



California Regulatory Notice Register

REGISTER 2007, NO. 19-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

MAY 11, 2007

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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 (USPS 002–931), (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by Thomson West and is offered by subscription for \$202.00 (annual price). To order or make changes to current subscriptions, please call (800) 888-3600. “Periodicals Postage Paid in Saint Paul, MN.” **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Thomson–West/Barclays, P.O. Box 2006, San Francisco, CA 94126. The Register can also be accessed at <http://www.oal.ca.gov>.

PROPOSED ACTION ON REGULATIONS

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

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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

CONFLICT OF INTEREST CODES

AMENDMENT

STATE AGENCY: Department of Financial Institutions

MULTI-COUNTY: Palo Verde Irrigation District
Tahoe City Public Utility District

A written comment period has been established commencing on **May 11, 2007**, and closing on **June 25, 2007**. Written comments should be directed to the Fair Political Practices Commission, Attention **Ashley Clarke**, 428 J Street, Suite 620, Sacramento, California 95814.

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

The Executive Director or the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested per-

son, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **June 25, 2007**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS AND BUSINESSES

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

AUTHORITY

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

REFERENCE

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

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, 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 **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulations at a public hearing on or after **June 14, 2007**, at **approximately 9:45 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m. on June 12, 2007.**

BACKGROUND/OVERVIEW

The Commission proposes to amend Title 2, California Code of Regulations Sections 18361.2 and 18361.4. Regulation 18361.2 sets forth Commission procedures when it considers whether to initiate civil litigation in an enforcement action. Essentially, the regulation requires the Executive Director to provide a memorandum for the Commission to consider in closed session. No members of the Commission staff are permitted to attend the closed session, except for the purpose of answering questions pertinent to the Commission's deliberations. The Commission is required to transcribe all closed session communications between the Commission and these staff members. According to subdivision (d) of the regulation, the reason for this is to minimize the Commissioners' exposure to information that may cause them to prejudge the case if it ultimately comes before them in an administrative action under Section 83116. If the Commission decides to initiate civil action, members of the Commission staff are then permitted to attend the closed session and advise the Commission on the civil action.

The Commission believes the General Counsel's and Commission Assistant's presence during the entire time of the Commission's closed session deliberations will assist the Commission in several ways. The General Counsel, or an attorney from the Commission's Legal Division if the General Counsel is unavailable, can advise the Commission on legal and procedural issues that may arise during its deliberations. The Commission As-

stant can make and preserve the required record for the closed session. Finally, recording rather than transcribing discussions with members of the Commission staff will maintain an adequate record of these discussions and save time for the Commission Assistant.

The proposed amendments essentially make three substantive changes to Regulation 18361.2: (1) require the General Counsel, or an attorney from the Commission's Legal Division, to be in attendance during the Commission's closed session deliberations on whether to initiate a civil enforcement action; (2) require the Commission Assistant to be in attendance at the same closed sessions; and (3) require Commission discussions with staff members as described above to be recorded rather than transcribed. All other proposed amendments to the regulation are technical or clarifying.

Regulation 18361.4 currently makes a cross-reference to the "transcript" required by Regulation 18361.2. Since the proposed regulatory action will amend Regulation 18361.2 to require a recording instead of a transcript, it is necessary to make a parallel change to Regulation 18361.4. All other proposed amendments to Regulation 18361.4 are technical or clarifying.

REGULATORY ACTION

Amend 2 Cal. Code Regs. Sections 18361.2 and 18361.4.

FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. This regulatory action will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulatory action will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulatory action will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY

Government Code section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act (Gov. Code Secs. 81000-91014).

REFERENCE

The purpose of these regulations is to implement, interpret and make specific Government Code Sections 83115, 83115.5 and 83116.

CONTACT

Any inquiries should be made to Scott Hallabrin, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov>.

ADDITIONAL COMMENTS

After the hearing, the Commission may adopt, amend or repeal the regulation if it remains substantially the same as described or as in the text originally made available to the public. The Commission may make changes to the regulation before its adoption, amendment, or repeal.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulations at a public hearing on or after **June 14, 2007**, at **approximately 9:45 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m. on June 12, 2007.**

BACKGROUND/OVERVIEW

The Commission proposes to adopt 2 Cal. Code of Regulations Section 18466. Regulation 18466 is in response to new legislation (AB 1759 Umberg) adding Section 84204.5 to the Political Reform Act. Section 84204.5 requires a committee to file online with the Secretary of State within 10 days each time it makes contributions or independent expenditures of \$5,000 or more to support or oppose the qualification or passage of a single state ballot measure. According to a Senate committee analysis, the legislation intends to close a loophole that allows ballot measure proponents to delay disclosing their financial supporters by funding a ballot measure campaign through a general purpose committee.

Regulation 18466 helps implement the new legislation by clarifying various issues that have arisen about the ballot measure reporting. The regulation addresses the application of the reporting requirement when a donor committee makes contributions of \$5,000 or more to a primarily formed committee or a general purpose ballot measure committee supporting or opposing state

ballot measure(s). The regulation also addresses how the disclosure requirement applies when contributions totaling \$5,000 or more are made to a committee supporting multiple state ballot measures. Finally, the regulation exempts a committee from duplicative reporting, providing that the Section 84204.5 disclosure is not required when a primarily formed committee makes a contribution to another committee that is primarily formed for the same state ballot measure or a measure on the same ballot.

REGULATORY ACTION

Adopt 2 Cal. Code Regs. Section 18466.

FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. This regulatory action will have no fiscal impacts on any local entity or program.

Fiscal Impact on State Government. This regulatory action will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulatory action will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY

Government Code Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act (Gov. Code Secs. 81000-91014).

REFERENCE

The purpose of this regulation is to implement, interpret and make specific Government Code Section 84204.5.

CONTACT

Any inquiries should be made to Hyla P. Wagner, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov>.

ADDITIONAL COMMENTS

After the hearing, the Commission may adopt, amend or repeal the regulation if it remains substantially the same as described or as in the text originally made avail-

able to the public. The Commission may make changes to the regulation before its adoption, amendment, or repeal.

TITLE 5. COMMISSION ON TEACHER CREDENTIALING

Division VIII of Title 5 of the California Code of Regulations

Proposed Amendments to California Code of Regulations, Title 5 Section 80001 Pertaining to Definitions and Terms

Notice of Proposed Rulemaking

The Commission on Teacher Credentialing proposes to amend regulatory action described below after considering all comments, objections and recommendations regarding the proposed action.

Public Hearing

A public hearing on the proposed actions will be held:

June 28, 2007

8:30 a.m.

CSU Chancellor's Office

401 Golden Shore

Long Beach, California 90802

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments by fax, through the mail, or by e-mail on the proposed action. The written comment period closes at 5:00 p.m. on June 25, 2007. Comments must be received by that time or may be submitted at the public hearing. You may fax your response to (916) 322-0048; write to the California Commission on Teacher Credentialing, attn. Terri H. Fesperman, 1900 Capitol Avenue, Sacramento, California 95814-4213; or submit an email at tfesperman@ctc.ca.gov.

Any written comments received 18 days prior to the public hearing will be reproduced by the Commission's staff for each member of the Commission as a courtesy to the person submitting the comments and will be included in the written agenda prepared for and presented to the full Commission at the hearing.

Authority and Reference

Education Code Section 44225 authorizes the Commission to promulgate rules and regulations which will implement, interpret or make specific Sections 44225(l) and 44349 of the Education Code and govern the procedures of the Commission.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

Title 5 Section 80001 contains terms and definitions used by the Commission. The proposed changes update several outdated subsections. The main change is to amend subsection (e) concerning the credentials issued by the Commission.

Phase 1 of the Teacher Credentialing Service Improvement Project (TCSIP) was launched in October 2001, allowing teachers and administrators to view the status of applications online and provide public access to teachers' credentials online. This feature has proven to be very popular with several thousand hits per day on the website.

In February 2005, the Commission implemented the Credential Automation System Enterprise (CASE). This system replaced the prior database system and collects and stores all of the information related to the Commission's mandated credentialing functions. With the implementation of CASE, all credential and application history is stored in one database and can be viewed online via the secure lookup web. On the official documents is the information provided on the Commission's online lookup page. The online display includes the document number, issuance date, and the recommending institution as applicable.

The next technology efficiency is scheduled to take place in January 2008 when the Commission will no longer print credential documents. The Commission will only post official documents online and will no longer print and provide a paper copy of the document. Credentials will be only available online to view and print by the credential holder.

Local employing agencies must keep records of appropriate certification for all individuals serving in a position that requires certification. Education Code section 44430 requires individuals to register their documents with their employing agency. County offices receive a download of credential information from the Commission for applicants who have noted a county of employment on their application. For all other certificated staff, the employing agency must obtain verification of certification held by their employees. Using the online system instead of contacting the Commission by telephone or email would expedite the timeline for the employer to receive the appropriate information.

There has been reluctance on the part of some employing agencies to use the credential information on the Commission's website as an official record of documents held. In subsection (e), staff is proposing to add language that the Commission's online lookup is an official record for credentials in addition to the paper format of the document.

Proposed Changes to Title 5 Regulations

80001(c) The proposed change is to use the term “Chair” instead of “Chairman”.

80001(d) The definition of the Commission is no longer found in Education Code section 44203(a) so the reference is deleted.

80001(e) Staff is proposing the addition of wording to make clear that the Commission’s website is the official record of credentials issued in addition to the paper format of the document.

80001(f) Since the definition of degree is no longer found in subdivision (a) of Education Code section 44259 but may be found in subdivision (b)(1), the reference has been changed.

80001(h) The Education Code section cited in this subsection no longer refers to the position as Executive Secretary. The change is to reflect the appropriate term.

80001(j) The proposed change is to use the term “Vice–Chair” instead of “Vice–Chairman”.

Documents Incorporated by Reference: None

Documents Relied Upon in Preparing Regulations: None

Disclosures Regarding the Proposed Actions

The Commission has made the following initial determinations:

Mandate to local agencies or school districts: None.

Other non–discretionary costs or savings imposed upon local agencies: None.

Cost or savings to any state agency: None.

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

Significant effect on housing costs: None.

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

These proposed regulations will not impose a mandate on local agencies or school districts that must be reimbursed in accordance with Part 7 (commencing with Section 17500) of the Government Code.

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

Assessment regarding the creation or elimination of jobs in California [Govt. Code §11346.3(b)]: The Commission has made an assessment that the proposed amendments to the regulation would not (1) create nor eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: The Commission has determined that the proposed amendment to the regulations does not affect small businesses. The regulations

are not mandatory but an option that affects school districts and county offices of education.

Consideration of Alternatives

The Commission must determine that no reasonable alternative it considered 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 or would be as effective and less burdensome to affected private persons or small businesses than the proposed action. Interested individuals may present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

Contact Person/Further Information

General or substantive inquiries concerning the proposed action may be directed to Terri H. Fesperman by telephone at (916) 323–5777 or Terri H. Fesperman, California Commission on Teacher Credentialing, 1900 Capitol Ave, Sacramento, CA 95814. General question inquiries may also be directed to Janet Bankovich at (916) 323–7140 or at the address mentioned in the previous sentence. Upon request, a copy of the express terms of the proposed action and a copy of the initial statement of reasons will be made available. This information is also available on the Commission’s web site at www.ctc.ca.gov. In addition, all the information on which this proposal is based is available for inspection and copying.

Availability of Statement of Reasons and Text of Proposed Regulations

The entire rulemaking file is available for inspection and copying throughout the rulemaking process at the Commission office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of regulations, and the initial statement of reasons.

Modification of Proposed Action

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

Availability of Final Statement of Reasons

The Final Statement of Reasons is submitted to the Office of Administrative Law as part of the final rulemaking package, after the public hearing. When it is available, it will be placed on the Commission’s web site at www.ctc.ca.gov or you may obtain a copy by contacting Terri H. Fesperman at (916) 323–5777.

Availability of Documents on the Internet

Copies of the Notice of Proposed Action, the Initial Statement of Reasons and the text of the regulations in underline and strikeout can be accessed through the Commission’s web site at www.ctc.ca.gov.

**TITLE 5. EDUCATION AUDIT
APPEALS PANEL**

Notice of Proposed Rulemaking

*Audits of K–12 Local Education Agencies
Fiscal Year 2007–08*

The Education Audit Appeals Panel (EAAP) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

Public Hearing:

A public hearing regarding this proposal is not currently scheduled. Not later than 15 days prior to the close of the written comment period, any interested person, or his or her duly authorized representative, may make a written request for a public hearing pursuant to Government Code section 11346.8, and a public hearing will be held. Requests for a public hearing should be addressed to the Regulations Coordinator.

Written Comment Period:

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Coordinator. The written comment period closes at **5:00 p.m. on June 25, 2007**. EAAP will consider only written comments received by the Regulations Coordinator by that time. Written comments for EAAP’s consideration should be directed to:

Chris Pentoney, Regulations Coordinator
Education Audit Appeals Panel
770 L Street, Suite 1100
Sacramento, CA 95814
Fax: (916) 445–7626
e-mail: cpentoney@eaap.ca.gov

Authority and Reference:

Authority cited: Section 14502.1, Education Code.
Reference: Sections 8482.3, 14501, 14502.1, 14503, 41020, 41372, 47634.2, and 99237 of the Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

The regulations in Title 5 of the California Code of Regulations, Division 1.5, Chapter 3, constitute the audit guide required by Education Code sections 14503 and 41020. The audit guide provides guidance, through definitions of terms and specification of procedures, to auditors in the conduct of statutorily required financial and compliance audits of local education agencies. EAAP proposes amendments and additions to these regulations for the 2007–08 fiscal year that derive from proposed content submitted to EAAP by the Controller pursuant to Education Code Section 14502.1. The affected regulation sections are 19816, 19816.1, 19828.1, 19830, and 19854, and new sections 19828.2, 19829.5, 19830.1, 19837.1, 19838, and 19846.

Article 2, Audit Reports, includes definitions of terms in Section 19816, which is amended to specify the numbers of audit procedures for fiscal year 2007–08, to add a new finding code for resolution of findings related to the proposed new section regarding classroom teacher salaries (described below), to provide for more specificity with regard to the schedule of Average Daily Attendance reported for charter schools, to omit the procedures related to alternative pension plans, to delete reference to a repealed statute, and to make minor corrections in grammar and style. Section 19816.1 specifies which sections of the audit guide are applicable to each audit year; it is amended to list those sections applicable to audits of fiscal year 2007–08.

Article 3, State Compliance Requirements: Local Education Agencies Other Than Charter Schools, Article 3.1, State Compliance Requirements: School Districts and Charter Schools, and Article 4, State Compliance Procedures: Charter Schools list the particular state–funded education programs that are required to be audited and set forth procedures that direct auditors to relevant documents and reports and guide auditors in steps to determine whether an auditee was in compliance with the relevant statutory and regulatory requirements during the period audited.

In Article 3, three existing sections are being amended to add or modify an introductory sentence limiting their applicability to certain audit years, and three successor sections are being added to incorporate changes applicable to audits of fiscal year 2007–08 and thereafter:

- Section 19828.1 is limited to audits of fiscal years 2004–05 through 2006–07. Successor Section 19828.2 adds the words “in the resolution” to subparagraph (b)(5) for fiscal year 2007–08 and future years (Stats. of 2006, Ch. 704 (AB 607), § 8).

- Section 19830 is limited to audits of fiscal years 2003–04 and 2004–05. Successor Section 19830.1 is applicable to audits of fiscal year 2005–06 and future years—deleting the ‘dead’ cross reference to Education Code Section 22714.5, which was repealed by its own terms effective January 1, 2005 (Stats. 2004, Ch. 935 (AB 1852), § 2).
- Section 19837 is limited to audits of fiscal years 2004–05 through 2006–07. Successor Section 19837.1 is amended for fiscal year 2007–08 and future years to conform with the provisions of Education Code Section 17002(d), as amended effective January 1, 2007 (Stats. 2006, Ch. 704 (AB 607), § 4).

New Section 19829.5, Classroom Teacher Salaries, directs auditors to check for compliance with Education Code Section 41372 regarding minimum expenditures as a percentage of a district’s current expense of education.

New Section 19838, Mathematics and Reading Professional Development, directs auditors to check for compliance with certain provisions of Education Code Section 99237, as amended by Statutes of 2006, Chapter 524 (SB 472), § 6).

Article 3.1, new Section 19846, After School Education and Safety Program, directs auditors to check local education agencies, including participating charter schools, for compliance with elements of the after school component, the before school component, and general requirements (matching funds, expenditure limitations).

Article 4, Section 19854, Annual Instructional Minutes — Classroom Based, is amended to delete the cross reference to Education Code Section 46201(a)(3) that was deleted from Education Code Section 47612.5(a)(1). Section 47612.5(a)(1) now specifies directly the minimum annual number of minutes of instruction that must be offered by grade levels. (Statutes of 2005, Chapter 543 (AB 1610), § 5.)

Disclosures Regarding the Proposed Action:

- Mandate on local agencies and school districts: None
- Cost or savings to any state agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None
- Other non–discretionary cost or savings imposed upon local educational agencies: None
- Cost or savings in federal funding to the state: None

- Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.
- Cost impact on a representative private person or business: The EAAP is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Adoption of these regulations will not:
 - (1) create or eliminate jobs within California;
 - (2) create new businesses or eliminate existing businesses within California; or
 - (3) affect the expansion of businesses currently doing business within California.
- Significant affect on housing costs: EAAP has made an initial determination that the proposed regulatory action would not affect housing costs.
- Effect on small businesses: The proposed regulations will have no effect on small businesses because they do not materially alter the requirements for LEA audits.

Consideration of Alternatives:

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

EAAP invites interested persons to present statements or arguments regarding alternatives to the proposed regulations at the above–mentioned hearing or during the written comment period.

Contact Persons:

Inquiries concerning the substance of the proposed action, requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, and other technical information upon which the rulemaking is based, and questions on the proposed administrative action may be directed to Chris Pentoney, Regulations Coordinator, at (916) 445–7745 or by e–mail: cpentoney@eaap.ca.gov. The back–up contact person for general inquiries is Carolyn Pirillo, at (916) 445–7745.

Availability of Initial Statement of Reasons and Text of Proposed Regulations:

The Regulations Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the

above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Coordinator at the above address.

Availability of Changed or Modified Text:

Following the comment period, and a hearing, if requested, and consideration of all timely and relevant comments received, EAAP may adopt the proposed regulations substantially as described in this notice. If EAAP makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before EAAP adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Coordinator at the address stated above. The Regulations Coordinator 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 completion of the Final Statement of Reasons, a copy may be obtained by contacting the Regulations Coordinator at the above address.

