, juvenile desert tortoises, and eggs.

Desert tortoise individuals are documented as present approximately 0.25 miles from the Project site within the adjacent Desert Sunlight project Chuckwalla recipient site, and approximately 4.25 miles from the Project site along the proposed shared gen-tie route, and there is suitable desert tortoise habitat within and adjacent to the Project site. Focused protocol-level field surveys indicated desert tortoise presence based on multiple condition class burrows found within the Project boundary. Because of the proximity of the nearest documented desert tortoise and results of the field surveys, the Service determined that the desert tortoise is reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of the desert tortoise. The Service estimated that up to two sub-adult or adult desert tortoises, up to two juveniles, and an unquantifiable number of eggs might occur within the Project boundary.

The Project activities will result in the permanent loss of 1,076.6 acres of desert tortoise habitat; and if the Project impacts desert tortoise habitat beyond this acreage, the amount or extent of take will be exceeded.

Original 2013 Biological Opinion, Incidental Take Statement, and Consistency Determination

On January 15, 2013, the Service issued the ITS and BO (Number FWS-ERIV-10B0593-12F0411) to BLM. The ITS and BO described the original Project and required the Applicant to comply with terms of the ITS and BO, including the incidental take statement (ITS), and incorporated additional measures. Conservation measures 4 and 4d of the BO described the compensatory mitigation requirements to offset impacts to vegetation and wildlife habitat resources by protecting in perpetuity lands that are consistent with the Northern and Eastern Colorado Desert Coordinated Management Plan (NECO; BLM 2002). The habitat compensation plan specifies habitat compensation ratios and identifies that the Applicant will complete the acquisition, protection, and transfer of all lands and record the required conservation easements, deed restriction, or other protection measures no later than 18 months after the start of ground-disturbing activities. The original Project impacts were described as 1,300 acres with required compensatory mitigation listed as 2,048.4 acres.

On March 5, 2013, the Director of CDFW received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITS and BO are consistent with CESA for

purposes of the Project and desert tortoise (See Cal. Reg. Notice Register 2013, Number 13-Z page 527). On April 3, 2013, CDFW issued Consistency Determination Number 2080-2013-002-06 for the Desert Harvest Solar Project, which determined that the ITS and BO (Number FWS-ERIV-1 OB0593-12F0411), issued by the Service on January 15, 2013, was consistent with CESA pursuant to section 2080.1 of the California Fish and Game Code.

Biological Opinion Amendment

On May 20, 2021, BLM requested that the Service amend the ITS and BO to revise conservation measure 4d, 4d.i, and 4d.ii to modify the compensatory mitigation timeline requirements from 18 months to 36 months as described in BLM's amended right-of-way (ROW) grant issued to the Applicant. Accordingly, the Service amended the ITS and BO requiring the Applicant to complete the acquisition, protection, and transfer of all lands and record the required conservation easements, deed restriction, or other protection measures no later than 36 months after the start of ground-disturbing activities. On July 7, 2021, BLM and the Service determined that the original 2013 ITS and BO would be modified to document approximately 197 acres of reduction of the Project footprint. Based on that reduction, Project impacts are now determined to be 1,076.6 acres with required compensatory mitigation of 1505.0 acres. On September 27, 2021, the Service issued an amendment to the ITS and BO (Number FWS-ERIV-10B0593-12F0411-R002) for the Project specifically including the changes listed above. Per the terms of the amendment to the ITS and BO, all other portions of the original January 15, 2013 biological opinion remain unchanged and in effect.

On July 26, 2022, the Director of CDFW received a notice from the Applicant requesting a new determination pursuant to Fish and Game Code section 2080.1 to address the changes in the project and the BO amendment (See Cal. Reg. Notice Register 2022, Number 32-Z, Z2022-0729-01).

Determination

CDFW has determined that the ITS and BO, as amended, are consistent with CESA as to the Project and desert tortoise because the mitigation measures contained in the ITS and BO, as amended, 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 desert tortoise will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the ITS and BO, as amended, 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 Proj-

ect will not jeopardize the continued existence of desert tortoise.

All portions of CDFW’s determination in Consistency Determination Number 2080–2013–002–006, issued on April 3, 2013 and attached hereto as Exhibit A, remain unchanged and in effect with the exception of the following amendments described in *italics*:

The third full paragraph on Page 7 is amended in its entirety to read:

- *The Applicant will provide for permanent protection and management of the compensation lands for desert tortoise, and enhancement actions such as habitat restoration, invasive plant control, road closures or road fencing, and controlling ravens and other predators. The total land acquisition will be an estimated 1505.0 acres. The final land acquisition acreage, which will reflect any deviations in Project disturbance, according to final design, and deviations in the as-built Project footprint, will be determined in coordination with and approved by the Agencies. The Applicant will complete the acquisition, protection, and transfer of all lands and record the required conservation easements, deed restriction, or other protection measures no later than 36 months after the start of ground-disturbing activities.*

The “Financial Assurances” section, beginning at the top of page 9, is amended in its entirety to read:

- *The Applicant will provide to the Agencies, no fewer than 30 days prior to commencing ground-disturbing activities, an irrevocable letter of credit or another form of security (fiscal security) provided for review by the Service and BLM and approval by CDFW. 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 the conditions set forth in the BO. The security will be in the amount of six million five hundred sixty-one thousand two hundred eighty dollars (\$6,561,280.00) for 2050.4 acres of land based on the following estimated costs of implementing the conservation measures: land acquisition costs for impacts to habitat, calculated at \$1,500/acre (\$3,075,600.00); costs of enhancing acquisition lands, calculated at \$250/acre (\$512,600.00); and long-term maintenance and management, calculated at \$1,450/acre (\$2,973,080.00). Notwithstanding the posting of security, the Applicant will complete the acquisition, protection, and transfer of all lands and record the required conservation easements, deed restriction, or other protection measures no later than 36 months after the start of ground-disturbing activities. The actual costs to comply with this condition will vary depending on the*

actual costs of acquiring compensation habitat, the costs initially improving the habitat, and the actual costs of long-term management as determined by a Property Analysis Record (PAR) or equivalent analysis. Land acquisition will be accomplished in one of three ways:

- 1) Providing funds in an amount equivalent to the total security amount in paragraph 4(c) into the Renewable Energy Action Team account established with National Fish and Wildlife Foundation (NFWF) no later than 30 days prior to ground disturbance. Lands will be acquired no later than 36 months after ground-disturbing activity and will be conserved in perpetuity by a legal mechanism agreed to by the Service, BLM, and CDFW. EDF will independently establish a management fund for the entity that owns and manages the acquired lands. The management fund will consist of an interest-bearing account, with the amount of capital commensurate to generate sufficient interest to fund all monitoring, management, and protection of the acquired lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and other actions designed to protect or improve the habitat values of the acquired lands. A PAR, or comparable method, will be conducted by EDF independently and reviewed by the Service, BLM, and CDFW to determine the management needs and costs described above, which then will be used to calculate the amount of capital needed for the management fund. This management fund will be held and managed by an entity approved by the Service, BLM, and CDFW as appropriate.
- 2) The responsibility for acquisition of compensation lands may be delegated to a third party other than NFWF, such as a non-governmental organization supportive of desert habitat conservation, by written agreement of the Service, BLM, and CDFW. If conservation lands are acquired by an agency-approved entity, they must meet the CDFW’s fully mitigated standard. Agreements to delegate land acquisition to an approved third party, or to manage compensation lands, will be executed and implemented within 36 months of the BLM and County of Riverside’s certification of the Project.
- 3) The Applicant may choose to compensate for impacts to state-listed endangered

species pursuant to Section 2081 of the Fish and Game Code using the “advance mitigation” mechanism set forth in California Fish and Game Code section 2069. Lands acquired through Section 2069 may in whole or in part satisfy the habitat requirements set forth in this mitigation measure, only to the extent that they do in fact provide habitat values for significant impacts to the species and biological resources identified above, and are consistent with the selection criteria described above.

If the Applicant directly acquires conservation lands independently, it must meet CESA’s fully mitigated standard. Lands purchased will be transferred in fee title to CDFW or another entity or individual qualified pursuant to California Government Code sections 65965–65968, as amended, with either a conservation easement, deed restriction, or other protective measures (as approved by CDFW) over those lands. If the Applicant transfers lands to CDFW, the Applicant will reimburse CDFW for reasonable expenses incurred during title and documentation review, expenses incurred from other State agency reviews, and overhead related to transfer of the lands. If the Applicant transfers lands via donation to BLM, similar transfer fees may be incurred.

Conclusion

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of desert tortoise, provided the Applicant implements the Project as described in the ITS and BO, as amended, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the ITS and BO, as amended. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service further 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 & G. Code, § § 2080.1, and 2081, subs. (b) and (c)).

CDFW’s determination that the BO, BO amendment, and ITS are consistent with CESA is limited to desert tortoise.

**DEPARTMENT OF
FISH AND WILDLIFE**

CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION
NUMBER 2080–2022–014–05

Project:

Legacy Homes Tract Number 14608 Development Project

Location: East Los Alamos, Santa Barbara County

Permittee: Legacy Homes

Background

Legacy Homes (Permittee) proposes to construct 59 residential lots, extend four residential streets, and improve drainage facilities on Legacy Homes Tract Number 14608, in Santa Barbara County. The Legacy Homes Tract Number 14608 Development Project (Project) includes disturbance to 23.09 acres for development into 59 lots located primarily west of Den Street and south of Coiner Street in the southwestern portion of the Los Alamos Community Plan area (Project Area). The lots are proposed to range from 8,877–16,875 gross square feet. The Project includes grading for tract development, including roads and residential building pads, estimated at 20,000 cubic yards of cut and 40,000 cubic yards of fill, with approximately 20,000 cubic yards of import, installation of exterior lighting, on-site drainage systems, installation of a pipeline, bank stabilization and a storm drain outfall at San Antonio Creek, road extensions over a drainage ditch of Shaw Street, and extension of Den Street south to intersect Coiner Street’s extension.

The proposed project is a “lot sales” subdivision, where graded lots would be offered individually or in groups to local builders. Future property owners would be responsible for developing their respective homes and funding connections to infrastructure including sewer, electrical, gas, and drainage.

The Project activities described above are expected to incidentally take¹ California tiger salamander (*Ambystoma californiense*) from the East Los Alamos Santa Barbara County Distinct Population Segment within the community of Los Alamos in Santa Barbara County. California tiger salamander could be incidentally taken as a result of grading, crushing, or entrainment. California tiger salamander is designated as an endangered species pursuant to the federal En-

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.”).

dangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and a threatened species pursuant to the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.). (See Cal. Code Regs., title 14, § 670.5, subdivision (b)(3)(G).)

The Permittee prepared a Habitat Conservation Plan (HCP) and received an Incidental Take Permit (ITP) from the United States Fish and Wildlife Service (USFWS) on August 18, 2022, (Permit Number ESPER0048285) pursuant to Section 10 of the ESA.

The Project Area lies within the historic range and federally designated critical habitat of the California tiger salamander. The HCP provides an assessment of the existing habitat within the Project Area, evaluates the effects of the proposed development and operation and maintenance activities (Covered Activities) for a period of 15 years on California tiger salamander, and presents a mitigation plan to offset habitat loss and/or incidental take of California tiger salamander that could result from the Covered Activities.

California tiger salamander are distributed in six metapopulations in Santa Barbara County:

- Southwestern Santa Maria Valley (West Orcutt);
- Southeastern Santa Maria Valley (Bradley–Dominion);
- West Solomon Hills/north Los Alamos Valley;
- East Los Alamos Valley;
- Purisima Hills; and
- Santa Rita Valley.

The three known California tiger salamander breeding sites nearest the Project Area are: Pond LOAL–18, located approximately 8,000 feet southeast of the Project Area; Pond ZACR–3, located approximately 15,000 feet southeast of the Project Area; and Pond SISQ–1, located approximately 16,000 feet northwest of the Project Area.

Other potential breeding ponds for California tiger salamander include: LOAL–26 (Carrari Pond A), located approximately 4,000 feet west of the Project Area; one or two additional unnamed pond(s) identified in aerial photographs and located on the same property, in the vicinity of Pond–LOAL–26, and in a drainage more than 8,000 feet from the Project Area (Personal communication, Greg McGowan 2004); and Pond LOAL–27, located 7,000 feet to the west of the Project Area. The Permittee was not able to survey or assess ponds located on the Carrari property (the closest of which is located approximately 4,000 feet west of the Project Area). Evidence from aerial photographs and descriptions of the habitat from scientists at Levine Fricke indicate that potential breeding habitat for amphibian species, including California tiger salamander, is located on the Carrari property within three man-made ponds. (Personal communication, Greg McGowan 2004.)

The Permittee obtained an ITP from the USFWS and is authorized to incidentally take California tiger salamander for a period of 15 years, commencing on August 18, 2022. Biological goals and objectives have been developed to ensure that the operating conservation program in the HCP is consistent with the conservation and recovery goals for the California tiger salamander.

The Project will require the use of heavy equipment (e.g., water truck, excavator, backhoe, loader, flatbed trailer) to complete construction.

Anticipated incidental take associated with the Covered Activities could include mortality to, or injury of, terrestrial adult or juvenile California tiger salamander associated with the removal of upland habitat. Individual California tiger salamanders could be injured or killed as a result of being crushed while harboring in burrows if they are not detected during pre-activity capture and relocation surveys. In addition, vehicle traffic has some potential to result in mortality of California tiger salamander. Finally, harassment from relocating California tiger salamander encountered within the Project Area may significantly disrupt normal behavioral patterns, including breeding, feeding, or sheltering. Take resulting from the Covered Activities authorized under the ITP, consistent with the HCP, will be incidental to the otherwise lawful and permitted activities conducted by the Permittee.

Potential impacts to California tiger salamander habitat from the Covered Activities have been quantified based on the best information that is reasonably available. During the 15-year period covered by the ITP, the cumulative take limits will be two California tiger salamander found dead or injured and six California tiger salamander captured and relocated. If the cumulative take limits are exceeded, the Permittee will immediately contact the USFWS' Ventura Field Office and the California Department of Fish and Wildlife (CDFW) to discuss the need for a permit amendment. Project activities that are likely to cause additional take will be suspended until the review is completed.

The ITP also requires the Permittee to implement and adhere to measures contained within the HCP.

On August 23, 2022, the Director of CDFW received a notice from the Permittee requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITP and HCP are consistent with CESA for purposes of the Project and California tiger salamander. (Cal. Reg. Notice Register 20220, Number 36–Z, page 1037.)

Determination

CDFW has determined that the ITP, along with its accompanying HCP, is consistent with CESA as to the Project and California tiger salamander because the mitigation measures contained in the HCP and ITP

meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of California tiger salamander will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the 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 California tiger salamander. The mitigation measures in the ITP and HCP include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- 1) Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with the USFWS and CDFW and overseeing compliance with the HCP, and ITP. Permittee shall notify the USFWS and CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify the USFWS and CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of the ITP.
- 2) Designated Biologist. Permittee shall submit to the USFWS, CDFW, and the County of Santa Barbara in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, collecting and handling of California tiger salamander. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual California tiger salamander and to minimize disturbance of California tiger salamander habitat. Permittee shall obtain USFWS/CDFW/County approval of the Designated Biologist in writing before starting Covered Activities and shall also obtain approval in advance in writing if the Designated Biologist must be changed. The Designated Biologist(s) may be assisted by approved biologists identified as Designated Monitors that have California tiger salamander experience but do not meet the qualifications to be a Designated Biologist. Designated Monitors shall be approved in writing by the USFWS, CDFW, and the County of Santa Barbara.
- 3) Designated Biologist Authority. To ensure compliance with the Conditions of Approval of the ITP, the Designated Biologist and Designated Monitors shall have authority to immediately stop any activity that does not comply with the ITP, and/or to order any reasonable measure to avoid the unauthorized take of California tiger salamander.
- 4) Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the California tiger salamander, information about the distribution and habitat needs of the California tiger salamander, sensitivity of the California tiger salamander to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in the ITP. Permittee shall provide interpretation for non-English speaking workers and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, workers shall sign a form stating they attended the program and understand all protection measures.
- 5) Construction Monitoring Notebook. The Designated Biologist shall maintain a construction monitoring notebook on-site throughout the construction period, which shall include a copy of the ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction monitoring notebook is available for review at the Project site upon request by the USFWS and CDFW.
- 6) Trash Abatement. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 7) Dust Control. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of California

- tiger salamander by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.
- 8) Invasive Species Control. The spread of invasive species shall be prevented per the operations and maintenance summary included in the Storm Water Quality Maintenance Plan attached to the HCP as Appendix E.
 - 9) Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to California tiger salamander and other species, such as monofilament netting (erosion control matting) or similar material, in potential California tiger salamander habitat.
 - 10) Delineation of Property Boundaries. Before starting Covered Activities, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities.
 - 11) Delineation of Habitat. Permittee shall clearly delineate habitat of California tiger salamander within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of California tiger salamander habitat.
 - 12) Project Access. Project-related personnel shall access the Project Area using existing routes and shall not cross California tiger salamander habitat outside of or in route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact USFWS/CDFW for written approval before carrying out such an activity. USFWS/CDFW may require an amendment to the ITP, among other reasons, if additional take of California tiger salamander will occur as a result of the Project modification.
 - 13) Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross California tiger salamander habitat outside of the marked Project Area unless provided for as described in HCP Measures 11 and 14.
 - 14) Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.
 - 15) USFWS/CDFW Access. Permittee shall provide USFWS and CDFW staff with reasonable access to the Project and shall otherwise fully cooperate with the USFWS' and CDFW's efforts to verify compliance with or effectiveness of mitigation measures set forth in the ITP.
 - 16) Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.
 - 17) Flag Burrows. Prior to any ground disturbance within the Project Area, the Designated Biologist(s) shall flag all potential California tiger salamander refugia within 50 feet of the Project Area to alert biological and work crews to their presence. Where feasible, an avoidance buffer of 50 feet or greater around refugia shall be maintained.
 - 18) Pre-construction Surveys. Within 30 days prior to initial ground-disturbance activities, the Designated Biologist shall be present to perform pre-construction surveys for California tiger salamander, and shall remain on-site until temporary exclusion fencing has been installed to preclude California tiger salamander from entering the work area in accordance with HCP Measure 29, clearance surveys have been completed in accordance with HCP Measure 30, all burrows have been excavated in accordance with HCP Measure 31, and any California tiger salamander within the exclusion fence have been relocated pursuant to the Relocation Plan. These surveys shall cover the existing access routes and the proposed construction Project work area(s), with a 50-foot buffer zone.
 - 19) Temporary Exclusion Fencing. Prior to any surface disturbance, Permittee shall install temporary exclusion fencing (exclusion fence) around the perimeter of all project work area(s). Permittee shall install exclusion fencing to avoid California tiger salamander burrows, so that the burrows are isolated from the active work area when possible. The Designated Biologist shall accompany the exclusion fence construction crew