Availability of Documents on the Internet:

Copies of the Notice of Proposed Rulemaking, Initial Statement of Reasons, text of the regulations in underline and strikeout, and Final Statement of Reasons will be accessible, through the Education Audit Appeals Panel website: www.eaap.ca.gov

TITLE 10. CALIFORNIA DEPARTMENT OF REAL ESTATE

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE REAL ESTATE COMMISSIONER

Jeff Davi, Real Estate Commissioner, proposes to adopt, amend and/or repeal the proposed regulations described below in Title 10, California Code of Regulations, after considering all comments, objections and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Commissioner proposes to adopt, amend and/or repeal sections 2842 and 2848 in Title 10 of the California Code of Regulations (CCR).

PUBLIC COMMENTS

The Commissioner or his representative will hold a public hearing starting at 10:00 AM, on June 29, 2007, in the Zinfandel Room at the Hilton Sacramento Arden West, located at 2200 Harvard Street, Sacramento, California 95815. The Examination Room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony to the Commissioner.

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commissioner. The written comment period closes on June 29, 2007. All written comments must be received by 5:00 p.m. on that date at the Department's Sacramento Office as follows:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P.O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

Comments may be sent via electronic mail to regulations@dre.ca.gov or via fax to David B. Seals at (916) 227-9458.

AUTHORITY AND REFERENCE

The changes to the regulations are authorized by Business and Professions Code sections 10080 and 10232.1 to implement, interpret or make specific Business and Professions Code sections 10232.1, 10235, 10236.4, 10240, 10240.2 and 10241.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

SUMMARY OF EXISTING LAWS AND REGULATIONS

Sections 10236.4, 10240, 10240.2, and 10241 of the Business and Professions Code set forth the statutory scheme regarding disclosures required to be given by real estate brokers to their clients for whom they are negotiating a loan to be secured directly or collaterally by a lien on real property. Section 2840 of the Regulations was originally adopted and subsequently amended to provide forms that would meet the requirements of Sections 10236.4, 10240, 10240.2, and 10241 to assist real estate brokers in presenting the required information in

a format that was easy to follow and understand by the prospective borrower. Conditions in the homebuying market in California have changed rapidly. Property values and conventional loan rates have resulted in a reduction in the number of persons qualified to purchase a home. This, in turn, has spawned a variety of “nontraditional mortgage products” offered to borrowers with terms and conditions which have allowed more potential borrowers to “qualify” for loans but without giving the borrowers sufficient information about the repayment structure to make an informed decision regarding their ability to meet the payment obligations as the loan matures. On January 31, 2007, the California Senate Banking Committee held a hearing on nontraditional mortgage products and the application to State mortgage regulators of the Interagency Guidance on Non-traditional Mortgage Products Risks (Guidance). The Federal Guidance was jointly promulgated by the Office of the Comptroller of the Currency (Treasury Department), Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision (Treasury Department), and the National Credit Union Administration, to provide instruction to federally regulated entities on how to address the inherent risks to industry and consumers associated with the origination and funding of nontraditional mortgage products. The Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators promulgated a similar Guidance requesting that State regulators of mortgage lenders and brokers adopt the Guidance to maximize consumer protections when using high risk loan products. Primarily because of the increased number of loan defaults related to nontraditional mortgage products and the public attention attributable to them, the Senate Banking Committee at the January 31 hearing asked the Department which areas of the Guidance were applicable to the Department’s licensed mortgage brokers and whether the Department had the enforcement authority to enforce the applicable portions of the Guidance. The Committee was advised that the Consumer Protection portion of the Guidance is applicable to mortgage brokers and existing law would allow for enforcement; however, clarifying regulations would be needed to instruct licensees how to comply. The changes proposed in Regulation Section 2842 are designed to accomplish that goal by implementing, interpreting and/or making specific the applicable laws and regulations cited hereinabove.

Sections 10232.1 and 10235 of the Business and Professions Code provide the statutory basis for the Department’s obligation to assure that the advertising of real estate brokers who solicit borrowers or lenders for

or negotiate loans or collect payments or perform services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, are not doing so in a false, misleading or deceptive manner. Regulation Section 2848, Title 10, California Code of Regulations, was promulgated in 1965 to implement, interpret, and make specific the provisions of Sections 10232.1 and 10235. As a result of the changing conditions of the real estate market, the need to protect consumers, and the concerns raised at the January 31, 2007 Senate hearing, the Department is proposing to amend Section 2848 of the regulations to require additional disclosures in advertising by licensees regarding various “higher risk” loan products to assure that the advertising is not misleading or deceptive. The changes proposed in Regulation Section 2848 are intended to implement, interpret or make specific Sections 10232.1 and 10235 of the Business and Professions Code.

SUMMARY OF THE EFFECT OF THE PROPOSED ACTION

ADOPTION OF SECTION 2842

Would specify a disclosure form to be given to borrowers who are obtaining a “nontraditional mortgage product”, as defined, which requires details regarding the possible changes in interest rates, the impact on payments of changes in interest rates, the amount of negative amortization and the impact of negative amortization on monthly payments, etc.

AMENDMENT OF SECTION 2848

Would add two subsections to require additional disclosures, such as (1) the impact of negative amortization on monthly payments; (2) how often and how much interest rates and payments can change; and (3) whether there is a balloon payment, in the advertising of various “higher risk” loan products to assure that potential borrowers are not deceived.

EFFECT ON SMALL BUSINESS

The proposed regulatory changes will not substantially adversely affect small business because the changes will require more detailed disclosures but will thereby allow licensees to avoid facing disciplinary action and litigation by assisting them in complying with existing statutory law.

DISCLOSURES REGARDING THE
PROPOSED ACTION

1. Plain English drafting: The Commissioner has confirmed that these regulations have been drafted in plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

2. Mandate on local agencies and school districts: None.

3. Cost or savings to any state agency: None.

4. Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None.

5. Other non-discretionary cost or savings imposed upon local agencies: None.

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

7. The Department is not aware of any substantial cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The additional cost to the average mortgage loan brokerage is estimated to be approximately \$350 per year.

8. The Commissioner has made an initial determination that the adoption, amendment or repeal of these regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

9. Impact on jobs and business expansion, elimination or creation: The Commissioner has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs within the State of California nor will it significantly affect the creation of new businesses, the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.

10. Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

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

The Commissioner invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed action may be directed to:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

The backup contact person is:

James L. Beaver, Assistant Chief Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

The name of the person who can respond to questions concerning the substance of the proposed regulatory action is:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

Please direct requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789

AVAILABILITY OF STATEMENT OF
REASONS, TEXT OF PROPOSED
REGULATIONS AND INTERNET SITE

The Commissioner will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at his office, at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of

reasons. The final statement of reasons once it is prepared pursuant to Section 11346.9 of the Government Code will also be a part of the rulemaking file and available for inspection and copying as indicated above. Portions of the rulemaking file and information regarding the Department are available through our website (www.dre.ca.gov). The express terms of the proposed action written in plain English are available from the agency contact person named in this notice. Copies may be obtained by contacting David B. Seals at the address and phone number listed above.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

The Real Estate Commissioner may, on his own motion or at the recommendation of any interested person made by written or oral comment, modify the Proposed Regulation and adopt the Regulation Change as modified if the change is determined to be one that the public could have reasonably anticipated from this Notice, the Informative Digest, and the Initial Statement of Reasons.

If the Commissioner decides to modify the Proposed Regulation change, the Department will make copies of the full text of the regulation, as originally proposed with the proposed modifications clearly indicated, available for not less than 15 days prior to adopting the modified regulation. Copies of the modified regulation will be mailed to all persons who have made written or oral comments concerning the Proposed Regulation and all persons who have requested notification of availability of the modifications.

Requests for modified regulations or other communications concerning the Proposed Regulation change should be addressed to the Department's contact person, David B. Seals, at the address and/or telephone number above.

**COMPLIANCE WITH GOVERNMENT CODE
§11346.4(A)(1) THROUGH (4)**

The Department of Real Estate (the Department) has complied with Government Code §11346.4(a)(1) through (4) and Section 86, Title 10 of the California Code of Regulations, by mailing or delivering a copy of this Notice of Proposed Changes in the Regulations of the Real Estate Commissioner and of the Proposed Regulations with changes indicated in strikeout and underline to the Department's list of interested persons including:

1. Every person who has filed a Request for Notice of Regulatory Action with the Department.

2. The Director of the Department. (The Real Estate Commissioner and the Secretary of the Business, Transportation and Housing Agency).

3. A substantial number of real estate brokers. They are predominantly small businesses, some of which may be, or have been in the past, affected by our Proposed Regulation change. The Department has no way of knowing which are small businesses.

4. The California Association of Realtors, a real estate licensee trade organization and the California Building Industry Association, a homebuilders trade organization.

5. A substantial number of land developers. Not small businesses by definition, but some of which may be, or have been in the past, affected by our Proposed Regulations.

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

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Chapter 2 of Title 11 of the California Code of Regulations. This proposal is made pursuant to the authority vested by Penal Code §13503 — powers of the Commission on POST, and §13506 — Commission on POST authority to adopt regulations. This proposal is intended to interpret, implement, and make specific Penal Code §13503(e) — Commission on POST authority to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses, §13519.12 — Commission on POST authority to establish training standards involving the responsibilities of first responders to terrorism incidents and training standards for related instruction.

Public Comments Due by June 25, 2007

The Commission requests written comments on the proposed actions. POST must receive the written comments no later than 5:00 p.m. on June 25, 2007. Please send written comments to Hal Snow, Interim Executive Director, at the Commission on POST, 1601 Alhambra Boulevard, Sacramento, CA, 95816-7083, or by fax at 916.227.5271.

A public hearing is not scheduled. Pursuant to Government Code §11346.8, any interested person, or his/her duly authorized representative, may request a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

Academies and training presenters use the *Training and Testing Specifications for Peace Officer Basic Courses* publication to teach and test POST mandated instruction and testing for basic training courses. This publication includes the learning domain (LD) curriculum and is incorporated by reference into POST Regulations.

The proposed changes include the following:

- Remove the POST–Constructed Knowledge test requirement in Learning Domain 17, Presentation of Evidence
- Modify language for clarification, accuracy, and grammar purposes
- Remove redundant curriculum in LD 41, Hazardous Materials
- Add verbs to LD 43, Emergency Management
- Add the new effective date for incorporating the training specifications by reference in Regulations 1005, 1007, and 1008.

The Consortium approved the recommendation to remove the existing language in LD 17 at its August 2005 meeting and the Commission approved them at its October 2005, meeting. At its June 2006 meeting, the Consortium approved proposed changes to LDs 41 and 43; the Commission approved them at its October 2006 meeting. Upon successful completion of the rulemaking process and adoption of the proposed amendments, academies and course presenters will be required to teach and test to the updated curriculum.

Adoption of Proposed Regulations

Following the close of 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, it will make available the text of any modified language, clearly indicated, at least 15 days before adoption to all persons whose comments POST received during the public comment period and to all persons who request notification from POST of the availability of such changes. Please address requests for the modified text to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date on which the revised text becomes available.

Text of Proposal, Rulemaking File, and Internet Access

The following information regarding the proposed regulatory action is available on the POST website at <http://www.post.ca.gov/RegulationNotices/RegulationNotices.asp>:

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

Individuals without Internet access may request a copy of the above documents by calling 916.227.4847, or by submitting a written request to the contact person listed below. Please refer to POST Bulletin **2007–11**. The rulemaking file, which contains the above–mentioned documents and all information upon which POST is basing this proposal, will be available for inspection during the Commission’s normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.).

The Final Statement of Reasons will be prepared after the close of the public comment period. To request a copy, contact POST at the above telephone number, write to the address under Contact Persons at the end of this notice, or view the document on the POST Internet website at the address cited above.

Estimate of Economic Impact

- Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- Non–Discretionary Costs/Savings to Local Agencies: None
- Local Mandate: None
- Costs to any Local Agency or School District for which Government Code Section 17561 Requires Reimbursement: None
- Business Impact/Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The Commission on Peace Officer Standards and Training has found that the proposed amendments will not affect California businesses, including small businesses, because the Commission sets selection and training standards for law enforcement and does not have an impact on California businesses, including small businesses.
- Cost Impacts on Representative Private Persons or Businesses: The Commission on Peace Officer Standards and Training is not aware of any cost impacts that a representative private person or

business would necessarily incur in reasonable compliance with the proposed action.

- Effect on Housing Costs: None.

Assessment

The Commission has determined that this regulatory proposal will neither create nor eliminate jobs in the State of California and will not result in the elimination of existing businesses or create or expand businesses in the State of California.

Alternatives

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

Contact Persons

Please direct inquiries or comments about this proposed regulatory action to Patricia Cassidy, at Commission on POST, 1601 Alhambra Boulevard, Sacramento, CA, 95816-7083, by telephone at 916.227.4847, by FAX at 916.227.5271, or by email at Patricia.Cassidy@post.ca.gov. The back-up contact person is Julie Hemphill; she is available by telephone at 916.227.0544, or by email at Julie.Hemphill@post.ca.gov.

TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION

Title 14 of the California Code of Regulations (CCR)

[Notice Published May 11, 2007]

NOTICE OF PROPOSED RULEMAKING

Coho Salmon Incidental Take Assistance, 2007

The State Board of Forestry and Fire Protection (Board) is proposing a regulatory action that would enable the California Department of Fish and Game (DFG) to establish certain incidental take permitting procedures authorizing the take of coho salmon under California Endangered Species Act (CESA). The proposed regulations set forth certain definitions and substantive measures that facilitate an expedited process for obtaining incidental take permits from the DFG for timber operations that may result in the take of coho salmon. The incidental take permitting procedures, including the expedited process, are being proposed by DFG under a separate rulemaking proposal.

PROPOSED REGULATORY ACTION

The Board proposes to amend the following sections of Title 14 of the California Code of Regulations (14 CCR):

Amend:

- § 895.1 Definitions
- §§ 916.9, 936.9 and 956.9 Protection and Restoration in Watersheds with Threatened or Impaired Values
- §§ 923.9, 943.9, and 963.9 Roads and Landings in Watersheds with Threatened or Impaired Values

Adopt:

- §§ 916.9.1 and 936.9.1 Minimization and Mitigation Measures for Protection and Restoration in Watersheds with Coho Salmon
- §§ 916.9.2 and 936.9.2 Additional Measures to Facilitate Incidental Take Authorization in Watersheds with Coho Salmon
- §§ 916.11.1 and 936.11.1 Monitoring for Adaptive Management in Watersheds with Coho Salmon
- §§ 923.9.1 and 943.9.1 Minimization and Mitigation Measures for Roads and Landings in Watersheds with Coho Salmon
- §§ 923.9.2 and 943.9.2 Additional Measures to Facilitate Incidental Take Authorization in Watersheds with Coho Salmon

PUBLIC HEARING

The Board will hold two public hearings.

Public Hearing #1: The first hearing is on Friday, June 22, 2007, starting at 10:00 a.m., at the Resources Building Auditorium, 1st Floor, and 1416 Ninth Street, Sacramento, California. This hearing will provide the public an opportunity to provide comments, as described below. No Board regulatory actions will be taken at this hearing. Board members may be present for the hearing. This hearing is not a substitute

for the Board's regular adoption hearing on July 12, 2007. This hearing is being held jointly with a hearing by DFG to accept public comments on DFG's related proposed regulatory action. DFG's proposed regulations set forth rules and guidelines to implement Fish and Game Commission policies regarding the issuance of incidental take permits for lawful timber operations and activities that may result in the take of coho salmon. The DFG regulations propose to amend 14 CCR, Subdivision 3, Chapter 6, by adding Article 3, sections 787.0 *et seq.*, Incidental Take Permit Guidelines for Timber Operations.

Public Hearing #2: The second hearing is on Thursday, July 12, 2007, starting at 8:00 a.m., at the Inter-Mountain Fair of Shasta County, 44218 A St. McArthur, CA, 96056. At the second hearing, in addition to taking public comments, the Board may take regulatory action to adopt the proposed regulation. This hearing is being held jointly with a hearing by DFG to accept public comments on DFG's related proposed regulatory action, which is described above.

At these hearings, any person may present statements or arguments, orally or in writing, relevant to the Board proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. **The written comment period ends at 5:00 P.M., on Monday, June 25, 2007.** The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
14169th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Public Resources Code (PRC) § 4551 and 4554.5 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific sections 4512, 4513 and 4561 of the Public Resources Code. Reference: Public Resources Code sections 4513, 4551.5, 4561 and 21080.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In February 2004, the State Fish and Game Commission approved DFG's coho salmon recovery strategy, including policies to guide the issuance of incidental take authorizations for timber operations and activities under CESA. Pursuant to Fish and Game Code 2112, DFG is required to develop and adopt rules and guidelines to implement those policies. DFG has developed proposed procedural regulations that set forth rules and guidelines to implement these policies (14 CCR Div. I, Subdiv. 3, Chapter 6, Sections 787.0 *et seq.*, Incidental Take Permit Guidelines for Timber Operations) and are the subject of a separate Notice of Rulemaking.

The DFG's proposed procedural regulations rely in part upon the Board's proposed regulations that are the subject of this Notice. The proposed Board regulations set forth certain definitions and substantive measures in the FPRs that enable DFG to establish certain incidental

take permitting procedures that meet the permit issuance criteria under CESA (Fish and Game Code § 2081, subdivisions (b) and (c)) for incidental take permits, including a certification process for providing incidental take permits under CESA for timber operations and activities that may result in take of coho salmon.

The Board proposal provides minimization and mitigation measures for timber operations that sufficiently provide protection for coho salmon and facilitate a process for DFG's issuance of incidental take permits. The approach allows those applying to the Department of Forestry and Fire Protection (CAL FIRE) for approval of timber harvesting plans in locations of CESA-listed coho salmon to utilize an optional expedited process for obtaining from DFG incidental take permits for coho salmon for timber operations and activities that would result in take of the species. The Board proposal includes adopting on a permanent basis, the existing Threatened and Impaired Watershed rules (Protection for Threatened and Impaired Watersheds, 2000, OAL File No. Z00-0118-14, including all amendments and renewal requests under in file Watershed with Threatened or Impaired Values, 2007 OAL File No. Z06-0831-01 and Watershed with Threatened or Impaired Values, 2007 OAL File No. Z00-0245-01) for specific coho salmon watershed. It also provides additional rules under 14 CCR § 916.9.2 [936.9.2], § 923.9.2 [943.9.2]; and 916.11.1 [936.11.1] intended to provide enhancements to the FPRs to meet the requirements under CESA for minimization and full mitigation where the optional expedited procedural process of obtaining an incidental taking is used.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- **Complies with the California Environmental Quality Act (CEQA):** The Board has determined on the basis of its rulemaking process Certified Regulatory Program, information contained in the rulemaking file including an Initial Study, and on the Forest Practice Rules as Certified Regulatory Program, that proposed actions will not result in significant adverse environmental effects. The Board is the lead agency under the California Environmental Quality Act (Pub. Resources Code, § 21000, *et seq.*)(CEQA). The DFG is a responsible agency under CEQA. As such, in accordance with CEQA Guidelines section 15253, DFG intends to use the Board's substitute environmental analysis document prepared by the

Board pursuant to its Certified Regulatory Program.