- to ensure that California tiger salamander are not killed or injured during fence installation. An alternative exclusion fence design may be used if the USFWS and CDFW have provided written approval in advance of fence installation. The exclusion fence shall be supported sufficiently to maintain its integrity under all conditions such as wind and heavy rain for the duration of the active construction period. Silt fencing shall not be used as exclusion fencing under this requirement; other agency-approved exclusion fencing (e.g., ERTEC-style fencing or comparable) will be used. Permittee shall check the exclusion fence at least once weekly and maintain/repair the fence when necessary.
- 20) Clearance Surveys. Prior to any ground disturbance within the Project Area, the Designated Biologist(s) shall examine the portions of the Project Area to be disturbed for small mammal burrows and California tiger salamander. The survey shall provide 100 percent coverage of the project limits. Any new small mammal burrows shall be marked with flagging. Any California tiger salamander detected within the Project Area shall be relocated as per an approved Relocation Plan.
 - 21) Burrow Excavation. After conducting the clearance survey, all small mammal burrows present within the portion of the Project Area to be disturbed or that cannot be avoided by 50 feet shall be fully excavated by hand by the Designated Biologist(s), and then collapsed. Any live California tiger salamander salvaged during burrow excavation shall be relocated as per an approved Relocation Plan.
 - 22) California tiger salamander in the Project Area. If any California tiger salamander is found in the Project Area during Covered Activities, all work that could potentially harm the California tiger salamander shall stop immediately until the Designated Biologist(s) can relocate the California tiger salamander following the USWS- and CDFW-approved Relocation Plan or it leaves the Project Area on its own accord.
 - 23) Precipitation. Permittee shall restrict Covered Activities to periods of low rainfall (less than 1/2-inch precipitation per 24-hour period). Permittee shall monitor the National Weather Service (NWS) 72-hour forecast for the Project Area.
 - a. If a 70 percent or greater chance of rainfall is predicted within 24 hours of project activity, a Designated Biologist shall survey the project site before construction begins EACH day rain is forecast. If Permittee uses a Designated Monitor to conduct surveys, a Designated Biologist must still be available to capture and relocate any California tiger salamander discovered during the surveys.
 - b. If precipitation begins, then a Designated Biologist shall be at the project site for the duration of the rain event in order for work to continue. If a Designated Monitor is used, then a Designated Biologist must still be on call and available to relocate any California tiger salamander discovered.
 - c. If rain exceeds 1/2 inch during a 24-hour period, all Covered Activities shall cease until it is no longer raining, and no further rain is forecast.
 - 24) Construction Hours. In compliance with the County of Santa Barbara's Condition of Approval number 31,² Permittee shall limit construction activity for site preparation and for future development to the hours of 7 a.m. to 4 p.m., Monday through Friday. No construction shall occur on State Holidays (e.g., Thanksgiving, Christmas, 4th of July, Labor Day). Construction equipment maintenance shall be limited to the same hours. Non-noise generating construction activities (e.g., painting, landscaping with hand tools, etc.) are not subject to these restrictions.
 - 25) Equipment Inspection. Workers shall inspect for California tiger salamander under vehicles and equipment before the vehicles and equipment are moved. If a California tiger salamander is present, the worker shall notify the Designated Biologist and wait for the California tiger salamander to move unimpeded to a safe location or the Designated Biologist shall move the California tiger salamander out of harm's way outside of the Project Area and in compliance with the approved Relocation Plan. The Designated Biologist shall relocate any California tiger salamander observed within the temporary exclusion fence (Measure 29).
 - 26) Stockpiles. Permittee shall place soil stockpiles where soil shall not pass into potential California tiger salamander breeding pools; nor shall it pass into any other waters of the state, in accordance with Fish and Game Code section 5650. Permittee shall appropriately protect stockpiles to prevent soil erosion.
 - 27) Daily Entrapment Inspections. Permittee shall ensure all trenches, holes, or other excavations with sidewalls steeper than a 1:1 slope is covered when

² The County of Santa Barbara's Conditions of Approval are attached as Appendix A to the Legacy Homes Tract Number 14608 Development Project Biological Resources Technical Report, which is, in turn, attached to the HCP as Appendix B.

not actively being worked on or have an escape ramp of earth of a non-slip material with a less than 1:1 slope. Either the Designated Biologist or Monitor shall inspect all open trenches, auger holes, and other excavations that may trap California tiger salamander prior to any work in or around them and immediately prior to being backfilled. Only the Designated Biologist(s) is/are authorized to safely remove and relocate any California tiger salamander found in accordance with the USFWS- and CDFW-approved Relocation Plan.

- 28) California tiger salamander Injury. If a California tiger salamander is injured as a result of project-related activities, the Designated Biologist shall immediately take it to a USFWS/CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured California tiger salamander. The Permittee shall notify USFWS/CDFW of the injury to the California tiger salamander immediately by telephone and e-mail followed by a written incident report. Notification shall include the name of the facility where the animal was taken.
- 29) To meet compensatory mitigation requirements, the Permittee shall purchase an estimated 1.0 acre of credits from the USFWS- and CDFW-approved La Purisima Conservation Bank. Purchase of credits must be completed before starting Covered Activities or within 18 months of the effective date of the ITP.