- **Mandate on local agencies and school districts:** None
- **Costs or savings to any State agency:** Adoption of the proposed regulations may result in savings to CAL FIRE in that if the streamlined permitting process is used, it will save CAL FIRE staff resources in timber harvest plan processes and/or consultations or plan reviews with DFG regarding coho salmon issues.
- **Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500:** None
- **Other non-discretionary cost or savings imposed upon local agencies:** None
- **Cost or savings in federal funding to the State:** None
- **Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:** The proposed regulatory action facilitates an expedited certification process for obtaining incidental take permits from DFG for timber operations that may result in the take of coho salmon. The certification process would authorize the take of coho salmon, a listed species under CESA. The proposed regulations would minimize and fully mitigate impacts of the timber harvesting activities on coho salmon. Therefore, to the extent businesses are engaged in activities that will take coho salmon and choose to obtain incidental take permits through the certification process, the proposed regulatory action may result in adverse economic impacts directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Refer to the Initial Statement of Reasons for summary of potential economic impacts.

The State Board of Forestry and Fire Protection has made an initial determination that the adoption and amendments of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that would be affected include those businesses engaged in activities that may take coho salmon and choose to obtain incidental take permits through the certification process. The proposed regulation includes additional rules under 14 CCR § 916.9.2 [936.9.2], § 923.9.2 [943.9.2], and 916.11.1

[936.11.1] intended to provide enhancements to the FPRs to meet the requirements under CESA for minimization and full mitigation where the optional expedited procedural process of obtaining an incidental take permit is used.

The Board has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.
- **Cost impacts on representative private persons or businesses:** Adoption of the proposed regulations may result in adverse economic impacts as described above and in the Initial Statement of Reasons.
- **Significant effect on housing costs:** None
- **Create or eliminate jobs within California; Create new businesses or eliminate existing businesses within California; or affect the expansion of businesses currently doing business within California:** Adoption of the proposed regulations may result in the creation and or the elimination of jobs. Given the potential for additional economic impacts as identified in the Initial Statement of Reasons, there may be the potential for adverse impacts on new or existing jobs; however, these impacts are unlikely to cause the elimination of existing businesses in California. Whether these potential impacts actually occur depends upon the extent to which timber operations and activities result in take of coho salmon under CESA, the level of compliance with the federal ESA, and the costs, if any, of minimizing and mitigating for take under CESA. Therefore, these impacts are speculative and difficult to estimate at this time.

In addition, there is the potential for creation of jobs and businesses, or expansion of businesses in California. The public sector may create new jobs as a result of mitigations such as road treatment, culvert replacement, and habitat enhancement.

These jobs would likely be created largely in rural counties with high levels of unemployment. Also, private environmental consulting firms could benefit economically from assisting in the development and implementation of mitigation measures.

- **Effect on small business:** Adoption of the proposed regulations may result in adverse economic impacts as described above and in the Initial Statement of Reasons.
- **The proposed rules do not conflict with, or duplicate Federal regulations.**

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

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

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
 Attn: Christopher Zimny
 Regulations Coordinator
 P.O. Box 944246
 Sacramento, CA 94244-2460
 Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, back-

ground, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above-referenced information is also available on the Board web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED
OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**TITLE 14. BOARD OF FORESTRY
AND FIRE PROTECTION**

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations**

[Notice Published May 11, 2007]

NOTICE OF PROPOSED RULEMAKING

Road Management Plan, 2007

The Board of Forestry and Fire Protection (Board) proposes to adopt the regulations of Title 14 of the California Code of Regulations (14 CCR) described below after considering all comments, objections, and recommendations regarding the proposed action.

Amend:

- § 895 Abbreviations Applicable Throughout the Chapter
- §1037 THP Preharvest Inspection—Filing Return

Adopt Permanently:

- § 1093 Road Management Plan
- § 1093.1 Definitions
- § 1093.2 Guidelines for Orderly Evaluation of Activities Proposed by an RMP.
- § 1093.3 Content of Road Management Plan
- § 1093.4 Limitation on Information Requirements
- § 1093.5 RMP Effective Period
- § 1093.6 Notice of Filing

PUBLIC HEARING

The Board will hold a public hearing starting at 8:00 A.M., on Thursday, July 12, 2007, starting at 8:00 a.m., at the Inter-Mountain Fair of Shasta County, 44218 A St. McArthur, CA, 96056, California. 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 Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to

Government Code section 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. **The written comment period ends at 5:00 P.M., on Thursday, June 28, 2007.** The Board will consider only written comments received at the Board office by that time (in addition to those comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board_public_comments@fire.ca.gov

AUTHORITY AND REFERENCE

Public Resources Code (PRC) 4551 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret, or make specific sections 4551.5, 4562.5, and 4562.7 of the Public Resources Code. PRC sections 751, 4512, 4513, 21000, and 21001 are additional references. PRC 4513(b) states that one of the goals of the Z'berg-Nejedly Forest Practice Act is to

consider watershed, wildlife, and fisheries. These regulatory changes will further that goal.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The State Board of Forestry and Fire Protection (Board) is proposing changes to the Forest Practice Rules (FPRs) for development of a *Road Management Plan (RMP)* as a supplement to the Timber Harvest Plan (THP) process. The RMP provides a means for addressing long-term issues of sustained timber production and cumulative watershed effects from the transportation system on fish, wildlife, the beneficial uses of water, and watersheds on a landscape basis. A RMP specifies measures to be applied to a forest transportation system to protect, maintain, and enhance the beneficial uses of water and other environmental resources consistent with the objectives of the timberland owner. Among the general ways the RMP contributes to the beneficial uses of water is the following:

- The RMP provides a regulatory opportunity for the California Department of Forestry and Fire Protection (Department), other responsible agencies, and timberland owners to identify site-specific conditions that are impacting the beneficial uses of water, including anadromous salmonid protection, within the broader context of a logical hydrologic or ownership unit.
- The RMP promotes consultation between the responsible agencies and the timberland owner to address specific limiting factors for anadromous salmonids and other beneficial uses of water related to roads within an evaluation area.
- The RMP provides timberland owners the opportunity to establish a landscape level framework for addressing long-term issues of sustained timber production, and cumulative effects analysis that includes the impacts of transportation systems on fish, wildlife, the beneficial uses of water, and watersheds.

The proposed regulation includes specific contents for the RMP. These include a goals and objectives element (long-term plans and desired future conditions), an evaluation element (history, existing conditions, and constraints), an operational element (construction and use), a verification element (tracking and monitoring), and an adaptive management element (goal comparison and revisions).

The RMP may be submitted by a timberland owner(s) for the Department Director's review and approval as supplemental information to support review of a THP or other Plan defined in the Forest Practice Rules.

In summary, the RMP provides the timberland owner and agencies a voluntary process to evaluate and reach

solutions on limiting factors for anadromous fisheries and other beneficial uses of water. It provides detailed information to improve the regulatory review of harvest plans with roads and improves watershed level impact analysis.

REGULATION PURPOSE AND NECESSITY

14 CCR § 895 Abbreviations Applicable Throughout the Chapter

Abbreviations are being added to represent the Road Management Plan (RMP) to allow some brevity in the rules and for clarity. The proposed addition to the abbreviations is intended to ensure that the affected public, as well as the reviewing agencies understand what technical term the abbreviation represents. This is additionally intended to allow for brevity in the rule language and subsequently to increase the clarity of reading for the regulated public.

14 CCR § 1037. THP Preharvest Inspection–Filing Return.

The purpose of this section of the proposed regulation is to state the process under which a THP submitted with an RMP shall have preliminary review for initial accuracy and filing. The subsection establishes a 20–day period for director review for preliminary accuracy checks and filing for formal review, because the RMP is expected to add additional preliminary review time.

14 CCR § 1093 Road Management Plan.

The purpose of this section is to state the legislative intent and authorization for the BOF to create a RMP

14 CCR § 1093.1 Definitions.

The purpose of this section of the proposed regulation is to define several terms used in the RMP that are not already included in the definitions section of the FPRs.

14 CCR § 1093.2 Guidelines for Orderly Evaluation of Activities Proposed by an RMP.

The Board establishes broad guidelines to be included in the RMP in this section and defines the goals and objectives to be achieved in the development of the RMP. This section also requires the RMP to be prepared by a Registered Professional Forester (RPF) and other licensed professionals as needed.

14 CCR § 1093.3 Content of Road Management Plan

SPECIFIC PURPOSE OF THE REGULATION

The Board provides that if a person chooses to submit an RMP, it shall contain goals and objectives, evaluation, operational, verification and adaptive management elements, along with other basic disclosure in-

formation such as name, address and legal locations [subsections (a) and (b)].

14 CCR § 1093.4 Limitation on Information Requirements

The purpose of this section of the proposed regulation is to limit the amount of information required in an RMP when there are ownerships other than the RMP submitters’ involved in the plan.

14 CCR § 1093.5 RMP Effective Period

The purpose of this section of the proposed regulation is to state a time limit for the implementation of an RMP. An RMP is limited to the time period associated with the THP to which it supplements.

14 CCR § 1093.6 Review of Road Management Plan–Notice of Filing

The purpose of this section is to state the Director shall review, approve or disapprove all submitted RMPs as part of the THP process to which the RMP supplements.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None are known.
- Costs or savings to any State agency: None are known.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC 17500: None are known.
- Other non–discretionary cost or savings imposed upon local agencies: None are known.
- Cost or savings in federal funding to the State: None are known.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:

The rule proposal may affect businesses and small business related to the timber industry by increasing the cost for timber harvesting. These potential extra costs are associated with planning, operations, and monitoring, and may include but are not limited to: additional planning, construction and maintenance costs for roads and watercourse crossings, and additional cost of professional consultations. There may also be additional cost associated with additional inspections.

The preparation and use of an RMP with a THP is not required but is an opportunity provided to THP

submitters. As such, it is the responsibility of the timberland owner to determine if the economic balance is in favor of proceeding under existing operational and planning requirements or to design site-related actions specific to the owner's property.

Given this use of the regulation at the discretion of the individual or business, the Board staff does not anticipate that any increased costs will result in a significant, statewide adverse economic impact directly affecting business, nor has it determined that it will affect the ability of California businesses to compete with businesses in other states.

- Potential cost impact on private persons or directly affected businesses: As indicated above, the rule proposal will affect businesses and large and small landowners with an interest in the timber products industry by increasing the cost for timber harvesting. These extra costs are associated with planning, operations, and monitoring, and may include but are not limited to: additional planning, construction and maintenance costs for roads and watercourse crossings, and additional cost of professional consultations
- Significant effect on housing costs: None are known.
- Adoption of these regulations will not create or eliminate jobs within California.
- Effect on small businesses: Given the use of this regulation is at the discretion of a small business, the Board staff does not anticipate that any increased costs will result in a significant adverse effect on small businesses.
- Adoption of these regulations will not: (1) create new businesses or eliminate existing businesses within California; or (2) affect the expansion of businesses currently doing business within California.

The proposed rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise

been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, Chief Environmental Protection and Regulation, Department of Forestry and Fire Protection, at the above address and phone number (916) 653-5602.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using the following styles is also available from the contact person named in this notice:

- 1) language existing before 5/14/07 is shown in PLAIN TEXT,
- 2) language being proposed as either an amendment or new section is DOUBLE-SPACED AND SINGLE UNDERLINED,

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above-referenced information is also available on the CDF web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) Requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**TITLE 14. BOARD OF FORESTRY
AND FIRE PROTECTION**

**Board of Forestry and Fire Protection (Board)
Title 14 of the California Code of Regulations**

[Notice Published May 11, 2007]

NOTICE OF PROPOSED RULEMAKING

**Watersheds with Threatened or Impaired
Values Extension, 2007**

The proposed changes to the Forest Practice Rules (FPRs) amend sections related to “Protection and Restoration in Watersheds with Threatened or Impaired Values”, 14 CCR § 916.11 [936.11, 956.11], and are generally termed Threatened or Impaired rules (T/I rules). These regulations define planning and operational requirements for timber harvesting and planning watersheds where State or federally listed threatened, endangered or candidate populations of anadromous salmonids are present or where they can be restored. The T/I rules currently expire on date of December 31, 2007. The proposed regulatory amendments, entirely and solely involve changing the expiration date of the regulations to December 31, 2008.

PROPOSED REGULATORY ACTION

The Board proposes to amend the following sections of Title 14 of the California Code of Regulations (14 CCR):

Amend:	
§ 895.1	Definitions
§ 898	Feasibility Alternatives
§ 914.8 [934.8, 954.8]	Tractor Road Watercourse Crossing
§ 916 [936, 956]	Intent of Watercourse and Lake Protection
§ 916.2 [936.2, 956.2]	Protection of the beneficial Uses of Water and Riparian Functions
§ 916.9 [936.9, 956.9]	Protection and Restoration in Watersheds with Threatened or Impaired Values
§ 916.11 [936.11, 956.11]	Effectiveness and Implementation Monitoring
§ 916.12 [936.12, 956.12]	Section 303(d) Listed Watersheds
§ 923.3 [943.3, 963.3]	Watercourse Crossings
§ 923.9 [943.9, 963.9]	Roads and Landings in Watersheds with Threatened or Impaired Values

PUBLIC HEARING

The Board will hold a public hearing on Thursday, July 12, 2007, starting at 8:00 a.m., at the Inter-Mountain Fair of Shasta County, 44218 A St. McArthur, CA, 96056. 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 Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regula-

tory action to the Board. The written comment period ends at 5:00 P.M., on Thursday, June 28, 2007. The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Public Resources Code (PRC) § 4551 and 4554.5 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific sections 4512, 4513 and 4561 of the Public Resources Code. Reference: Public Resources Code sections 4513, 4551.5, 4561 and 21080.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board recognizes the need to protect anadromous salmonid populations listed under the State Endangered Species Act (ESA) and the Federal ESA that may be impacted by forest practices regulated under the Board's purview. In prior years the Board addressed this by adopting changes to the FPRs in 2000 under a previous rulemaking package (Protection for Threatened

and Impaired Watersheds {T/I}, 2000, OAL File No. Z00-0118-14). The Board subsequently extended these rules in 2001, 2002, 2003 and 2006.

The T/I rules were adopted and readopted on a temporary basis in order for the Board to review alternatives to the 2000 adopted T/I regulations. Currently, the T/I rules expire on December 31, 2007. Although advances have been made towards reviewing appropriate long-term regulatory needs, the Board has not completed its review of the T/I rules and much remains to be done.

Given the current expiration date of December 31, 2007, the proposed regulation is necessary to address the pending expiration of the regulation. Extension of the T/I rules are also needed for two other related reasons:

- 1) Several State departments, including the Department of Fish and Game, are using the T/I rules as part of their "Recovery Strategy for California Coho Salmon", dated February 2004. Non-renewal of the Board's T/I rules would conflict with efforts being conducted in accordance with this strategy.
- 2) The Board has started a Technical Literature Review of the T/I rules to determine the necessity and effectiveness of the regulations. The outcome of the literature review could affect the terms and conditions of the T/I rules. The literature review is expected to be completed in December, 2007, necessitating the proposed extension.

SPECIFIC PURPOSE OF THE REGULATION

The purpose of the regulation is to extend the existing T/I rules for a period of one to three years, depending on a decision of the Board based on the amount of time needed to complete and consider the results of the literature review, input from the public and other factors. Specific changes to the proposed regulations in this Notice, entirely and solely involve changing the expiration date of the regulations to December 31, 2008.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None

- Cost or savings in federal funding to the State: None
- The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private persons or businesses: The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- Effect on small business: None. The Board has determined that the proposed amendments will not affect small business. The changes proposed under this rulemaking action would extend the effective date of rules until December 31, 2008. There are no other proposed regulatory changes under this proposal. As such, there would be no additional economic relief or burden on any impacted business beyond what is imposed by the existing T/I rules.
- The proposed rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

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

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of

the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
 Attn: Christopher Zimny
 Regulations Coordinator
 P.O. Box 944246
 Sacramento, CA 94244-2460
 Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the Board web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,

- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

TITLE 14. DEPARTMENT OF FISH AND GAME

NOTICE BY THE DEPARTMENT OF FISH AND GAME TO CONSIDER THE ADOPTION OF REGULATIONS TO AMEND DIVISION 1, SUBDIVISION 3, CHAPTER 6, TITLE 14, CALIFORNIA CODE OF REGULATIONS, ADDING ARTICLE 3, SECTIONS 787.0 et seq.

[Notice Published May 11, 2007]

NOTICE IS HEREBY GIVEN that the Department of Fish and Game (DFG) proposes to amend its regulations for Implementation of the California Endangered Species Act by adding regulations implementing Fish and Game Commission policies to guide the DFG's issuance of incidental take permits for lawful timber operations and activities that may result in the take of coho salmon.

PROPOSED REGULATORY ACTION

The DFG proposes to amend Division 1, Subdivision 3, Chapter 6, title 14, California Code of Regulations, by adding the following:

Article 3, sections 787.0 *et seq.*, Incidental Take Permit Guidelines for Timber Operations.

This regulatory action is related to a concurrent Board of Forestry and Fire Protection (Board) regulatory action that is being noticed separately by the Board. The Board proposes to amend the Forest Practice Rules under a rulemaking proposal entitled Coho Salmon Incidental Take Assistance, 2007.

PUBLIC HEARING

The DFG will conduct two public hearings on the proposed action. The hearings will be held:

Friday, June 22, 2007, starting at 10:00 a.m., at the Resources Building Auditorium, 1st Floor, and 1416 Ninth Street, Sacramento, California. This hearing will provide the public an opportunity to provide comments during the written comment period described below. No DFG action will be taken at this hearing. This hearing will be held jointly with a Board hearing on the Board's related regulatory proposal, Coho Salmon Incidental Take Assistance, 2007.

Thursday, July 12, 2007, starting at 8:00 a.m., at the Inter-Mountain Fair of Shasta County, 44218 A St. McArthur, CA, 96056. This hearing will provide the public an opportunity to provide comments following the close of the written comment period described below. This hearing will be held jointly with a Board hearing on the Board's related regulatory proposal, Coho Salmon Take Assistance, 2007. The Board may take regulatory action at this hearing to adopt its proposed regulations. DFG does not intend to take any action to adopt these proposed regulations at this hearing. Instead, DFG may take action subsequent to the hearing.

WRITTEN COMMENT PERIOD

Any interested person may submit written comments relevant to DFG's proposed action. Written comments must be received by DFG no later than 5:00 p.m. **Monday, June 25, 2007**, in order to be considered. Written comments may be delivered, mailed, or transmitted by facsimile or electronic mail. Written comments should be addressed as follows:

To: Mark Stopher, Habitat Conservation Program
Manager
California Department of Fish and Game
601 Locust Street
Redding, CA 96001
Fax: (530) 225-2391
Email: mstopher@dfg.ca.gov

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The purpose of the proposed action is to adopt rules and guidelines in accordance with Section 2112 of the Fish and Game Code to implement Fish and Game Commission policies regarding the issuance of incidental take permits pursuant to Section 2081 of the Fish and Game Code for timber operations or activities that may take coho salmon, a species that is listed as threatened or endangered under the California Endangered Species Act, Fish and Game Code sections 2050, et seq. (CESA). The Fish and Game Commission approved the *Recovery Strategy for California Coho Salmon (Oncorhynchus kisutch)* (February 2004), and approved for in-

clusion specified policies pursuant to Section 2112 of the Fish and Game Code to guide the issuance of incidental take permits under Section 2081 of the Fish and Game Code for timber operations or activities. This article implements those policies.

In accordance with section 2112 of the Fish and Game Code, this article specifies conditions and circumstances when: (1) take is prohibited; (2) an incidental take permit is required; and (3) an incidental take permit is not required. This article outlines various ways to obtain incidental take permits for timber operations and activities, including an expedited process for obtaining incidental take permits by certification pursuant to these regulations, and through the normal permitting process set forth in CESA implementing regulations, California Code of Regulations, title 14, section 783.0 *et seq.*

The standards for issuance of incidental take permits are the permit issuance criteria set forth in section 2081(b) and (c) of the Fish and Game Code. This article is not intended to create a presumption that any particular timber operation or activity will incidentally take coho salmon. In addition, it does not affect the DFG's authority to authorize take pursuant to any other provision of the Fish and Game Code or any other provision of the California Code of Regulations including, but not limited to, take authorizations issued or approved by the DFG pursuant to section 2835 of the Fish and Game Code.

The proposed action is related to a separate regulatory proposal of the Board entitled Coho Salmon Incidental Take Assistance, 2007. The regulations that the DFG proposes are procedural regulations that in part rely upon the Board's proposed regulations that are the subject of a separate Initial Statement of Reasons. The proposed Board regulations set forth certain definitions and substantive measures in the Forest Practice Rules (FPRs) that enable the DFG to establish certain incidental take permitting procedures that meet the permit issuance criteria under CESA (Fish and Game Code § 2081, subdivisions (b) and (c)) for incidental take permits, including a certification process for providing incidental take permits under CESA for timber operations and activities that may result in take of coho salmon.

Currently, no regulatory procedure for the issuance of incidental take permits for coho salmon is integrated with the FPRs. Without such an integrated approach, in addition to applying to the Department of Forestry and Fire Protection for approval of timber harvesting plans, timberland owners would have to engage in a lengthy, separate process for obtaining incidental take permits for coho salmon from the DFG for any timber operations or activities that would result in take of the species. This would involve separate environmental review pro-

cesses and related costs to both the permit applicant and the DFG.

DISCLOSURES REGARDING THE PROPOSED ACTION

The DFG has made the following initial determinations concerning the proposed action:

(a) Duplication of Federal Law

The DFG's proposed regulations do not duplicate existing federal law or regulations.

(b) Environmental Analysis

The DFG has determined on the basis of an Initial Study for this proposed action and the Board's proposed action that this proposed action will not result in significant environmental effects. The Board is the lead agency under the California Environmental Quality Act (Pub. Resources Code, § 21000, *et seq.*) (CEQA). The DFG is a responsible agency under CEQA. As such, in accordance with CEQA Guidelines section 15253, DFG intends to use the Board's substitute environmental analysis document pursuant to its Certified Regulatory Program.

(c) Financial Impacts and Impacts on Business

The proposed regulatory action to establish rules and guidelines regarding the issuance of incidental take permits for coho salmon for timber operations and activities that may result in the take of coho salmon are procedural and would not directly affect businesses, including the ability of California businesses to compete with businesses in other states, except perhaps to the extent that they provide an expedited certification process for obtaining incidental take permits from DFG. The certification process would authorize the take of coho salmon, a listed species under CESA. The proposed regulations establishing the certification process require compliance with specified substantive regulations of the Board that together would minimize and fully mitigate impacts of the timber harvesting activities on coho salmon and meet other permit issuance criteria required by CESA under Fish and Game Code section 2081(b) and (c). Therefore, to the extent businesses are engaged in activities that will take coho salmon and choose to obtain incidental take permits through the certification process, the proposed regulatory action may result in adverse economic impacts directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Where the DFG authorizes take of coho salmon that is incidental to an otherwise lawful activity, impacts of the taking must be minimized and fully mitigated, and any such mitigation must be monitored for implementation and effectiveness under CESA. Permitting under CESA

for incidental take of coho salmon would result in some increased costs when compared to the status quo under the current FPRs, which includes the federal take prohibition under the ESA. The DFG has determined that the costs to timber operators statewide are estimated to be \$183,000/year or \$5.49 million over 30 years. This is explained in greater detail in the Initial Statement of Reasons.

However, if the streamlined permitting process established by the proposed regulations is used, it would result in savings of additional costs to permit applicants in obtaining incidental take permits through the standard process set forth in Section 2081(b) of the Fish and Game Code and the associated environmental review under CEQA.

DFG has made an initial determination that the adoption of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that would be affected include those businesses engaged in activities that may take coho salmon and choose to obtain incidental take permits through the certification process. This would involve complying with additional rules being proposed by the Board (14 CCR § 916.9.2 [936.9.2], § 923.9.2 [943.9.2], and 916.11.1 [936.11.]) that are intended to provide enhancements to the FPRs to meet the requirements under CESA for minimization and full mitigation where the optional expedited procedural process of obtaining an incidental take permit is used.

DFG has considered proposed alternatives that would lessen any adverse economic impact on business, and invites the submission of proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

(d) Mandates on Local Agencies and School Districts

The proposed action will not impose any mandates on local agencies or school districts.

(e) Cost to Any Local Agency or School District for Which Reimbursement is Required

Adoption of the proposed regulations will not result in costs to any local agency or school district that are required to be reimbursed pursuant to Part 7 (commenc-

ing with section 17500) of Division 4 of the Government Code, other nondiscretionary cost or savings on local agencies, or any cost or savings in federal funding to the State.

(f) Cost or Savings to Any State Agency

Adoption of the proposed regulations may result in savings to DFG in that if the streamlined permitting process is used, it will save DFG staff resources in issuing incidental take permits.

(g) Significant Adverse Economic Impact on Businesses

Adoption of the proposed regulations may result in adverse economic impacts as described in (c) above and in the Initial Statement of Reasons.

(h) Statement of Potential Cost Impact on Private Persons and Businesses

Adoption of the proposed regulations may result in potential costs impacts on private persons and businesses as described in (c) above and in the Initial Statement of Reasons.

(i) Effect on Housing Costs

Adoption of the proposed regulations will not have any effect on housing costs.

(j) Assessment of Potential to Create or Eliminate Jobs or Businesses or Expand Business within the State of California

Adoption of the proposed regulations may result in the creation of jobs as described in the Initial Statement of Reasons. The adoption of the proposed regulations are unlikely to lead to an expansion of business in the State.

(k) Effect on Small Businesses

Adoption of the proposed regulations may result in effects on small businesses as described in (c) above and in the Initial Statement of Reasons.

CONSIDERATION OF ALTERNATIVES

In accordance with subsection 11346.5(a)(13) of the Government Code, the DFG must determine that no reasonable alternative considered by DFG or that has otherwise been identified and brought to the attention of DFG would be as effective and less burdensome to affected private persons than adoption of the proposed regulations. The DFG has made this determination, and the explanation is contained in the Initial Statement of Reasons.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The DFG has prepared an Initial Statement of Reasons providing an explanation of the purpose, back-

ground, and justification for the adoption of the proposed regulations and the DFG's Form Std. 399. Anyone may view and print a copy of the statement or text of the proposed regulations by accessing the following page on the DFG's Internet website: www.dfg.ca.gov. Copies of the Initial Statement of Reasons and the text of the proposed regulations are also available upon request from the DFG's contact person, Mark Stopher, at (530) 225-2275. The entire rulemaking file is available for public inspection at 1416 Ninth Street, Suite 1335, Sacramento, California 95814.

The DFG will post the Final Statement of Reasons and any future notices related to the proposed action on the DFG's Internet website: www.dfg.ca.gov. Anyone wishing to receive future notices related to the proposed action and/or receive a copy of the Final Statement of Reasons once it has been prepared should submit a written request containing the requestor's postal mailing address to Mark Stopher, Habitat Conservation Program Manager, 601 Locust Street, Redding, California 96001. These requests can also be submitted by fax at (530) 225-2391.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

The text of any changes or modifications to the text of the proposed regulation will be available to the public at least fifteen (15) days prior to the date on which the DFG considers the proposed regulations for adoption unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. (Gov. Code, § 11346.8(c).) This information will also be made available on the DFG Internet website at: www.dfg.ca.gov.

**PLAIN ENGLISH DETERMINATION AND
AVAILABILITY OF TEXT**

The proposed regulations were prepared pursuant to the standard of clarity provided in Government Code section 11349 and the plain English requirements of Government Code sections 11342.580 and 11346.2(a)(1). The proposed regulations are considered non-technical and were written to be easily understood by the persons that will use them. The purpose of the proposed regulations is to provide rules and guidelines in accordance with Section 2112 of the Fish and Game Code to implement Fish and Game Commission policies regarding the issuance of incidental take permits pursuant to Section 2081 of the Fish and Game Code for timber operations or activities that may take

coho salmon. These rules and guidelines will be used by persons in government as well as the private sector.

The text of the proposed regulations is in plain English and is available on the DFG Internet website at: www.dfg.ca.gov and upon request from the DFG's contact person, Mark Stopher, at (530) 225-2275.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

AUTHORITY

The authority for the DFG to adopt these proposed regulations is provided in Fish and Game Code sections 702 and 2112.

Reference: Section 2081, Fish and Game Code.

**TITLE 22. DEPARTMENT OF TOXIC
SUBSTANCES CONTROL**

**45-DAY PUBLIC NOTICE AND
COMMENT PERIOD**

Environmental Fee

Department Reference Number: R-2006-03

**Office of Administrative Law Notice
File Number: Z-07-0427-05**

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to adopt California Code of Regulations, title 22, division 4.5, chapter 19, section 69269.1.

**PUBLIC HEARING AND WRITTEN
COMMENT PERIOD**

A written comment period has been established commencing on May 11, 2007 and closing on June 27, 2007. DTSC will hold a public hearing on the proposed regulations at 10:00 a.m. on June 27, 2007 in the Byron Sher Auditorium, 2nd Floor, 1001 "I" Street, Sacramento, at which time any person may present statements or arguments orally or in writing, relevant to this proposal. Please submit written comments to the contact person listed at the end of this notice. Written comments on the rulemaking submitted no later than 5:00 p.m. on June 27, 2007 will be considered.

Representatives of DTSC will preside at the hearing. Persons who wish to speak are requested to register be-

fore the hearing. Pre-hearing registration will be conducted at the location of the hearing from 9:30 a.m. to 10:00 a.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded an opportunity after the registered persons have been heard.

Due to enhanced security precautions at the Cal/EPA Headquarters Building located at 1001 I Street, Sacramento, all visitors are required to sign in prior to attending any meeting. Sign-in and badge issuance occur in the Visitor and Environmental Services Center. This Center is located just inside and to the left of the building's public entrance. Depending on their destination and the building security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification cards. Depending on the size and number of meetings scheduled on any given day, the security check-in could take from three to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.

If you have special accommodation or language needs, please contact Laura Hayashi, Regulations Coordinator, Regulations Section, at (916) 322-6409 or by e-mail at regs@dtsc.ca.gov by June 11, 2007. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

In accordance with the California Government Code and Americans with Disabilities Act requirements, this publication can be made available in Braille, large print, computer disk, or tape cassette (etc) as a disability-related reasonable accommodation for an individual with a disability. To discuss how to receive a copy of this publication in an alternative format, please contact Laura Hayashi at (916) 322-6409 or by e-mail at regs@dtsc.ca.gov.

AUTHORITY AND REFERENCE

These regulations are being proposed under the authority of Health and Safety Code sections 25205.6 and 58012 (Added by Gov. Reorg. Plan No. 1, §146, eff. July 17, 1991.) The statutory references are Health and Safety Code sections 25205.6 and 25501.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Law

- 1) Requires DTSC, on or before November 1 of each year, to provide the Board of Equalization (BOE)

with a schedule of codes consisting of corporations and organizations that use, generate, store, or conduct activities related to hazardous materials, as defined, including, but not limited to, hazardous waste. The schedule consists of identification codes from either the Standard Industrial Classification (SIC) system established by the U.S. Department of Commerce, or the North American Industry Classification System (NAICS) adopted by the U.S. Census Bureau.

- 2) Establishes an annual fee schedule as follows:
 - a) \$200 for those organizations with 50 or more employees, but less than 75 employees;
 - b) \$350 for those organizations with 75 or more employees, but less than 100 employees;
 - c) \$700 for those organizations with 100 or more employees, but less than 250 employees;
 - d) \$1,500 for those organizations with 250 or more employees, but less than 500 employees;
 - e) \$2,800 for those organizations with 500 or more employees, but less than 1,000 employees;
 - f) and, \$9,500 for those organizations with 1,000 or more employees.
- 3) The fee paid by those organizations is placed into the Toxic Substances Control Account (TSCA) pursuant to Health and Safety Code section 25173.6, to be available to DTSC upon appropriation by the Legislature.
- 4) Defines that the number of employees employed by an organization is the number of persons employed in the state for more than 500 hours during the calendar year preceding the calendar year in which the fee is due.
- 5) Establishes that the fee rates (above) are the rates for the 1998 calendar year. Beginning with the 1999 calendar year, and for each calendar year thereafter, the BOE will adjust the rates annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or by a successor agency.
- 6) Outlines specified mandatory payments to fund the State's obligations to the federal government under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), more commonly known as Superfund.

- 7) Exempts from the environmental fee a nonprofit corporation primarily engaged in the provision of residential social and personal care for children, the aged, and special categories of persons with some limits on their ability for self-care, as described in SIC Code 8361 of SIC Manual published by the United States Office of Management and Budget, 1987 edition.

Policy Statement Overview

DTSC is responsible for implementing three core program activities: regulating the generation, transportation, disposal and management of hazardous waste; cleaning up sites contaminated with hazardous substances; and identifying ways to prevent or reduce the amount of hazardous waste produced in California. To fund these programs, DTSC levies two types of fees. The first type consists of fees assessed on persons who are engaged in specific, regulated activities, including the generation, transfer and disposal of hazardous waste, and the operation of hazardous waste treatment, storage and disposal facilities. Fees of this nature are based on a "polluter pays" principle wherein persons engaged in these activities are responsible for paying DTSC's regulatory and oversight costs.

The other type of fee that DTSC assesses is a broad-based fee. Unlike the regulatory fees described above, which are based on specific hazardous waste activities, DTSC levies its broad-based fee, the environmental fee, on businesses engaged in activities that are carried out using products, equipment or services that cannot be produced or provided without adding to the general hazardous waste regulatory problem. The premise underlying a broad-based fee like the environmental fee is that at least some aspects of the hazardous waste regulatory problem derive from the basic operational characteristics of advanced economies, which are dependent on the use of chemicals and other hazardous substances to produce goods and services.

Modern societies rely on many products — computers, copiers, cell phones, household and industrial chemicals, printed material, plastics — that are manufactured using chemical feedstocks and chemical processing techniques. In many cases, it is not just the production of the product that creates hazardous waste; rather, the product itself becomes a hazardous waste after it has served its useful life and is discarded. Because the use of these products is ubiquitous, DTSC's broad-based environmental fee casts a wide net to include all businesses that depend on modern day products to function. DTSC uses the revenues from the environmental fee to pay the costs of the more general, public-health related aspects of the hazardous waste program, including cleanup of "orphan" toxic waste sites, laboratory activities, toxic risk assessment, and pollution prevention.

Environmental Fee

The environmental fee was established in 1989 by Senate Bill (SB) 475 (Stats. 1989, ch. 269) to provide DTSC with a broad-based revenue source to supplement the fees it was already receiving from businesses that generate, store, transport or dispose of hazardous waste. The environmental fee does not require that a business be involved with hazardous waste, only that it conducts activities in this State related to hazardous materials (Health & Saf. Code, § 25205.6, subd. (b)). Since all businesses use products that contain hazardous materials, such as computers, printers, automobiles, fluorescent lights and cleaning products, the fee applies to all businesses with 50 or more employees unless they are specifically exempted. The environmental fee does not apply to banks and insurance companies, which under the California Constitution pay a corporate tax in lieu of all other taxes. In 1994, Assembly Bill (AB) 3540 (Stats. 1994, ch. 619) exempted nonprofit residential care facilities from having to pay the environmental fee.

Prior to 1998, the environmental fee was used to fund both hazardous waste management and site mitigation program activities. In 1995, SB 1222 (Stats. 1995, ch. 638) required the Secretary for Cal/EPA to convene a task force to review DTSC's hazardous waste fee structure and make recommendations on a new fee system by January 1, 1997. The Fee Reform Task Force was composed of representatives from regulated businesses, general industry, labor unions, the Legislature, and environmental organizations. The Task Force concluded that DTSC's regulatory costs should be funded from fees on regulated industries and that DTSC's site mitigation costs should be funded from the parties responsible for contaminating the sites. When responsible parties cannot be located or are insolvent, the Task Force recommended that site cleanup costs be funded from the environmental fee. The Task Force selected the environmental fee because it wanted to use a broad-based revenue source for cleanup costs in situations where no specific business could be held responsible.