Monitoring and Reporting Measures

- 1) Mitigation Monitoring and Reporting Program. The Permittee shall develop a Mitigation Monitoring and Reporting Program (MMRP). The purpose of the MMRP is to ensure that the impact minimization and mitigation measures required by USFWS and CDFW are properly implemented, and thereby to ensure compliance with ESA, Fish and Game Code section 2081, subdivision (b), and section 21081.6 of the Public Resources Code.
- 2) Notification Before Commencement. The Designated Representative shall notify the USFWS and CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-project measures before starting Covered Activities.
- 3) Notification of Non-compliance. The Designated Representative shall immediately notify the USFWS and CDFW in writing if it determines that the Permittee is not in compliance with any measures of the ITP, including but not limited

to any actual or anticipated failure to implement measures within the time periods indicated in the ITP and/or the MMRP. The Designated Representative shall report any non-compliance with the ITP to the USFWS and CDFW within 24 hours.

- 4) Relocation Plan. The Designated Biologist shall prepare a California tiger salamander Relocation Plan and submit it to the USFWS and CDFW for approval prior to beginning Covered Activities. The Relocation Plan shall include, but not be limited to, identification of capture methods, handling methods, relocation methods, identification of relocation areas, and identification of a wildlife rehabilitation center or veterinary facility. Covered Activities may not proceed until the USFWS and CDFW approve the relocation plan in writing. Only approved Designated Biologist(s) are authorized to capture and handle California tiger salamander.
- 5) Pre-construction Survey Report. The Designated Biologist shall submit a report documenting the results of the pre-construction survey to the USFWS and CDFW within five days after performing the survey.
- 6) Compliance Monitoring. The Designated Biologist shall be on-site daily during all initial surface-disturbing activities and shall conduct compliance inspections a minimum of once per week during periods of inactivity and after clearing, grubbing, and grading are completed. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the California tiger salamander; (2) prevent unlawful take of species; (3) check for compliance with all measures of the ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing oversight activities and compliance inspections, observations of California tiger salamander and their sign, survey results, and monitoring activities required by the ITP.
- 7) Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records into a Monthly Compliance Report and submit it to the USFWS and CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to the USFWS and CDFW. If the USFWS and CDFW determine the reporting schedule

must be changed, the USFWS and CDFW will notify Permittee in writing of the new reporting schedule.

- 8) Annual Status Report. Permittee shall provide the USFWS and CDFW with an Annual Status Report no later than January 31 of every year beginning with issuance of the ITP and continuing until the USFWS and CDFW accept the Final Mitigation Report identified below. Each Annual Status Report shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of California tiger salamander; and (6) information about other Project impacts on California tiger salamander.
- 9) CNDDDB Observations. The Designated Biologist shall submit all observations of California tiger salamander to the California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or Annual Status Report, whichever is submitted first relative to the observation.
- 10) Final Mitigation Report. No later than 45 days after completion of all mitigation measures, Permittee shall provide the USFWS and CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all Annual Status Reports; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of California tiger salamander; (4) information about other Project impacts on California tiger salamander; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of the ITP measures in minimizing and mitigating project impacts of the taking on California tiger salamander; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects

on California tiger salamander; and (8) any other pertinent information.

- 11) Notification of Take or Injury. Permittee shall immediately notify the Designated Biologist if a California tiger salamander is taken or injured by a Project-related activity, or if a California tiger salamander is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to the USFWS and CDFW by phone/email. The initial notification to the USFWS and CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP number. Following initial notification, Permittee shall send the USFWS and CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible, provide a photograph, explanation as to cause of take or injury, and any other pertinent information.
- 12) Record of Handling. All California tiger salamander captures, and sightings confirmed by the Designated Biologist(s) shall include the following documented information: the date, time, and location of each occurrence using Global Positioning System (GPS) technology, the name of the party that actually identified the animal, circumstances of the incident, the general condition and health of each individual, any diagnostic markings, sex, age (juvenile or adult), and actions undertaken and habitat description. Permittee shall submit this information to the CNDDDB. This information shall also be included in the Monthly Compliance Report.

Security

Permittee has completed the purchase of 1.00 acre of conservation credits from the La Purisima Conservation Bank, as documented by a September 9, 2022 Bill of Sale provided to CDFW. Because Permittee has completed mitigation in advance of project impacts, Permittee is not required to provide further financial assurance.

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 California tiger salamander, provided the Permittee implements the Project as described in the ITP and HCP, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the ITP and HCP. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the USFWS amends or replaces the ITP or HCP, the Permittee shall be re-

quired 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).)

**DEPARTMENT OF
FISH AND WILDLIFE**

**PROPOSED RESEARCH ON
FULLY PROTECTED SPECIES**

**GOLDEN EAGLE AND BALD EAGLE
RESEARCH IN CALIFORNIA**

The Department of Fish and Wildlife (Department) received a proposal on December 16, 2022, from Dr. Jeff Smith of H.T. Harvey & Associates, requesting authorization to take golden eagle (*Aquila chrysaetos*) and bald eagle (*Haliaeetus leucocephalus*) (eagles), both Fully Protected bird species, for scientific research purposes, consistent with protection and conservation of the species.

Dr. Smith will be conducting nest surveys and monitoring, quantifying reproductive success and productivity, and assessing overall population dynamics of eagles on and around various development and energy-related projects across California, including, but not limited to, Santa Clara, Contra Costa, and Riverside counties, as well as the Central Valley of California. These studies establish baseline knowledge of the eagle populations in proposed project areas, evaluate the potential risk to eagles of developing projects, support the development and implementation of relevant conservation measures to minimize those risks, quantify the actual impacts of project development, and assess and evaluate the effectiveness of implemented conservation measures and risk-minimization technologies. The proposed activities include surveying and monitoring nests via aerial helicopter and ground-based surveys, salvaging carcasses, collecting naturally shed feathers, and collecting prey and nestling remains under nest sites. If any eagles are found dead, they will be salvaged and submitted to the Department's Wildlife Investigations Lab, as designated by the Department and the U.S. Fish and Wildlife Service. No adverse effects on individuals or populations are expected.

The Department intends to issue, under specified conditions, an amended Memorandum of Understanding (MOU) that would authorize the applicant to carry out the proposed activities. The applicant is also required to have valid federal permits and a scientific collecting permit for this research on eagles and to incidentally take other bird species in California.

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected bird species after a 30-day notice period has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected birds, it will issue the authorization on or after January 29, 2023, for an initial and renewable term of four years. Contact: Shannon Skalos, Shannon.Skalos@wildlife.ca.gov.