The Legislature enacted the Task Force's recommendations with SB 660, (Stats. 1997, ch. 870) which raised the environmental fee rates and designated it as the primary funding source for DTSC's Site Mitigation and Brownfield Reuse Program and its Science, Pollution Prevention and Technology Development Program. SB 660, in essence, created a funding "firewall" between DTSC's regulatory programs and its site mitigation/general support activities. Funding sources that support DTSC's hazardous waste regulatory costs include the generator fee, disposal fee, activity fee (facility permit activity), annual facility fee, EPA identification fee, manifest fee, and money collected from cost recovery

efforts for corrective actions. In contrast, funding for DTSC’s site cleanup and pollution prevention activities comes from the environmental fee, fines and penalties collected from actions brought by DTSC, recovery of DTSC’s costs to oversee cleanup activity of contaminated sites, interest and other revenue, and until 2001, General Fund revenue.

The rates for the environmental fee, which are adjusted annually to reflect changes in the cost of living as measured by the Consumer Price Index, are based on the number of employees that are employed by a business in the State for more than 500 hours during the previous calendar year for which the fee is due.

Proposed Regulations

The proposed regulations are required by order of the California Supreme Court in *Morning Star Company v. State Board of Equalization* (2006) 38 Cal. 4th 324. In its April 24, 2006, ruling the Court reversed a Court of Appeals decision and ruled that DTSC violated the Administrative Procedures Act (APA) and that the department must formally promulgate a regulation for the proper implementation of the environmental fee. The Supreme Court determined DTSC’s policy is a reasonable interpretation of the law, but not the only interpretation. The Court stated that DTSC’s provision of all the SIC codes to BOE was a reasonable basis for assessing the environmental fee, but noted it didn’t meet the test of “the only legally tenable interpretation” of the statute. Thus, because the policy is not the only possible interpretation and applies statewide, it should have been adopted as a formal regulation, according to the Court, with the customary APA requirements of advance notice, public comment, and review by an independent office that measures it against the law passed by the Legislature.

The proposed regulations clarify Health and Safety Code section 25205.6 by defining key terms associated with the environmental fee and identifies authoritative references that identify materials that pose a significant present or potential hazard to human health or safety, or to the environment, if released into the environment.

The proposed regulations will include information specifying one or more hazardous materials that causes each two-digit SIC code to be included on the list subject to the environmental fee.

CALIFORNIA ENVIRONMENTAL QUALITY
ACT (CEQA) COMPLIANCE

The environmental fee regulation is not considered a “project” under California Code of Regulations, title 14, section 15378, subsection (b)(4).

PEER REVIEW

Under the provisions of Health and Safety Code section 57004, peer review is not required because the proposed regulations do not establish a regulatory level, standard or other requirement subject to scientific peer review. The proposed rule is considered an administrative standard that does not require peer review.

BUSINESS REPORT

DTSC has determined that this rulemaking will not require businesses to write a new report, as defined by Government Code section 11346.3, subdivision (c).

FISCAL IMPACT ESTIMATES

Mandates on Local Agencies and School Districts: DTSC has made a preliminary determination that adoption of these regulations will create no new local mandates.

Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement: DTSC has made a preliminary determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

Cost or Savings to Any State Agency: DTSC has made a preliminary determination that the proposed regulations will have no impact on State revenue or costs.

Cost or Savings in Federal Funding to the State: DTSC has made a preliminary determination that the proposed regulation will have no impact on Federal revenue or costs.

Effect on Housing Costs: DTSC has made a preliminary determination that the proposed regulation will have no impact on housing costs.

Cost Impacts on Representative Private Persons or Businesses:

DTSC 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 on Businesses:

DTSC has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states. The regulations included herein are for an existing program, the environmental fee, which has been in place since 1989. The regulation will not result in any

increase in fees or taxes above the amounts that are assessed currently.

Effect on Small Businesses:

DTSC has determined that provisions of this rulemaking will have no effect on small businesses. Business organizations with fewer than 50 employees are not subject to the environmental fee.

CONSIDERATION OF ALTERNATIVES

DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. DTSC invites interested persons to present arguments, with respect to the various options, at the scheduled hearing, or during the written comment period.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

Copies of the Notice, Initial Statement of Reasons and the text of the proposed regulations are posted to DTSC's Internet site at <http://www.dtsc.ca.gov> or may be obtained from Laura Hayashi of DTSC's Regulations Section as specified below. In addition, the rulemaking record, which contains all the information upon which this proposal is based, is available for inspection at the address listed below.

POST-HEARING CHANGES

After the close of the comment period, DTSC may adopt the proposed regulations. If, pursuant to Government Code section 11346.8, subdivision (c), sufficiently related changes are made, the modified text will be made available for comment for at least 15 days prior to adoption. Only persons who requested notification of modified changes, provided written or oral testimony at the hearing, or submitted written comments on these specific regulations will be sent a copy of the modified text.

Once regulations have been adopted, DTSC prepares a Final Statement of Reasons which updates the Initial Statement of Reasons, summarizes how DTSC addressed comments and includes other materials, as required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from Ms. Hayashi at the address listed below. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at <http://www.dtsc.ca.gov>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations.

CONTACT PERSONS

Inquiries regarding technical aspects of the proposed regulations may be directed to Kyle Gardner of DTSC at (916) 322-2448 or, if unavailable, Dennis Mahoney of DTSC at (916) 324-0339. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments or contentions regarding the rulemaking and/or supporting documents must be submitted in writing or may be presented orally or in writing at the public hearing in order for them to be considered by DTSC before it adopts, amends or repeals these regulations. To be included in this regulation package's mailing list, and to receive updates of this rulemaking, please visit <http://www.calepa.ca.gov/Listsews/dtsc/> and subscribe to the applicable Listserv. You may also leave a message on the DTSC mailing list phone line at (916) 324-9933 or e-mail: regs@dtsc.ca.gov.

Please direct all written comments, procedural inquiries and requests for documents by mail, e-mail or fax to:

Laura Hayashi, Regulations
Coordinator
Regulations Section
Department of Toxic Substances
Control

Mailing Address: 1001 "I" Street
P.O. Box 806
Sacramento, CA 95812-0806

E-mail Address: regs@dtsc.ca.gov

Fax Number: (916) 324-1808

Laura Hayashi's phone number is (916) 322-6409. If Ms. Hayashi is unavailable, please call Nicole Sotak, Chief of Regulations Section, at (916) 327-4508.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

**CONSISTENCY DETERMINATION
Fish and Game Code Section 2080.1
CESA No. 2080-2007-006-06**

PROJECT: I-15 Northbound Truck-Descending Lane/Pavement Rehabilitation
LOCATION: I-15 South of Bailey Road to North of Yates Well Road, County of San Bernardino
NOTIFIER: California Department of Transportation

BACKGROUND

The California Department of Transportation (“Caltrans”) is planning to construct a 12 mile long truck–descending land on the northbound side and rehabilitate the roadbeds on the southbound and northbound sides of Interstate 15 between postmiles 169.9 and 182.1. The purpose of the project is to reduce northbound traffic congestion and safety concerns caused by an average sustained down grade of 4.3 percent. The project is located from south of Bailey Road to North of Yates Well Road in San Bernardino County. The proposed construction will impact 18 acres of desert tortoise habitat. 17.11 acres is considered unoccupied habitat and 0.89 is within critical habitat of the desert tortoise. All acres are within the Caltrans right–of–way.

The project will impact 18 acres of desert scrub and desert wash habitat. This acreage includes habitat for the desert tortoise (*Gopherus agassizii*), a species listed as threatened pursuant to both the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 *et seq.*) and the California Endangered Species Act (CESA) (Fish and Game Code § 2050 *et seq.*).

Because the project has the potential to take a species listed under the ESA, the United States Fish and Wildlife Service (“Service”) issued a Biological Opinion and Incidental Take Statement to the Federal Highway Administration (1–8–07–F–21) on March 27, 2007 for the project which concluded that the project “. . . is not likely to jeopardize the continued existence of the tortoise. . .” The Biological Opinion was amended on April 20, 2007 to include specific language related to required timeframes for providing habitat mitigation lands and requirements for funding long–term management of those lands. The Biological Opinion was subsequently amended again on April 24, 2007, to include corrected mitigation fees which were erroneously included in the first amendment. The Biological Opinion and Amendments describe the project, including project features developed to minimize impacts on the tortoise, and set forth measures to mitigate the remaining impacts to the tortoise and its habitat. On March 29, 2007, the Director of the Department of Fish and Game (“DFG”) received correspondence from Caltrans requesting a determination pursuant to section 2080.1 of the Fish and Game Code that the amended Biological Opinion and Incidental Take Statement are consistent with CESA.

DETERMINATION

DFG has determined that the Incidental Take Statement and amended Biological Opinion are consistent with CESA because the mitigation measures therein meet the conditions set forth in Fish and Game Code section 2081, subparagraphs (b) and (c), for authorizing

the incidental take of CESA–listed species. Specifically, DFG finds that the take of tortoise will be incidental to an otherwise lawful activity (*i.e.*, construction of the truck–descending lanes and road rehabilitation), the mitigation measures identified in the amended Biological Opinion and Incidental Take Statement will minimize and fully mitigate the impacts of the authorized take of desert tortoise, and the project will not jeopardize the continued existence of the species. The mitigation measures in the amended Biological Opinion and Incidental Take Statement include but are not limited to, the following:

1. Caltrans will reduce direct injury and mortality to tortoises by:
 - Implementing preconstruction surveys;
 - Having a biological monitor on site during construction;
 - Inspecting each trench 3–4 times per day and before back filling; and
 - Constructing desert tortoise–exclusion fencing
2. All personnel involved in the construction project will receive desert tortoise protection training prior to performing on–site work.
3. Caltrans will place trash in sealed containers and will empty the containers at the close of business each day and will cage or net water sources to prevent use by common ravens.
4. Caltrans will use biological monitors who are authorized by the Service and DFG to handle desert tortoises.
5. Caltrans will mitigate for permanent habitat impacts by purchasing and protecting in perpetuity a total of 55 acres of desert tortoise habitat at a replacement location (3:1 for 17 acres and 4:1 for the 1 acre in critical habitat). In addition, Caltrans will provide for the long–term management and initial enhancement of the compensatory habitat.
6. Caltrans will provide a report to DFG and the Service within 60 days of the completion of project activities that documents compliance with all commitments and Terms and Conditions specified in the amended Biological Opinion, Incidental Take Statement, and any other regulatory permits.

Based on this consistency determination, Caltrans does not need to obtain authorization from the DFG under CESA for take of desert tortoise that occurs in carrying out the project, provided Caltrans complies with the mitigation measures and other conditions described in the amended Biological Opinion and Incidental Take Statement. However, if the project as described in the Biological Opinion, including the mitigation measures

therein, changes after the date of the Opinion, or if the Service amends or replaces that Opinion, Caltrans will need to obtain from DFG a new consistency determination (in accordance with Fish and Game Code section 2080.1) or a separate incidental take permit (in accordance with Fish and Game Code section 2081).

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —

Public Interest Notice

For Publication May 11, 2007

CESA CONSISTENCY DETERMINATION FOR Implementation of the Klamath River Fisheries Restoration Grant Program by the California Department of Fish and Game Trinity, Humboldt, and Del Norte Counties

The California Department of Fish and Game’s Fisheries Restoration Grant Program (“FRGP”) notified the Director of the Department on May 1, 2007 that the FRGP proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (“CESA”). The project authorized by the federal consultation consists of implementation of the Klamath River Restoration Grants Program pursuant to Department of the Army Regional General Permit No. 12 (Corps file 27922N) (RGP 12). Restoration projects funded by the FRGP and covered by RGP 12 are designed specifically for the purpose of restoring salmonids fisheries habitat and improving watershed conditions to improve the survival, growth, migration, and reproduction of native salmonids. Project activities include instream habitat improvements using gravel, rock, and wood, log placement, installation of fish screens, removal of fish passage barriers, riparian restoration, and upslope rehabilitation activities.

On May 21, 2004, the National Marine Fisheries Service (NMFS) issued a no jeopardy federal biological opinion and incidental take statement (151422SWR03AR8912:FRR/JTJ) to the U.S. Army Corps of Engineers that authorizes take of the Federally and State endangered Central California Coast (CCC) Coho Salmon (*Oncorhynchus kisutch*) that may occur incidentally during implementation of restoration projects described in the biological opinion.

Pursuant to California Fish and Game Code Section 2080.1, the FRGP is requesting a determination that the

federal biological opinion 151422SWR03AR8912:FRR/JTJ is consistent with CESA. If the Department determines that the federal biological opinion is consistent with CESA, restoration projects funded by the FRGP and carried out pursuant to RGP 12 will not be required to obtain separate incidental take permits under CESA for their projects.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —

Public Interest Notice

For Publication May 11, 2007

CESA CONSISTENCY DETERMINATION FOR Prichard Lake Restoration Project Sacramento County

The Department of Fish and Game (“Department”) received a notice on April 19, 2007 that the Sacramento County Airport System (“SCAS”) proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (“CESA”). This project consists of restoration activities on 42.7 acres of wetland habitat at and around Prichard Lake in Sacramento County. The activities will temporarily impact the 9.7 acre Prichard Lake site and the 33 acres wetland compensation site.

The U.S. Fish and Wildlife Service, on May 27, 2004, issued to the U.S. Army Corps of Engineers (“Corps”), a no jeopardy federal biological opinion (1-1-04-F-0030) which considers impacts to the Federally and State threatened giant garter snake (*Thamnophis gigas*), and authorizes incidental take. The Service subsequently issued two amendments to the biological opinion: No. 1-1-06-F-0225 on August 25, 2006 which slightly modified the project activities, and No. 1-1-07-F-0163 on April 20, 2007 which clarified details of the conservation easement and management endowment.

Pursuant to California Fish and Game Code Section 2080.1, the Corps and SCAS are requesting a determination that federal biological opinion 1-1-04-F-0030, as amended by 1-1-06-F-0225 and 1-1-07-F-0163, is consistent with CESA. If the Department determines that the federal biological opinion is consistent with CESA, SCAS will not be required to obtain an incidental take permit for the proposed project.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —
Public Interest Notice

For Publication May 11, 2007

CESA CONSISTENCY DETERMINATION FOR
Replacement of 264 culverts on State Routes 128
and 253 Project
Humboldt County

The California Department of Fish and Game (“Department”) received notice on April 3, 2007 that the California Department of Transportation (“Caltrans”) proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (“CESA”). This project consists of replacing or retrofitting 274 culverts on State Routes 128 and 253 in Mendocino County, 5 of which locations are known to be inhabited by listed fish species. The activities will include in-water work which will impact listed fish species and may necessitate removal of riparian vegetation.

The National Marine Fisheries Service, on January 4, 2005, issued to the Federal Highway Administration (FHWA), a no jeopardy federal biological opinion (151422SWR2004SR20089:DJL) which considers the Federally and State endangered Central California Coast (CCC) Coho Salmon (*Oncorhynchus kisutch*) and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, Caltrans is requesting a determination on whether the federal biological opinion 151422SWR2004SR20089:DJL is consistent with CESA. If the Department determines that the federal biological opinion is consistent with CESA, Caltrans will not be required to obtain an incidental take permit under CESA for the proposed project.

FISH AND GAME COMMISSION

NOTICE OF FINDING, FINDING, AND
STATEMENT OF REASONS

(Denying Petition to Delist Coho Salmon South of
San Francisco)

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2074.2 of the California Fish and Game Code, the California Fish and Game Commission (“Commission”), at its March 1, 2007, meeting in Arcata, rejected the petition (“Petition 2004”) filed by Messrs. Homer T. McCrary and Fabian Alvarado of Big

Creek Lumber Company and Mr. Robert O. Briggs of Central Coast Forest Association to remove coho salmon (*Oncorhynchus kisutch*) south of San Francisco from the list of endangered species. This rejection is based on a finding that the petition did not provide sufficient information to indicate that the petitioned action may be warranted. At that meeting, the Commission also announced its intention to adopt this Statement of Reasons at its April 2007 meeting in Bodega Bay.

NOTICE IS ALSO GIVEN that, at its April 12, 2007 meeting in Bodega Bay, the Commission adopted the following formal statement of reasons (findings of fact and law) outlining the basis for rejection of the petition.

BACKGROUND

February 24, 1993. The Commission received a petition from the Santa Cruz County Fish and Game Advisory Commission to list as endangered under the California Endangered Species Act (“CESA”) coho salmon in Scott and Waddell Creeks.

March 2, 1993. The Commission referred the petition to the Department of Fish and Game (“Department”) to review and recommend whether the petition contained sufficient information to warrant its acceptance by the Commission. The Department recommended the petition be rejected because it believed it was inappropriate to limit the listing to two populations of a species that was experiencing severe decline over a large portion of its range.

October 7, 1993. The petition was withdrawn with the stated intent of submitting a new petition covering all streams south of San Francisco.

December 16, 1993. The Commission received an expanded petition to list as threatened coho salmon south of San Francisco. Thereafter, the Department reviewed the petition and recommended it be accepted.

April 7, 1994. The Commission found that the petition contained sufficient information to indicate that the petitioned action may be warranted and accepted the petition. Coho salmon south of San Francisco became a “candidate” species.

March 1995. The Department completed its status review of coho salmon south of San Francisco, and recommended the coho salmon south of San Francisco be listed as endangered, rather than threatened as petitioned.

December 31, 1995. The Commission listed, as endangered, coho salmon south of San Francisco under CESA.

1996. The Commission’s regulations are amended to include and identify coho salmon south of San Francisco as “Endangered”. (Cal. Code Regs. tit. 14, §670.5 or 3670.5)

July 28, 2000. The Commission received a petition from the Salmon and Steelhead Recovery Coalition to list coho salmon north of San Francisco under CESA. (Coho salmon populations south of San Francisco were already listed as endangered under CESA.)

August 7, 2000. The Commission forwarded the petition to the Department to review and recommend whether the petition contained sufficient information to indicate that the petitioned action may be warranted.

February 2, 2001. The Department presented its findings to the Commission that the petition provided sufficient information and recommended to the Commission that it accept the petition to list coho salmon north of San Francisco for consideration. The Commission did not take any action due to lack of quorum.

April 5, 2001. The Commission accepted the petition to list coho salmon north of San Francisco for consideration after receiving public testimony thereby making coho a “candidate species”.

May 28, 2002. The Department transmitted to the Commission its April, 2002, status review report regarding coho salmon north of San Francisco (as required by Fish and Game Code section 2074.6) recommending that it list coho salmon north of Punta Gorda (Humboldt Co.) as a threatened species and coho salmon south of Punta Gorda (Humboldt Co.), (which includes coho salmon south of San Francisco), as an endangered species in the Commission’s regulations (Cal. Code Reg., tit. 14, §670.5).

August 30, 2002. The Commission made a finding that coho salmon north of Punta Gorda and coho salmon south of Punta Gorda warrant listing as a threatened and an endangered species, respectively.