**DEPARTMENT OF
FISH AND WILDLIFE**

**CESA CONSISTENCY
DETERMINATION REQUEST FOR
MABURY TENTATIVE TRACT
MAP NUMBER 18163
PROJECT 2080-2022-018-05**

ORANGE COUNTY

The California Department of Fish and Wildlife (CDFW) received a notice on December 13, 2022, that Milan REI X, LLC (MCM) proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed project involves building 22 new detached single-family homes on 10.87 acres, a 0.06-acre storm drain outlet in Santiago Creek, and a 0.22-acre temporary construction access bridge crossing across Santiago Creek. The proposed project is located northwest of the intersection of Cannon Street and Santiago Canyon Road in the City of Orange, Orange County, California.

The U.S. Fish and Wildlife Service (Service) issued a federal biological opinion (BO)(Service Ref. Number FWS-OR-22-0029849-S7-F) in a memorandum to the U.S. Army Corps of Engineers on September 7, 2022, and Minor Correction to the BO (Service Ref. Number FWS-OR-22-0029849-S7-TA) on October 19, 2022 which considered the effects of the proposed project on state and federally endangered least Bell's vireo (*Vireo bellii pusillus*).

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

permit under Fish and Game Code section 2081 subdivision (b) for the proposed project.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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 **February 16, 2023**, at 10:00 a.m. in the Board Room of the Fresno Council of Governments 2035 Tulare Street, Fresno, 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 **February 16, 2023**, at 10:00 a.m. in the Board Room of the Fresno Council of Governments 2035 Tulare Street, Fresno, 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.

RULEMAKING PETITION DECISION

OFFICE OF ADMINISTRATIVE LAW

NOTICE OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 11340.7

The California Gambling Control Commission (CGCC) petitioned the Office of Administrative Law (OAL) to adopt regulations to clarify the process required for a state agency to approve a petition for the adoption, amendment, or repeal of a regulation and schedule the matter for public hearing as provided by Government Code section 11340.7. OAL issues this decision pursuant to Government Code section 11340.7(d).

BACKGROUND

Title 2, Division 3, Part 1, Chapter 3.5 of the Government Code (commencing with section 11340) sets forth the requirements of the Administrative Procedure Act as it relates to agency rulemaking.

Government Code sections 11340.6 and 11340.7 establish a process by which the public may petition an

agency to make regulatory changes. Requirements for an interested person to petition a state agency are contained in Government Code section 11340.6:

“Except where the right to petition for adoption of a regulation is restricted by statute to a designated group or where the form of procedure for such a petition is otherwise prescribed by statute, any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation as provided in Article 5 (commencing with Section 11346). This petition shall state the following clearly and concisely:

- (a) The substance or nature of the regulation, amendment, or repeal requested.
- (b) The reason for the request.
- (c) Reference to the authority of the state agency to take the action requested.”

Upon receipt of a petition, the petitioned agency must comply with the response requirements in Government Code section 11340.7:

- “(a) Upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346), a state agency shall notify the petitioner in writing of the receipt and shall within 30 days deny the petition indicating why the agency has reached its decision on the merits of the petition in writing or schedule the matter for public hearing in accordance with the notice and hearing requirements of that article.
- (b) A state agency may grant or deny the petition in part, and may grant any other relief or take any other action as it may determine to be warranted by the petition and shall notify the petitioner in writing of this action.
- (c) Any interested person may request a reconsideration of any part or all of a decision of any agency on any petition submitted. The request shall be submitted in accordance with Section 11340.6 and include the reason or reasons why an agency should reconsider its previous decision no later than 60 days after the date of the decision involved. The agency’s reconsideration of any matter relating to a petition shall be subject to subdivision (a).
- (d) Any decision of a state agency denying in whole or in part or granting in whole or in part a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346) shall be in writing and shall be transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register at the earliest practicable date. The decision shall identify the agency, the party submitting the petition, the provisions of the California Code of Regulations requested to

be affected, reference to authority to take the action requested, the reasons supporting the agency determination, an agency contact person, and the right of interested persons to obtain a copy of the petition from the agency.”

In short, an agency that is petitioned to make regulatory changes pursuant to Government Code section 11340.6 must acknowledge receipt of the petition, then within 30 days issue a written decision denying the petition on the merits or schedule the matter for public hearing in accordance with Article 5 of the Administrative Procedure Act. In addition, Government Code section 11340.7 also permits an agency to “grant any other relief or take any other action as it may determine to be warranted by the petition.”

Referenced in Government Code section 11340.7(a) above, Article 5 (commencing with section 11346) of the Administrative Procedure Act establishes the requirements for public participation and procedures for the adoption of regulations by state agencies. To initiate a rulemaking action, an agency issues a Notice of Proposed Action by publishing the notice in the California Regulatory Notice Register, mailing the notice to every person on the agency’s mailing list, and posting the Notice of Proposed Action, proposed regulation text, and Initial Statement of Reasons on its website. The agency may include a date for a public hearing in its Notice of Proposed Action, or a public hearing may be requested by the public pursuant to Government Code section 11346.8(a) if the agency did not schedule one.

Pursuant to Government Code section 11342.4, OAL is vested with the authority to “adopt, amend, or repeal regulations for the purpose of carrying out the provisions of” Title 2, Division 3, Part 1, Chapter 3.5 of the Government Code. There are no existing regulations implementing, interpreting, or making specific the requirements of Government Code section 11340.7.

DISCUSSION

On November 22, 2022, OAL received a petition from Executive Director Stacey Luna Baxter on behalf of CGCC pursuant to Government Code section 11340.6. The petition requests that OAL “adopt regulations to clarify the meaning of the requirement to ‘... schedule the matter for public hearing in accordance with the notice and hearing requirements of that article,’ as provided in GC section 11340.7, subdivision (a).” Specifically, CGCC recommends that “OAL consider a process that includes a state agency scheduling a public hearing, at a future date of its choosing, and provide notification of such to (1) the petitioner, (2) the list of persons identified in Government Code section 11346.4, subdivision (a)(1), and posted on the state agency’s website. Then, once the state agency submits

the [Notice of Proposed Action] to OAL for publishing in the California Regulatory Notice Register, the state agency can include the previously scheduled public hearing date.”