Pursuant to Fish and Game Code section 2114 (recovery strategy), the Commission delayed the required rulemaking to add coho to the threatened and endangered species list in the Commission’s regulations for one year while the Department prepared a recovery strategy.

August 28, 2003. The Department presented its draft recovery strategy to the Commission; and the Commission granted a 6 months extension on the recovery strategy.

February 4, 2004. The Department presented its recovery strategy to the Commission. The Commission authorized its staff to publish a Notice of Intent (NOI) to amend CCR, tit. 14, sec. 670.5 to add all California coho to the threatened and endangered species lists.

February 25, 2004. Commission staff issued the Notice of Intent to amend CCR, tit. 14, sec. 670.5. Issuance of the NOI begins the rulemaking process to add coho salmon north of Punta Gorda and coho salmon south of Punta Gorda to the list of threatened and endangered species.

June 17, 2004. The Commission received a petition from the Central Coast Forest Association and Big Creek Lumber Company to redefine the southern boundary of the coho regulatory listing to exclude or delist coho salmon south of San Francisco.

August 5, 2004. The Commission voted to adopt the rulemaking package to add coho salmon north of Punta Gorda to the list of threatened species and to add all coho salmon south of Punta Gorda to the list of endangered species.

December 31, 2004. The Department provided the Commission with its written evaluation of the petition to delist coho salmon south of San Francisco.

January 26, 2005. Petitioners provided comments to the Commission on the Department’s written evaluation of the petition to delist coho salmon south of San Francisco.

March 17, 2005. The Commission rejected the petition to delist coho salmon south of San Francisco.

March 30, 2005. The California Endangered Species Act list (14 C.C.R. 670.5) was amended to add coho salmon north of Punta Gorda as “threatened” and to add all coho salmon south of Punta Gorda as “endangered”. The separate listing for coho salmon “south of San Francisco” was removed.

November 16, 2005. Petitioners filed a petition for it of mandate in Sacramento County Superior Court challenging the Commission’s rejection of the petition to delist coho salmon south of San Francisco.

September 22, 2006. The Sacramento County Superior Court issued an order setting aside the Commission’s March 17, 2005 decision to reject the petition to delist coho salmon south of San Francisco.

October 6, 2006. The Sacramento County Superior Court clarified its September 22, 2006 order.

January 25, 2007. The Commission is served with the Judgment and Notice of Entry.

February 7, 2007. The Commission issued a notice of reconsideration of the petition to delist coho salmon south of San Francisco.

March 1, 2007. The Commission reconsidered the petition to delist coho salmon south of San Francisco and received additional written and oral comment from the petitioners, the Department, and the public. At this meeting the Commission rejected the petition, finding that the petition did not contain sufficient information to indicate the petitioned action may be warranted. Staff was directed to prepare a draft statement of reasons (pursuant to Fish & Game Code § 2074.2) for consideration at the Commission’s April 12–13, 2007 meeting.

STATUTORY REQUIREMENTS

A species is endangered under California Endangered Species Act, Fish and Game Code Section 2050 et

seq. (CESA), if it “is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease.” (Fish & G. Code, § 2062.) The responsibility for deciding whether a species should be removed from the endangered species list, otherwise known as delisting, rests with the Commission. (Fish & G. Code, § 2070.)

To be accepted by the Commission, a petition to remove a species from the endangered species list must include sufficient scientific information that the delisting may be warranted. (Fish & G. Code, § 2072.3, Cal. Code Regs., tit. 14, § 670.1, subs. (d) and (e).) The petition must include information regarding the species’ population trend, range, distribution, abundance and life history; factors affecting the species’ ability to survive and reproduce; the degree and immediacy of the threat to the species; the availability and sources of information about the species; information about the kind of habitat necessary for survival of the species; and a detailed distribution map. (Fish & G. Code, § 2072.3, Cal. Code Regs., tit. 14, § 670.1, subd. (d)(1).) In deciding whether it has sufficient information to indicate the petitioned action may be warranted, the Commission is required to consider the petition itself, the Department’s written evaluation report, and comments received about the petitioned action. (Fish & G. Code, § 2074.2.)

The requisite standard of proof to be used by the Commission in deciding whether the petitioned action may be warranted (i.e. whether to accept or reject a petition) was described in *Natural Resources Defense Council v. Fish and Game Commission* (1994) 28 Cal.App.4th 1104 [hereinafter *NRDC*]. In *NRDC*, a case where the petitioned action was listing of a species, the court determined that “the section 2074.2 phrase ‘petition provides sufficient information to indicate that the petitioned action may be warranted’ means that the amount of information, when considered in light of the Department’s written report and the comments received, that would lead a reasonable person to conclude there is a substantial possibility the requested listing could occur. . .” (*NRDC, supra*, 28 Cal.App.4th at page 1125.) This “substantial possibility” standard is more demanding than the low “reasonable possibility” or “fair argument” standard found in the California Environmental Quality Act, but is lower than the legal standard for a preliminary injunction, which would require the Commission to determine that a listing is “more likely than not” to occur. (*Ibid.*)

The *NRDC* court noted that this “substantial possibility” standard involves an exercise of the Commission’s discretion and a weighing of evidence for and against the petitioned action in contrast to the “fair argument” standard that examines evidence on only one side of the

issue. (*NRDC, supra*, 28 Cal.App. 4th at page 1125.) As the court concluded, the decision-making process involves:

. . . a taking of evidence for and against listing in a public quasi-adjudicatory setting, a weighing of that evidence, and a Commission discretion to determine essentially a question of fact based on that evidence. This process, in other words, contemplates a meaningful opportunity to present evidence contrary to the petition and a meaningful consideration of that evidence.” (*Id.* at 1126.)

Therefore, in determining whether the petitioned action “may be warranted,” the Commission must consider not only the petition and the evaluation report prepared on the petition by the Department, but other evidence introduced in the proceedings. The Commission must decide this question in light of the entire record.

REASONS FOR FINDING

This statement of reasons for the finding sets forth an explanation of the basis for the Commission’s finding and its rejection of the petition to remove coho salmon south of San Francisco from the endangered species list. It is not a comprehensive review of all information considered by the Commission and for the most part does not address evidence that, while relevant to the petitioned action, was not at issue in the Commission’s decision.

In order to accept this petition, the Commission is required to determine that it has information to persuade a reasonable person that there is a substantial possibility that coho salmon south of San Francisco could be removed from the endangered species list. As the decision in *NRDC* makes clear, the Commission must critically evaluate and weigh all evidence, and this process does not allow the Commission to resolve all uncertainties in favor of either the proponents or opponents of the petitioned action. The Commission may deal with data gaps by drawing inferences based on available information or by relying on expert opinion that the Commission finds persuasive, but in the end the petition and other information presented to the Commission must affirmatively demonstrate the species no longer meets the criteria for protection as an endangered species.

As was previously mentioned, Fish and Game Code section 2072.3 provides that certain sufficient scientific information must be included in a petition in order for it to be accepted. (e.g., species’ population trends, range, distribution, abundance and life history; factors affecting the species’ ability to survive and reproduce; the degree and immediacy of the threat to the species; the impact of existing management efforts; suggestions for future management of the species; the availability and sources of information about the species; information about the kind of habitat necessary for survival of the

species; and a detailed distribution map.) The petition includes some of this information but much is missing or mischaracterized.

A. Continuing Threatened Status of Coho Salmon South of San Francisco

One of the most obvious omissions in the petition is a failure to include specific information that the species in question is “no longer threatened by any one or any combination of the [following] factors:

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

(Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(B).)

In the petition and supplemental materials submitted by petitioners, little credible evidence is provided regarding the continuing status of coho salmon south of San Francisco and no credible evidence is provided that the coho salmon populations south of San Francisco are “no longer threatened.” Instead testimony by fisheries biologists from the Department, during the 2004–2005 proceeding, clearly establish that:

- Coho salmon south of San Francisco may be doing better now than they were ten years ago, but populations are still quite depressed and restricted, and are still vulnerable to extinction.
- In 1995, coho salmon were found in Waddell and Scott Creeks and the San Lorenzo River.
- In 2003, only Scott Creek contained all three brood years, and Waddell Creek contained only two of three brood years, one of which contained less than 20 adults.
- Currently, it appears that all three brood years are present in both Scott and Waddell Creeks, and possibly San Vicente Creek, but at far fewer numbers than Scott and Waddell Creeks. Gazos Creek appears to have only two brood years with very low numbers.

(See also written testimony of Jerry Smith, Ph.D., regarding recent research at Gazos, Waddell and Scott Creeks; February 10, 2007.)

Rather than address the continuing status of coho salmon south of San Francisco, the bulk of the petition and supplemental petition materials argue that the original 1995 listing of coho salmon south of San Francisco was unfounded or in error because coho salmon are not native to streams south of San Francisco. While this argument misunderstands CESA and its application to all populations of native species within California, the Commission finds that each of the arguments presented

by petitioners on this issue are unsupported by evidence in the record and, in fact, again reflect numerous mischaracterizations of evidence, numerous misstatement of facts, and a strong reliance on speculation and innuendo rather than rational scientific analysis. The petition’s arguments regarding the coho salmon’s non-native status can be consolidated into six independent arguments and each will be addressed in this Commission statement of reasons.

B. Coho Salmon South of San Francisco Are Not Native

1. Archeological Data

Petitioners, the petition, and the supplemental materials submitted by petitioners (including a recent article by Kaczynski and Alvarado in *Fisheries*) argue that an absence of coho salmon remains in the archaeological records available for areas south of San Francisco establish that coho salmon did not historically exist within this area. In support of this premise petitioners cite to the research and survey work of Kenneth Gobalet, Ph.D., published in 2004 in which Dr. Gobalet, surveying Native American middens south of San Francisco, had yet to find the remains of any coho salmon. In a clear effort to mischaracterize Dr. Gobalet’s work petitioners omitted a clear qualification in Dr. Gobalet’s published article.

“Because of this paucity of materials, far more sampling is required to use the archaeological record as definitive evidence for the absence of coho salmon from this section of coast. This is particularly important to acknowledge, because there is no question that coho salmon were native to San Mateo and Santa Cruz counties (Behnke 2002; P.B. Moyle personal communication). Specimens dating from 1895 that were collected by Cloudsley Rutter in streams south of San Francisco are in the collection of the California Academy of Sciences (D. Catania, CAS, personnel communication). If coho salmon exist in the archaeological records of San Mateo County and Santa Cruz County coast at the same frequency as in the San Francisco Bay area (14 of 105,000 elements), then at least 7,506 elements would have to be recovered before a single coho salmon could be expected.”

(“Archaeological perspectives on Native American fisheries of California with emphasis on steelhead and salmon.” *Transactions of the American Fisheries Society* 133(4): 801–833, 825.; as of 2004, only 1,156 fish bones had been analyzed from San Mateo and Santa Cruz sites.)

In that same article Dr. Gobalet goes on to note that the low number of salmonid remains discovered to date is likely due to the fact that salmonid bones do not pre-

serve well due to higher porosity and are generally thinner than other bony fish. (Gobalet, et al. 2004) In fact, coho salmon have rarely been documented at archaeological excavation within their known range in California and only documented at archaeological sites in the eastern San Francisco Bay area and Del Norte County, despite the fact that the species is known to be native to streams in Marin, Sonoma, Mendocino, and Humboldt Counties. (Gobalet, et al. 2004; see also NOAA Notice of 90-day Petition Finding, Federal Register, Vol. 71, No. 56, March 23, 2006, page 14685.)

Dr. Gobalet did appear at the Commission's March 1, 2007 hearing and did testify orally as well as provide a written statement. Dr. Gobalet emphasized in his testimony the qualifying statement made in his published work and noted that "the failure to find remains of these fishes at archaeological sites does not mean they were not present in coastal waters." Dr. Gobalet went on to further testify, however, that such archaeological remains of coho salmon have recently been discovered and positively identified at a site in Año Nuevo State Reserve (San Mateo County) confirming the historical existence of coho salmon south of San Francisco. "The parsimonious explanation for the presence of coho salmon in Año Nuevo State Reserve prehistorically is that native salmon were captured from local streams (e.g. Waddell Creek) by the local Indians. . . ." This new find and testimony positively refutes petitioners' arguments that archaeological remains of coho salmon have never been found south of San Francisco.

2. Early Scientific Accounts

The Petition also asserts that there is no valid historic (including accounts from local newspapers) or scientific source which documents the presence of coho salmon south of San Francisco prior to 1906. Because the scientific documentation published prior to 1906, primarily by early ichthyologist David Starr Jordan (Jordan, 1892; Jordan and Gilbert, 1876–1919; Jordan, Gilbert, and Hubbs, 1882; Jordan and Everman, 1902; Jordan, 1904a; Jordan 1904b; etc.), referenced coho salmon as occurring north of San Francisco, the petitioners conclude coho salmon were absent south of San Francisco. The Commission disagrees with the petitioners' claim. Jordan was describing the North American distribution of coho salmon in a general ichthyofaunal reference, and his use of commonly used phraseology that a species is abundant up to, or from, a geographical landmark does not mean that the species was absent in areas beyond the referenced landmark. Jordan also wrote, "This species (coho salmon) is not common south of the Columbia, but is sometimes taken in California" (Jordan, 1894). Coho salmon were more abundant in Oregon and California than indicated by this statement, further

highlighting the problematic nature of relying on general ichthyofaunal references for precise species distribution information. Regarding the various excerpts from early newspaper articles, the Commission views these as non-scientific reports of already depressed salmonid populations rather than as definitive scientific proof that these fishes were unquestionably absent from the area.

Early scientific collection efforts also stand as clear evidence of historic coho salmon populations south of San Francisco. In fact, coho salmon specimens collected from San Mateo and Santa Cruz county streams in 1895 and currently held in the California Academy of Science's (CAS) Ichthyological Collection (CAS, 2004) represent clear evidence that coho salmon were native to, and present in, streams south of San Francisco Bay prior to 1906. The CAS maintains four samples (jars) of specimens that authenticate the collection of 11 native coho salmon from Waddell Creek and four from Scott Creek in Santa Cruz County on June 5, 1895, by the party of Rutter, Scofield, Seale, and Pierson (CAS, 2004). Also, two coho salmon specimens were collected from San Vicente Creek in Santa Cruz County and one from Gazos Creek in San Mateo County by the same party of investigators. Although the collection of these latter specimens is not dated, they can reasonably be assumed to have been collected during the same period. Coho salmon continue to persist in these four streams today.

In correspondence the petitioners submitted to the Commission, the petitioners questioned the validity of these coho salmon specimens based on an assumption these were lapses in their chain of custody.

The information the petitioners provide, however, is pure speculation and does not indicate the specimens are in any way unreliable. In fact, David Catania, Ichthyology Collections Manager for the California Academy of Science believes the 1895 collections are reliable, are coho, and are from south of San Francisco. In a written statement provided to the Commission on February 12, 2007, Mr. Catania states:

"Housed in the California Academy of Sciences (CAS) fish collection are four cataloged lots with 18 individuals collected during the 1895 Carmel River Expedition of Stanford University. These specimens came from Scotts, Waddell, San Vicente, and Gatos Creeks in Santa Cruz County. In their petition, F. Alvarado and V.W. Kaczynski call into question the validity of these specimens with two main concerns: 1) changes in the identification of the specimens over time, and 2) the effects of the 1906 earthquake on the Stanford

University (SU) fish collection now at the CAS. I will comment on each.

Attaching undue importance to these changes in identification, suggests a limited understanding of specimen-based collections.

What is significant is that we have the specimens as vouchers and that they can be examined at any time, not that they may have been misidentified fifty or a hundred years ago. Within the last few years, these specimens have been examined by three experts who have positively identified 17 of the individuals as coho (one specimen is chinook). Previous misidentifications do not change what the specimens are.

Alvarado and Kaczynski cite J. Böhlke's account of the 1906 earthquake and its effects on the Stanford University fish collection (Stan. Ich. Bull. v. 5, pg. 3, 31 July 1953) but are selective in their interpretation. The 1906 earthquake broke fewer than 25% of the bottles. The ichthyologists used their expertise to salvage specimens and the corresponding data from jars that had broken. Unless they were relatively certain, the specimens were discarded. Although one cannot completely rule out the possibility, **there is no indication that any of the four bottles containing these 17 coho was ever broken.**

In my opinion, the chances are negligible that the data associated with these 17 coho were compromised."

(emphasis added.)

Both the Department's biologists (in their supplemental materials) and the National Marine Fisheries Service (see, NOAA Notice, *supra*, Federal Register, page 14685) agree with Mr. Catania's assessment of the CAS specimens. Dr. Gobalet, commenting on these same allegations by petitioners states that "Kaczynski and Alvarado (2006) [authors of additional petition material] disrespect over a century of credible science with improbable scenarios." "There is no evidence that the [specimen] jars containing coho salmon were broken during the [1906] earthquake and to intimate otherwise is to denigrate the work of meticulous collection custodians at Stanford and the CAS." The Commission agrees. The petitioners provide no evidence to support their contention that the 1906 earthquake compromised the integrity of the CAS coho collection, only speculation that it could have occurred. This speculation is not evidence that any reasonable person would rely upon in assessing the petition.

3. **Climate Differences**

The petition asserts that "extreme weather events [are] the principal reason that coho colonies are unsustainable in streams south of the Santa Cruz Mountains."

In supplemental materials submitted in support of the petition by Mr. Robert Briggs (Central Coast Forest Association), Mr. Briggs suggests that information in the Department's and NOAA Fisheries' joint report titled Action Plans for Monitoring California's Coastal Anadromous Salmonids ("Action Plan") (Boydston and McDonald 2005), supports petitioners' weather assertions. Mr. Briggs includes in his September 30, 2006 letter to the Commission an excerpt from the Action Plan that he believes supports their assertion:

"Compared to the northern California coast and the Pacific Northwest, the southern region has fewer rainy days during the winter (Figure 3A), although the rainy days that do occur tend to have precipitation comparable to areas further north (Figure 3B). The consequence is that the discharge of southern California streams is more episodic than northern streams (Figure 3C). Note that winter discharge for Sespe Creek, depicted for the years 1991 and 1995 in Figure 3C may increase by two to four orders of magnitude over the few days following a major storm event, while the more northerly streams increase by about one order of magnitude" (Boydston and McDonald 2005).

Mr. Briggs mischaracterizes the excerpt he cites from the Action Plan which he claims "explicitly confirms the findings of our petition . . ." (climatic conditions north of San Francisco Bay are substantially different from those south of San Francisco Bay) by incorrectly assuming that the Action Plan is comparing rainfall and discharge north of San Francisco Bay to that in Santa Cruz County. In reality, the Action Plan is comparing rainfall and discharge in the "Northern Monitoring Area" with that of the "Southern Monitoring Area", with the boundary between the two areas located at the Pajaro River (the Santa Cruz/Monterey county line). It is important to note the Northern Monitoring Area includes the coho streams south of San Francisco that are in dispute by the petitioners and Mr. Briggs. The excerpt Mr. Briggs references is comparing the Northern Monitoring Area (which supports all runs of coho salmon) to the Southern Monitoring Area (which supports only steelhead), not the area north of San Francisco to coho habitat south of San Francisco, as Mr. Briggs implies.

Furthermore, the graphs from the Action Plan referenced by Mr. Briggs provide even more evidence to support the Department's findings that coho habitat north of San Francisco is not substantially different from coho habitat south of San Francisco. As the graphs clearly show, percentage of wet days and amount of precipitation per wet day in Santa Cruz and San Mateo counties are essentially identical to those of Marin County and areas farther north along the central and

north coast. These figures support the Department's conclusions that coastal areas of Santa Cruz and San Mateo counties have similar climate to areas of northern California where the native status of coho is not in dispute.

The Department also testified to a publication by NOAA Fisheries Southwest Fisheries Science Center (Spence et al. 2005) that supports the fact that coho are native south of San Francisco. Spence et al. (2005) constructed a model based on several geomorphic and hydrologic characteristics that estimates the historical potential for a particular stream to be suitable for coho salmon. This modeling shows that coastal Marin County streams are ecologically similar to Santa Cruz County streams of equivalent watershed size.

Petitioners rely upon the Kaczynski and Alvarado article in *Fisheries* to state that Santa Cruz is significantly more likely to receive four inches of rain in a single day than Marin County throughout the winter and spring. However, this doesn't prove that Santa Cruz County is unsuitable for coho salmon. In order to demonstrate that, one would have to look at the range of precipitation patterns over the entire range of coho salmon. For example, if one were to compare the precipitation patterns of Marin County to Del Norte County or Jefferson County in Washington (all within the natural range of coho) it is likely that there would be a much more significant difference than that shown by Kaczynski and Alvarado (2006) for Marin and Santa Cruz counties. In order to make determinations about habitat suitability, one would need to examine the habitat characteristics along the entire range of coho, not just one small area, and not just one habitat variable.

The Kaczynski and Alvarado (2006) article identifies late or nonexistent seasonal rains, stream flows that are not sufficient to open sand bars, and devastating floods as reasons why they believe coho salmon could not have persisted in Santa Cruz County streams. These conditions are natural for this area, as they are in streams immediately north of San Francisco. Smith (2006) points out that these conditions have produced the same year class effects (as identified by Kaczynski and Alvarado 2006) in Redwood Creek in Marin County as they have south of there. Further, Smith (2006) indicates that regardless of these conditions coho have still maintained runs in those streams.

The geological processes also described in the Kaczynski and Alvarado (2006) article apply throughout the California coastal mountain range and are not unique to the Santa Cruz Mountains. The coastal geology and active geologic processes that purportedly result in a "... marginal, harsh, and extreme ..." environment unsuitable for coho salmon in Santa Cruz Range streams (Kaczynski and Alvarado 2006) are not unique to this locale. Rather, the rocks and active geologic pro-

cesses of the Mendocino Range (i.e., north of San Francisco Bay) closely resemble those of the Santa Cruz Range to the south (Norris and Webb, 1990).

While some localized habitat differences may exist between watersheds north and south of San Francisco Bay, the Commission is unaware of any conclusive scientific evidence, and the petition does not offer any, that would lead one to conclude that these habitat differences are significant enough to preclude coho salmon presence south of San Francisco. While climatic conditions, erosive geology, and variable hydrology can be detrimental to coho salmon, these conditions are not unique to the area south of San Francisco but also occur in other portions of the central California coast where coho salmon are acknowledged to be native and persistent.

4. Ocean Conditions

The petitioners assert that poor ocean conditions due to decadal scale regime changes experienced over the last several decades would have caused the extinction of coho populations south of San Francisco but for artificial hatchery support. In support of this argument Petitioners offer the *Fisheries* article by Kaczynski and Alvarado which contains a simple static cohort replacement rate (CRR) calculation that the petitioners claim proves that ocean conditions in the region are so unsuitable for coho salmon that they could not exist there naturally.

First, the Commission believes that the Department is correct in stating that the static CRR calculation is much too simplistic to accurately model replacement rate dynamics in these fish. Predicting population persistence over time is much more complicated than the petitioners' simple calculations suggest (see McElhenny et al. 2000, Spencer 1999, Morris et al. 1999). Furthermore, the simplistic calculation is misleading because it suggests that no female could possibly produce enough offspring to replace herself due to poor habitat conditions, and that cohort replacement rates below one lead to immediate extinction. However, the method they use does not accurately model the way that populations truly behave, nor does it properly characterize the meaning of CRR in terms of population persistence. In reality, there is no single value of freshwater survival, ocean survival, or fecundity that can be applied to every fish. Rather, these values are different for each fish, leading to difference in each parent's representation in the next generation. The petitioners' results depend heavily on their choice of environmental and reproductive parameters, applying estimates of average survival to all individuals in a population, and ignoring the effects of initial populations size and metapopulation exchange. Also, a CRR less than one indicates that a population, in the three year time period under consideration, has fewer indi-

viduals in it than three years previous. If CRR remains less than one over a period of time, the probability of extinction does increase because, given past performance, we would project that the population will continue to get smaller. The projected time to extinction depends on the rate of decrease in population size and the size of the population. However, low CRR does not mean that the population is extinct.

The accuracy of the petitioners' results is totally dependent, and sensitive to, the data used to generate them. Even if the petitioners' methods were valid for predicting when a population went extinct (which they are not), real empirical data — specifically freshwater and ocean survival estimates from the region — are largely lacking. Hence, any such analysis will likely be so inaccurate as to be useless for predicting time to extinction. As the Department correctly points out the only estimate of freshwater survival in this region comes from Shapovalov and Taft (1954). In a 4-year study in Waddell Creek, they estimated that average egg to smolt survival was 1.43%. Using the simple static CRR model used by the petitioners, and applying this value of freshwater survival, ocean survival would have to be around 6% in order to return one female per spawning female, not 8.6% as stated by the petitioners. Slight increases or decreases to the freshwater survival estimate or to the number of eggs per female used in the calculation greatly affect the result. In actuality, individual female coho salmon may produce between 1,983 and 4,706 eggs (Groot and Margolis 1991). This illustrates just one of the problems with using fixed values in these simplistic calculations — they do not take individual and environmental variation into account, and so are very unlikely to give accurate predictions. In fact, coho salmon across their range have experienced periods of poor ocean conditions over the past few decades, and coho populations have likely declined as a result. However, all coho populations did not go extinct during these periods even though calculations like those used by the petitioners could be used to predict that they did.

The Department and its biologists properly note that a more dynamic simulation that incorporates Oregon Population Area Index survival rates and estimates of spawner–recruit relationships was carried out by Botsford et al. (2005). Spawner numbers declined at both the high and low ends of the range of spawner–recruit values, and were especially low at the low end. While this does suggest that coho salmon experienced very bad conditions between 1980 and 2000, it cannot be interpreted to mean that they suffered extinction.

The Commission is persuaded by substantial and credible evidence that the south of San Francisco coho salmon populations are part of a larger metapopulation that includes populations to the north of them. This

structure complicates the assumptions of static survival estimates because these populations are connected by exchange. The three year spawning cycle of coho also acts as an extinction buffer by retaining a stock of fish in the ocean. Their three-year life history, along with exchange among populations, significantly improve the chances that coho salmon could persist in the face of periodic poor ocean and freshwater conditions. (See Department supplemental materials and the NOAA Notification, Federal Register, *supra* at 14687.)

5. **Hatchery Planting**

The petitioners' central argument in all of this discussion about “non–native coho salmon” is that coho salmon were historically absent from the region south of San Francisco prior to hatchery importation and planting there, and that all of the coho salmon in the region, both historically and today, are derived from out of basin hatchery plantings. The statement in Alvarado et al. (2005) (cited by petitioners) is clear regarding their assertion “. . . we very clearly asserted that there have never been any native coho in streams south of San Francisco.” The Commission can find no scientifically credible data that this assertion is true. In place of data, and either ignoring or attacking all of the positive information presented by the Department and others, the petitioners submit an argumentative narrative from which they conclude nothing more than that their hypothesis “could be true.” What the petitioners call “evidence” is actually persuasive writing, not valid scientific evidence, and should be recognized as such.

The following statements from Alvarado et al. (2005) illustrate the lack of a scientific evidence standard used by the petitioners to assert their claims:

*“As stated above, by 1870 the California Acclimitization Society was operating a fish hatchery in San Francisco (Leitritz 1970) and there is **no reason to assume they did not plant any fish just south of there.**” (Alvarado et al. 2005, p. 18; emphasis added.)*

The petitioners do not provide evidence of any kind that coho salmon were raised by this hatchery, or that, if they were raised at the hatchery, coho were planted south of San Francisco by this hatchery operation. The petitioners' confuse the possibility that coho could have been planted with positive evidence that they were, and present that possibility as evidence.

“Certainly, we know the Santa Cruz Organization for the Propagation and Protection of Fish was planting exotic fish into Santa Cruz County streams prior to 1900 (Santa Cruz Morning Sentinel 1878). Also, in the 1880s a private fish farm on Butano Creek, just north of Santa Cruz

County, was raising native and exotic fish (ESA 2004)." (Alvarado et al. 2005, p. 23.)

There is no evidence in the above documents that the "exotic fish" referred to are coho salmon. The petitioners here confuse the mere suggestion that "exotic fish" means that out of basin coho were raised by these facilities and somehow made their way to south of San Francisco streams. This is not scientific or historical evidence of anything, much less evidence that the petitioners' assertions are true.

"Although, the extent and description of private fish cultural activities in California before 1900 is not well documented we know there was considerable fish cultural activity prior to 1900 that cannot be ruled out." (Alvarado et al. 2005, p. 23.)

Here, while admitting that the historical record is not well documented, the petitioners again mistake what is merely possible with what can be established with scientific evidence. The authors here provide no evidence of the extent or intensity of fish culture activity specific to coho salmon in streams south of San Francisco prior to 1900. Instead, they simply state that they "know" that it was "considerable." Of course, this neither confirms their assertion that fish cultural activity was "considerable," nor does it show that hatchery activity is the sole reason for coho presence south of San Francisco.

The Department's response to the original petition contained the following, which is reprinted and rebutted in Alvarado et al. (2005). The Department said:

"The petitioners do not provide any evidence that supports their assertion that coho salmon have been maintained in streams south of San Francisco by hatchery input." (CDFG 2004a, p. 7 as cited in Alvarado et al. 2005, p. 24.)

Essentially, the Department asked that the petitioners provide scientifically credible support for their assertion concerning hatchery maintenance of coho in south of San Francisco streams. Here is how the petitioners responded:

This is categorically false. The majority of the following information was presented in our petition (Alvarado et al. 2004, pg. 49) and is given here nearly verbatim:

The most likely times since their introduction for coho salmon to have succumbed to stochastic extirpation would have been during one of the two most sever California droughts of the last century. These droughts occurred in the early 1930s and mid 1970s. It is estimated that both of these droughts were severe enough to have a recurrence interval of over 100 years (Paulson et al. 1990). Although, they were mild in comparison to

prehistoric droughts, without anthropogenic intervention they would probably have been capable of stressing local coho populations to the point of extirpation. Coincidentally, during the 1928–34 drought coho salmon were heavily planted in Santa Cruz County (Anderson 1995; Bryant 1994; Streig 1991, 1993). The 1970s drought nearly extirpated all coho south of San Francisco and led to the creation of the Monterey Bay Salmon and Trout Project (discussed above). Similarly, prior to recent years, residents and anglers took it upon themselves to manually open the sandbars at the mouths of our creeks to allow returning anadromous fish to spawn. This action is now strictly prohibited by the CDFG. (Alvarado et al. 2005, p. 24; emphasis added.)

Petitioners' response does not provide any evidence in the form of population size estimates or estimates of the ratio of hatchery to natural coho to support their claims. Instead it resorts to pure speculation. The petitioners persistently mistake "possibility" for evidence.

Essentially, favorable ocean conditions in addition to human intervention (intentional and inadvertent) compensated for at least two major stochastic circumstances that would otherwise have extirpated introduce coho populations within the last century. (Alvarado et al. 2005, p. 24.)

This is pure conjecture. The petitioners provide no evidence that these events either would have caused coho to become extinct, or that hatcheries were the key element that avoided extinction. In order to know for sure what happened and what role hatcheries had, the Commission needs more than just an argument.

The Department has evaluated the available stocking data, which, notwithstanding the petitioners' comments, is the best available scientific information. The best scientific data available paints a very different picture from that of the petitioners' argument. The best available science and by far the more credible evidence leads the Commission to conclude that coho salmon hatchery operations in the region were relatively small, with limited, scattered production over an extended time scale, and that these relatively primitive hatchery operations relied on large proportions of early stage plants that possess notoriously poor survival prospects. The fact that hatchery stocks were imported to the region cannot be interpreted to mean that there were no native fish there at the time. There are no anomalous genetic patterns that suggest that coho runs south of San Francisco were established by any hatchery. In fact, the most recent genetic data strongly indicate otherwise. The petitioners' hypothesis that all historical and present day south of San Francisco coho populations are due

to hatchery plants remain pure speculation unsupported by credible scientific evidence.

Recent genetic evidence supports this point. Molecular genetic data assembled and analyzed by the Southwest Fisheries Science Center's Santa Cruz Laboratory indicate coho salmon south of San Francisco Bay represent a historic part of the Central Coast coho salmon population and are not the result of hatchery introductions (*NOAA Notification*, Federal Register, *supra* at 14686.) These data are from two studies of genetic variation for 18 microsatellite genes in coho salmon populations from the entire range of species in California. These two studies include genotypes from more than 5,500 fish, an examination of the genetics of fish from various life stages and brood years, and systematic sampling to remove temporal and age-class variations. The 18 microsatellite genes are highly variable, with a total of almost 500 alleles, and provide sufficient information content to detect isolation between populations and insight into biogeographic patterns at multiple scales. The studies found that all coho salmon populations south of San Francisco Bay are more closely related to each other than to any others, and their closest relatives are found in the populations just to the north of San Francisco Bay in Marin county. In some cases, alleles in coho salmon from San Mateo and Santa Cruz counties do not appear to be present in any other populations within the central coast area. More generally, genetic structure within the central coast coho salmon is one of isolation by distance, with genetic distance highly correlated with geographic distance. This is an equilibrium pattern that exists when populations are structured by adaptation-drift and distance-dependent migration acting together. The results are not consistent with the petitioners' claim that plantings replaced lineages in the southern part of the range, or that these populations are non-native introductions. (*Id.*)

These results suggest that, while coho salmon south of San Francisco have unique genetic characteristics, they nonetheless are clearly part of the central coast coho salmon population. These findings do not rule out the possibility that coho salmon populations in San Mateo and Santa Cruz counties may have received some genetic signals from the introduction of out-of-state or out-of-area fish; however, the number of unique alleles in the southern populations clearly demonstrates the genetic attributes of a native species at the edge of its range.

6. Ephemeral Populations

As a final, and only somewhat related, portion of their arguments about the "non-native" status of coho salmon south of San Francisco, petitioners suggest that these populations are simply "ephemeral". The term ephemeral is not defined by the petitioners, but is commonly

used to mean "lasting but a short time". (The petitioners do not say what they consider to be a "short time.") The implication of the petitioners' argument is that if a population is ephemeral, then it is 1) not important to overall population viability, and 2) cannot be protected under CESA. The Commission believe this is wrong on both counts.

First, there is no significant or even credible evidence in the record to conclude that coho populations south of San Francisco are, in fact, ephemeral.

Second, in order to show that "ephemeral" populations are not important one would have to know a great deal about the populations relationship of south San Francisco coho with other nearby groups. Metapopulations are groups of populations characterized by multiple sub-populations that are connected to some degree by migration. NOAA Fisheries concluded that metapopulation dynamics is typical for coho salmon in California (NOAA Fisheries 2005, unpublished memorandum, as cited in *NOAA Notification*, Federal Register, *supra*.) Generally there is a dynamic relationship between localized extinction and recolonization of sub-populations within the metapopulation, and in a healthy and viable metapopulation, one does not need to be overly concerned with localized natural extinction of some subpopulations. However, in potentially non-viable populations, such as the endangered central coast coho salmon, these subpopulations take on a much greater importance for persistence of the metapopulation in that they 1) add to the genetic diversity of the larger associated population, 2) provide a means of recolonization of habitat where they had previously become extirpated, 3) provide a "safety net" in case of other sub-populations are extirpated, and 4), lead to range expansion and ultimately the recovery of the species.

Neither petitioners nor other commentators have provided enough focused information about California coho metapopulation structure and dynamics to specifically describe them. However, credible scientific evidence has been produced sufficient to say that there is substantial gene flow between south of San Francisco coho and coho populations to the north, and that metapopulation processes may be very important to long term viability of coho salmon across their ranges. The fact of metapopulation exchange between southern and more northerly populations suggests that these southern populations are a functioning part of a larger metapopulation process that includes more northerly coho salmon groups. That, along with the potential importance of metapopulation structure to long term persistence, leads us to conclude that southern coho populations are important to overall California coho salmon viability.

On a time scale of decades or longer, extinction and re-colonization are likely to be important elements of population structuring as well as a mechanism of range expansion and contraction for salmonids. Because of this, what seems to be ephemeral populations today may be essential to long-term viability of the species as a whole at some time in the future. If population turnover occurs over short times, ephemeral populations may be important contributors to the viability of a larger metapopulation (McElhany et al. 2000). There is no distinction in CESA that precludes listing “ephemeral” populations. If the Commission were to conclude that these populations are unimportant and remove CESA protections, this would eliminate an invaluable mechanism for recovery, thereby making recovery and delisting much more problematic.

C. *The FISHERIES Article*

One of the petitioners, Fabian Alvarado, and V.W. Kaczynski recently published an article in the American Fisheries Society (“AFS”) publication, *Fisheries* magazine entitled “Assessment of the southern range limit of North American coho salmon: difficulties in establishing natural range boundaries” (Kaczynski and Alvarado 2006). Petitioners offer this article as “proof” of the scientific validity of their petition. Unfortunately this article presents nothing more than the same information as the 2004 petition to the Commission, with some updated analyses.