Whether regulatory changes are proposed in response to a petition from a member of the public or the agency proposes changes on its own, in addition to any internal procedures, there are several steps required by the Administrative Procedure Act that must be taken before an agency can publish the Notice of Proposed Action. “[W]hen the proposed regulations involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period,” the agency shall involve parties who would be subject to the proposed regulations in public discussions pursuant to Government Code section 11346.45. An agency subject to a board or commission needs to obtain any necessary approvals before beginning the rulemaking process. Pursuant to State Administrative Manual section 6615, if there will be a fiscal impact an agency is obligated to send the Form STD. 399 to Department of Finance (Finance) “at least 30 days prior to the date on which the notice of proposed adoption is to be issued.” In the case of changes proposed by a petition, an agency would need to transmit its documents to Finance on the same day the petition is received. For major regulations, there is no ability to comply with the timeline in Government Code section 11340.7. California Code of Regulations, title 1, section 2001(a)(2) requires the agency “submit to [Finance] the information required in subdivision (a)(1) as soon as possible but in no event later than 60 days prior to filing a notice of proposed action with OAL.” In addition, California Code of Regulations, title 1, section 2001 (d) requires the agency to “seek public input regarding alternatives from those who would be subject to or affected by the regulations (including other state agencies and local agencies, where appropriate) prior to filing a notice of proposed action with OAL.”

Given the steps that must be taken before an agency can notice its proposed regulatory changes, the timeline required by Government Code section 11340.7 is nearly impossible to comply with if an agency elects to accept the petition and make regulatory changes. Further, an agency with a board or commission likely cannot even decide whether to deny or accept a petition without first obtaining board or commission approval, which would presumably require compliance with the notice requirements of the Bagley–Keene Act.

While it may be difficult, if not impossible, for agencies to comply with Government Code section 11340.7(a), the statute is clear. An agency that chooses to accept a petition and propose regulatory changes must schedule the matter for public hearing in accordance with Article 5 of the Administrative Procedure

Act. Any regulation adopted by OAL that provides for an alternative timeline or defines a different type of public hearing for purposes of accepting a petition would be inconsistent with the statute and violate Government Code section 11342.2.

CGCC’s additional suggestion for clarifying regulations to specify who must receive notice are already addressed by the Administrative Procedure Act. Government Code sections 11346.4(a)(1)–(6) require the agency send the notice to the persons, businesses, and groups listed in those subsections (which include those listed by CGCC). Government Code section 11340.85 requires the agency provide notice to the public by posting the Notice of Proposed Action on its website.

It is unclear what CGCC means by a state agency “scheduling a public hearing, at a future date of its choosing” and “once the state agency submits the [Notice of Proposed Action] to OAL for publishing in the California Regulatory Notice Register, the state agency can include the previously scheduled public hearing date”. If CGCC means the agency can schedule the hearing for a future date to allow time to obtain proper approvals and develop the required documents and then include that date in the Notice of Proposed Action, as discussed above, OAL cannot adopt a regulation that would be inconsistent with the timing requirements of Government Code section 11340.7 and Article 5 of the Administrative Procedure Act.

DECISION

Based on the above, OAL determined that it must deny the petition and that “other action” is warranted within the meaning of Government Code section 11340.7(b). OAL will schedule a stakeholder meeting to discuss challenges agencies face in responding to petitions pursuant to Government Code section 11340.7 and take necessary and appropriate action.

CONTACT PERSONS

Interested persons have the right to obtain a copy of the petition from OAL and may do so by contacting the OAL Reference Attorney by telephone at (916) 323–6815, by fax at (916)323–6826, by e-mail at staff@oal.ca.gov, or by mail at:

Office of Administrative Law
 Attention: Reference Attorney
 300 Capitol Mall, Suite 1250
 Sacramento, CA 95814–4339

Any other questions concerning this matter may be directed to:

Amy Gowan, Senior Attorney
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
Phone: (916) 323-6225
Email: amy.gowan@oal.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.

Department of Cannabis Control
File # 2022-1101-02
Equity Fee Waivers and Deferrals for Commercial Cannabis Licensing Fees

In this certificate of compliance, the Department makes permanent the adoption of a regulation to establish a fee waiver for equity applicants or licensees, pursuant to Business and Professions Code section 26249. This regulatory action also establishes a fee deferral for equity applicants or licensees, pursuant to Business and Professions Code section 26249.

Title 04
Adopt: 15014.1
Filed 12/15/2022
Effective 12/15/2022
Agency Contact: Kaila Fayne (916) 251-4544

Department of Corrections and Rehabilitation
File # 2022-1104-04
Release Allowances

This Certificate of Compliance makes permanent the emergency regulations amending the method of issuance of release allowances for eligible individuals to check or debit card.

Title 15
Amend: 3000, 3075.2
Filed 12/20/2022
Effective 12/20/2022
Agency Contact:
Renee Rodriguez (916) 445-2220

CalSavers Retirement Savings Board
File # 2022-1214-02
CalSavers Retirement Savings Program Amendments

This emergency rulemaking action conforms the Board's regulations to changes made by Senate Bill 1121 (Chapter 192 of 2022) to governing statutes concerning the number of eligible employees an employer must have for purposes of required registration with the CalSavers Retirement Savings Program. The action also deletes provisions which have become obsolete due to the passage of time.

Title 10
Amend: 10000, 10001, 10002, 10005, 10006
Filed 12/21/2022
Effective 01/01/2023
Agency Contact: Eric Lawyer (916) 653-1744

California School Finance Authority
File # 2022-1209-01
Charter Access to Bank Loan Enhancement Program

In this readopt of OAL Matter Number 2022-0915-01EE, the California School Finance Authority is establishing a program to utilize a grant award under the U.S. Department of Education's Credit Enhancement for Charter Schools Facilities Program for the financing of acquisition, renovation, or construction of charter school facilities, or the refinancing of existing charter school facility debt. This action establishes relevant definitions, eligibility criteria, award allocation, and eligible uses of funds, as well as an application and fee.

Title 04
Adopt: 10200.8, 10200.9, 10200.10, 10200.11, 10200.12, 10200.13, 10200.14, 10200.15
Filed 12/19/2022
Effective 12/21/2022
Agency Contact: Ryan Storey (213) 620-6360

State Water Resources Control Board
File # 2022-1212-01
Drought Conservation Emergency Regulation

This emergency rulemaking by the State Water Resources Control Board extends emergency regulations originally adopted in OAL Matter Number 2022-0105-03E pursuant to Water Code section 1058.5. The regulations are intended to promote conservation of water in response to the Governor's October 19, 2021, proclamation of a drought state of emergency, which was reaffirmed in Executive Order N-7-22.

Title 23
Adopt: 995
Filed 12/21/2022
Effective 12/21/2022
Agency Contact: Garrett Lenahan (916) 341-5179

Department of Transportation
 File # 2022-1201-03
 Conflict-of-Interest Code

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

Title 21
 Amend: 1575
 Filed 12/20/2022
 Effective 01/19/2023
 Agency Contact: Janet Johnson (279) 234-2372

Fish and Game Commission
 File # 2022-1109-01
 Pacific Leatherback Sea Turtle

The Fish and Game Commission amends section 670.5 by adding the Pacific Leatherback Sea Turtle to the list of endangered reptiles. This action is exempt from the Administrative Procedure Act pursuant to section 2075.5, subdivision (e), of the Fish and Game Code. This action was submitted to OAL for filing and printing only.

Title 14
 Amend: 670.5
 Filed 12/20/2022
 Effective 12/20/2022
 Agency Contact: Jennifer Bacon (916) 902-9285

State Teachers Retirement System
 File # 2022-1123-05
 Conflict-of-Interest Code

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

Title 05
 Amend: 22000
 Filed 12/21/2022
 Effective 01/20/2023
 Agency Contact: Brian Sytsma (916) 414-1703

Fair Political Practices Commission
 File # 2022-1121-01
 Cost of Living Adjustments

This action by the Fair Political Practices Commission amends regulations to change voluntary expenditure ceiling amounts, the gift amount that would constitute a financial interest, the gift amount that would cause disqualification in the making of a governmental decision, and the amount of the adjusted annual gift limit. These amounts are in effect for the period January 1, 2023 to December 31, 2024.

Title 02
 Amend: 18545, 18700, 18730, 18940.2
 Filed 12/20/2022
 Effective 01/19/2023
 Agency Contact:
 Amanda Apostol (916) 322-5660

Board of Education
 File # 2022-1028-03
 Nutrition Services

This action without regulatory effect aligns regulations with changes to federal and state law by (1) amending requirements for school nutrition services including lunch and breakfast programs; and (2) repealing regulations governing the California Fresh Start Program.

Title 05
 Amend: 15550, 15552, 15553, 15554, 15555, 15557, 15558, 15559, 15565, 15580, 15581, 15582, 15583, 15584
 Repeal: 15561, 15566, 15567, 15568
 Filed 12/14/2022
 Agency Contact: Patricia Alverson (916) 319-0642

Board of Registered Nursing
 File # 2022-1102-02
 Exemption from Continuing Education Requirements

The Board of Registered Nursing amends the California Code of Regulations, Title 16, Section 1452. The amendments remove gendered language and replace it with gender neutral terms.

Title 16
 Amend: 1452
 Filed 12/14/2022
 Agency Contact: Marissa Clark (916) 574-7438

Board of Registered Nursing
 File # 2022-1102-03
 Required Curriculum: Direct Patient Care Course Hours
 (Conform to AB 2684)

This action without regulatory effect corrects the reference note to replace a cumulative range with a list of each individual statute.

Title 16
 Amend: 1426
 Filed 12/19/2022
 Agency Contact: Marissa Clark (916) 574-7438

California Horse Racing Board
 File # 2022-1110-01
 Jockey's Riding Fee

The California Horse Racing Board submitted this action pursuant to California Code of Regulations, ti

tle 1, section 100 to increase jockey losing mount fees by the percentage increase of the state minimum wage pursuant to Business and Professions Code section 19501.

Title 04
Amend: 1632
Filed 12/20/2022
Agency Contact:
Amanda Drummond (916) 263-6033

New Motor Vehicle Board
File # 2022-1102-04
2022-2023 ACP Fees

This action without regulatory effect amends the Arbitration Certification Program (ACP) fee based on the formula established in section 553.70 of title 13 of the California Code of Regulations.

Title 13
Amend: 553.70
Filed 12/14/2022
Agency Contact:
Danielle R. Phomsopha (916) 244-6777

California Energy Commission
File # 2022-1028-05
Small Power Plant Exemption (SPPE)

The California Energy Commission (“CEC”) proposes to remove the adjudicatory hearing process for its Small Power Plant Exemption. The proposed regulation also supplements and clarifies information that must be provided during the application process for certification and for the Small Power Plant Exemption.

Title 20
Amend: 1936, 1940, 1941, 1942,
Repeal: 1934, 1937, 1943, 1944, 1945, 1946, 1947,
Appendix F
Filed 12/14/2022
Effective 12/14/2022
Agency Contact: Corrine Fishman (916) 805-7452

Physical Therapy Board of California
File # 2022-1107-02
Documentary Evidence of Equivalent Degree
(Coursework Tools)

This rulemaking action by the Physical Therapy Board of California updates regulations and corresponding documents incorporated by reference relating to standards for satisfactory documentary evidence of equivalent degree for licensure as a physical therapist or physical therapist assistant.

Title 16
Amend: 1398.26.1
Filed 12/14/2022
Effective 01/01/2023
Agency Contact: Brooke Arneson (916) 561-8276

State Personnel Board
File # 2022-1028-04
Whistleblower Appeals Rights

This rulemaking action by the State Personnel Board updates notice requirements related to whistleblower retaliation hearings and determinations.

Title 02
Amend: 67.6, 67.7
Filed 12/14/2022
Effective 04/01/2022
Agency Contact: Lori Gillihan (916) 651-1043

Office of Environmental Health Hazard Assessment
File # 2022-1103-02
Proposition 65 Exposure to Acrylamide in Cooking

This proposed rulemaking action by the Office of Environmental Health Hazard Assessment specifies what constitutes Proposition 65 exposure to acrylamide that is formed in food by cooking or heat processing.

Title 27
Adopt: 25506
Filed 12/20/2022
Effective 04/01/2022
Agency Contact: Monet Vela (916) 323-2517

**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.