A copy of this article was sent to the Commission attached to a letter from Mr. Robert Briggs of the Central Coast Forest Association (Briggs 2006). The letter contained several misleading statements:

- 1) “*The paper[’s] endorsement by the American Fisheries Society ought to demonstrate that the petition meets the statutory test for full consideration*” (Briggs 2006)

First, publication of a paper in an American Fisheries Society publication does not constitute an endorsement of the findings and conclusions by AFS (Letter from B. Beard, Managing Editor, AFS *Fisheries* magazine). In fact, this article was published as a perspective piece, meaning it expresses a policy opinion of the authors backed up by science. More importantly, publication of the petition in *Fisheries* has no real bearing on the question of whether the petition contains sufficient information for consideration because it does not address the requirements or scope of CESA. A major flaw of the article is that it completely fails to assess the southern information range limit of coho salmon as the title of the article states (there is no analysis of information from north of San Francisco, except to compare precipitation patterns of Marin and Santa Cruz counties), but only recounts reasons why the southern limit is not in Santa

Cruz County. The findings and conclusions in the article are so similar to the petition that it appears that the purpose of the article was to provide scientific legitimacy to the petition.

Mr. Briggs’ letter goes on to assert that:

- 2) “*Fisheries [is] the premier North American ichthyologic journal.*” (Briggs 2006)

AFS publishes four scholarly journals: *Transactions of the American Fisheries Society*, *North American Journal of Fisheries Management*, *North American Journal of Aquaculture*, and the *Journal of Aquatic Animal Health*. These four journals are comprised of papers of original research, whereas *Fisheries* consists mostly of information of general interest to fisheries professionals (opinions, legislative updates, job listings, etc.) in addition to occasional technical papers of broad interest.

The Commission does not find that the Kaczynski and Alvarado article in *Fisheries* adds any more substance to the petition, nor any more credibility to the petition’s factual assertions and arguments. Any alleged legitimacy of the proffered article as support for the petition is more than offset by the nature of the article and its limited review by the AFS as an “opinion” piece and by the specific errors, misrepresentations, and omissions already identified by the Commission within the underlying petition. The Commission further finds that the written and oral testimony of the Department and the Department fisheries biologists clearly identifies the errors within the petition that are reiterated in the *Fisheries* article. Written statements from Peter Moyle, Ph.D, an internationally respected authority on salmonid fish and fisheries (and on behalf of Peter Cedans, Ph.D. (NOAA Fisheries), Louis Botsford, Ph.D. (U.C. Davis), Kenneth Gobalet, Ph.D. (CSU Bakersfield), Robert Liedy, Ph.D. (U.S. EPA), Dennis McEwan, (Department of Fish and Game), Jerry Smith, Ph.D. (San Jose State Univ.), John Williams, Ph.D. (fisheries consultant), and Ronald Yoshiyoma, Ph.D. (U.C. Davis)) summarize the presentation of information contained in the Kaczynski and Alvarado article as “inaccurate and misleading and . . . their conclusions are fundamentally wrong.” Dr. Moyle goes on to say that he believes “there is substantial evidence that coho salmon are native to the region south of San Francisco and [that he sees] no reason why they should be removed from the list of Endangered Species.” (Peter Moyle letter, February 12, 2007.)

The Commission agrees with Dr. Moyle’s assessment of the article and the underlying petition and does not find the article providing any new information, credible information, upon which a reasonable person would rely.

D. CESA Protection For Endangered Species Extends to All Members of the Listed Species

Petitioners continue to assert that coho salmon were never “native” south of San Francisco, and that all coho salmon there historically or presently are either derived from hatchery fish or they are the result of strays from more northern populations. The Commission does not agree with this assessment, as the Commission has outlined above and in the Commission’s original findings on the 2004 petition. Furthermore, the Commission finds **no** support for petitioners’ assertion that “native species”, as addressed under CESA, are to be narrowly construed as only those species (1) with an uninterrupted presence throughout all of their California range, and (2) never the subject of artificial propagation or restoration efforts. CESA says no such thing. Both a plain language reading of the Act and an examination of species already protected under the Act reveals that the “native species” governed by the Act are all species indigenous to California. CESA’s protection extend to indigenous species wherever they occur in California — throughout all or a significant portion of their range. Nor does CESA discriminate between hatchery and naturally spawning populations. If the current populations of coho salmon south of San Francisco are derived from hatchery planting, the genetic analysis indicates that they are native California fish. Recent Commission action to list coho salmon north of San Francisco under CESA included hatchery as well as naturally spawning population in the region.

Additionally, if a coho population is the result of “stray spawnings” of fish from north of San Francisco populations, as petitioners hypothesize, CESA does not exclude fish that are the result of straying (see above for the importance of “strays” and “ephemeral populations”). Even if the petitioners’ assertions are correct, populations south of San Francisco would then represent a range expansion of the species in California and would be subject to provisions of CESA, regardless of how they got there. Genetic analysis indicates that coho salmon populations south of San Francisco are clearly part of the large salmonid resources of the State of California. As such, they continue to warrant listing under CESA.

E. The National Marine Fisheries Service Has Similarly Reviewed the Petition and Rejected It.

On November 12, 2003 the National Marine Fisheries Service (“NMFS”) received a petition from Homer McCrary (one of the petitioners herein) to redefine the southern extent of the federal endangered species protections for California coho salmon by excluding coho salmon populations occupying watersheds in Santa Cruz and coastal San Mateo Counties (south of San

Francisco). (See, *NOAA Notification of Finding*, Federal Register, Vol. 71, No. 58, March 23, 2006, pg. 14683–14687.) The federal petition was in all relevant aspects identical to the petition before the Commission. (A copy of the federal petition is contained within the record before the Commission, and was provided during the Commission’s consideration of coho salmon listing for populations north of San Francisco.) Section (4)(b)(3)(A) of the federal Endangered Species Act requires that, after receiving a petition for delisting, a finding of “whether the petition presents substantial scientific information indicating that the petitioned action may be warranted” must be made if the matter is to receive further consideration. After a thorough assessment of the federal petition, and substantial supplemental materials, NMFS resoundingly rejected the petition concluding the “petition does not present substantial scientific ... information that the petitioned action may be warranted.” (*NOAA Notification*, Federal Register, *supra*, p. 14687.)

The Commission finds that the thorough assessment of the record performed by NMFS and its subsequent conclusion are significant additional evidence in support of the Commission’s rejection of the petition. Furthermore, the NMFS evidentiary assessment provides further support for the Commission’s assessment and conclusions regarding the credibility of the petitioners and petitioners’ evidentiary statements.

FINAL DETERMINATION BY COMMISSION

The Commission has weighed all the scientific and general evidence in the administrative record, to include the petition, the supplemental materials provided by petitioner, the Department’s initial written evaluation report, the statewide listing administrative record, (including the status review and recovery strategy), the recent federal reviews, the original listing administrative record, the Department’s supplemental report and rebuttal, and oral presentation and comments, and other comments received from the public, and, based upon that weighing of the evidence, the Commission has determined that the petition does not provide sufficient evidence to persuade the Commission (**nor any reasonable person**) that the petitioned action may be warranted. (Fish & G. Code, § 2074.2). In making this determination the Commission could not reasonably conclude there is a substantial possibility that the listing of coho salmon south of San Francisco was unfounded or in error such that delisting could occur. Nor could the Commission reasonably conclude that there is substantial possibility that coho salmon south of San Francisco no longer meets the criteria for protection as an endangered species such that delisting could occur.

DECISION NOT TO PROCEED

BOARD OF PHARMACY

**NOTICE OF DECISION NOT TO PROCEED
WITH RULEMAKING ACTION**

The California State Board of Pharmacy has decided not to proceed with its rulemaking action described in the Notice published in the California Regulatory Notice Register on December 22, 2006, OAL File # Z06-1212-03, concerning Title 16, section(s) 1775.4, Citation and Fine Appeals.

BOARD OF PHARMACY

**NOTICE OF DECISION NOT TO PROCEED
WITH RULEMAKING ACTION**

The California State Board of Pharmacy has decided not to proceed with its rulemaking action described in the Notice published in the California Regulatory Notice Register on February 23, 2007, OAL File # Z07-0213-02, concerning Title 16, section(s) 1707.2, Notice to Consumers.

**SUMMARY OF REGULATORY
ACTIONS**

**REGULATIONS FILED WITH
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.

AIR RESOURCES BOARD

Emergency Readoption of Stationary and Portable CI Engines ATCM

This regulatory action amends regulations which the Board had adopted in February 2004 regarding the Airborne Toxic Control Measure (ATCM) for diesel engines, one set of regulations for portable diesel engines and one for stationary diesel engines. The amendments to the ATCM regulations create some limited com-

pliance flexibility for engine dealers, distributors and owners.

Title 17
California Code of Regulations
ADOPT: 93116.3.1
AMEND: 93115, 93116.2, 93116.3
Filed 04/26/07
Effective 04/26/07
Agency Contact: George Poppic (916) 322-3940

AIR RESOURCES BOARD

Emergency Rulemaking for PERP Program

This regulatory action amends regulations regarding the Portable Equipment Registration Program (PERP). The regulations expand the definition of “resident engine,” defines Tier 1 and 2 engines, and establishes the requirements and fee schedule for compliance flexibility in the revised PERP.

Title 13
California Code of Regulations
AMEND: 2451, 2452, 2453, 2455, 2456, 2458, 2459, 2460, 2461, 2462
Filed 04/26/07
Effective 04/27/07
Agency Contact: George Poppic (916) 322-3940

AIR RESOURCES BOARD

Portable Equipment Registration Program

ARB adopted a voluntary statewide program to provide uniform registration of portable engines and equipment units in California in 1997, known as the Portable Equipment Registration Program (“PERP”). “Portable equipment” is “any piston-driven engine and/or equipment unit that is designed and capable of being carried and moved from one location to another and would remain at a single location for less than 12 consecutive months.” (Notice, Page 1.) These engines and/or equipment include pumps, cranes, oil well drilling and military tactical support equipment, among other things. Parties with portable engines who register voluntarily with ARB are not subject to registration requirements of local air quality management districts. ARB proposes to amend the regulations to require owners of registered engines/equipment to: (1) designate a home district, (2) install hour meters on such engines/equipment, (3) install placards, supplied by ARB for a fee, (4) identifying the engine/equipment as registered with PERP, (5) maintain records of hours of operation for a minimum of five years, (6) notify respective AQMDs when an equipment unit would be operated at a location for more than five days (registered engines are exempt). The amendments also increase the various inspection fees, require an arrangement of an inspection by the district within 45 days of initial registration or renewal, and makes various non-substantive changes.

Title 13
 California Code of Regulations
 AMEND: 2450, 2451, 2452, 2453, 2454, 2455,
 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463,
 2464, 2465
 Filed 04/26/07
 Effective 04/27/07
 Agency Contact: Amy Whiting (916) 322-6533

BOARD OF EQUALIZATION
 Interstate and Foreign Commerce

This change without regulatory effect amends the regulation that explains when the presumption that a vehicle, vessel or aircraft purchased outside California was purchased for use in California does not apply. It adds mention of a new statutory exclusion that in effect allows for limited use in California for the purpose of warranty or repair service completed in 30 days or less, as provided in Revenue and Taxation Code section 6248, subdivision (f), without the implication of use tax.

Title 18
 California Code of Regulations
 AMEND: 1620
 Filed 04/25/07
 Effective 04/25/07
 Agency Contact: Diane G. Olson (916) 322-9569

BOARD OF FORESTRY AND FIRE PROTECTION
 Utility Clearing Exemption, 2006

Board of Forestry and Fire Protection amendment to Title 14, California Code of Regulations, section 1257 to add a new exemption to tree clearing requirements for electrical utility power lines located in state responsibility areas. The exemption applies only to primary distribution conductors and would allow trunks and limbs of healthy, mature trees, as specified, to remain if they are sufficiently strong and rigid to prevent encroachment within six inches of the power line under reasonably foreseeable local wind and weather conditions.

Title 14
 California Code of Regulations
 AMEND: 1257
 Filed 04/30/07
 Effective 05/30/07
 Agency Contact:
 Christopher Zimny (916) 653-9418

BOARD OF PSYCHOLOGY
 Supervised Professional Experience
 This rulemaking action adds formal postdoctoral internships and hours accrued at a public school by a person working as a school psychologist to the postdoctoral supervised professional experience acceptable for licensure as a psychologist. The action also extends the period of an exemption for licensure applicants working in an exempt setting as registered psychologists from 2 years to 30 months.

Title 16
 California Code of Regulations
 AMEND: 1387, 1390.3
 Filed 04/27/07
 Effective 05/27/07
 Agency Contact: Kathy Bradbury (916) 263-0712

BUSINESS, TRANSPORTATION AND HOUSING AGENCY
 Passenger Car Rental Industry Assessment

This is the first emergency re-adoption of an emergency regulation approved December 29, 2006. This emergency action implemented the Passenger Car Rental Industry assessment established by the Legislature in 2006 and provides a collection process for the assessment. The assessment was implemented January 1, 2007.

Title 10
 California Code of Regulations
 ADOPT: 5357, 5357.1, 5358, 5358.1 AMEND:
 5350, 5352
 Filed 04/26/07
 Effective 05/02/07
 Agency Contact: Terri Toohey (916) 324-3787

CALIFORNIA HIGHWAY PATROL
 Cargo Securement Standards

This emergency regulatory action adopts the federal requirements for cargo securement standards in compliance with section 34500.3 of the Vehicle Code. (Previous OAL #06-1220-01E)

Title 13
 California Code of Regulations
 ADOPT: 1300, 1400, 1401, 1402, 1403, 1404, 1405
 REPEAL: 1300, 1301, 1302, 1303, 1304, 1304.1,
 1305, 1310, 1311, 1312, 1313, 1314, 1315, 1320,
 1321, 1322, 1323, 1324, 1325, 1330, 1331, 1332,
 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1339.1,
 1339.2, 1339.3, 1339.4, 1339.5, 1339.6, 1340, 1341,
 1342, 1343, 1344, 1350, 1351, 1352, 1353, 1354,
 1355, 1356, 1360, 1361, 1362, 1363, 1364, 1365,
 1366, 1370, 1371, 1372, 1373, 1374, 1375, 1400,
 1401, 1402, 1403, 1404, 1405, 1406, 1410, 1411,
 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1420,

1421, 1422, 1423, 1424, 1425, and Article 15 text
Filed 05/01/07
Effective 05/02/07
Agency Contact: Jason Golenor (916) 445-1865

DEPARTMENT OF CORPORATIONS
Review of Conflict of Interest Codes

The California Department of Corporations is amending its conflict of interest code found at title 10, section 250.30, California Code of Regulations. The changes were approved for filing by the Fair Political Practices Commission on March 9, 2007.

Title 10
California Code of Regulations
AMEND: 250.30
Filed 04/25/07
Effective 05/25/07
Agency Contact: Karen Fong (916) 322-3553

DEPARTMENT OF CORRECTIONS AND REHABILITATION
Firearms

This regulatory action exempts Community Correctional Facilities (CCFs) from the armory armed post coverage requirement, provided they are under some form of 24-hour-a-day observation or surveillance and equipped with alarms. This amendment will reflect the evolution of DOCR policy due to the expansion in number of CCFs and the staffing issues of these smaller, minimum to medium security correctional facilities.

Title 15
California Code of Regulations
AMEND: 3276(e)
Filed 05/02/07
Effective 06/01/07
Agency Contact: John McClure (916) 341-6894

DEPARTMENT OF FOOD AND AGRICULTURE
Diaprepes Root Weevil Interior Quarantine

This certificate of compliance makes permanent the prior emergency regulatory action (OAL file no. 06-1114-08E) that added approximately one square mile in the Oceanside area of San Diego County and added approximately four square miles in the Huntington Beach area of Orange County to areas already under quarantine in these two counties for the Diaprepes root weevil (Diaprepes abbreviates).

Title 3
California Code of Regulations
AMEND: 3433(b)
Filed 04/25/07
Effective 04/25/07
Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF INSURANCE
CEA: Fund Transfer from Base Limits Program to Optional Limits Program

This filing is a certificate of compliance for an emergency regulation which allowed the California Earthquake Authority (CEA) to borrow funds from its base-limits fund to finance its reinsurance of risks associated with optional higher coverage limits for personal property, loss of use, and building code upgrade.

Title 10
California Code of Regulations
AMEND: 2697.6, 2697.61
Filed 04/25/07
Effective 04/25/07
Agency Contact:
Lisbeth Landsman-Smith (916) 492-3561

DEPARTMENT OF MENTAL HEALTH
Mental Health Services Act (2)

California voters approved Proposition 63 during the November 2004 General Election. Proposition 63, now known as the Mental Health Services Act (the Act), became effective on January 1, 2005. The Act is intended to expand mental health services to children/youth, adults and older adults who have severe mental illnesses/severe mental disorders and whose service needs are not being met through other funding sources. The Act seeks to establish prevention and early intervention programs as well as to develop innovative programs. Through imposition of a 1% tax on personal income in excess of \$1 million, the Act provides the opportunity for the Department of Mental Health (DMH) to provide increased funding, personnel and other resources to support county mental health programs and monitor progress toward statewide goals for children/youth, adults, older adults and families. On December 30, 2005, the Department of Mental Health (DMH) submitted to the Office of Administrative Law (OAL), and the same day OAL filed with the Secretary of State (SOS), an emergency regulatory action which implemented Proposition 63, the Mental Health Services Act. Section 5898 of the Welfare and Institutions Code provides that such regulations, if adopted in 2005, are deemed an emergency, exempt from the review of OAL, and shall remain in effect as emergency regulations for no more than one year. On January 13, 2006, DMH submitted an amendment to these emergency regulations, by way of a new subsection (b) to section 3400, which was approved by OAL and filed with the SOS on January 23, 2006 and subsequently readopted twice. The public hearing on these regulations was conducted on June 5, 2006. On December 29, 2006, DMH replaced those emergency regulations expiring on December 30, 2006 with more extensive emergency regulations that were developed during the rulemaking pro-

ceeding. This emergency regulatory action readopts those emergency regulations which expire on May 1, 2007.

Title 9

California Code of Regulations

ADOPT: 3100, 3200.010, 3200.020, 3200.030, 3200.040, 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3200.170, 3200.180, 3200.190, 3200.210, 3200.220, 3200.230, 3200.240, 3200.250, 3200.260, 3200.270, 3200.280, 3200.300, 3200.310, 3300, 3310, 3315, 3320, 3350, 3360, 3400, 3405, 3410, 3415, 3500, 3505, 3510, 3520, 3530, 3530.10, 3530.20, 3530.30, 3530.40, 3540, 3610, 3615, 3620, 3620.05, 3620.10, 3630, 3640, 3650 REPEAL: 3100 3200.010, 3200.020, 3200.030, 3200.040, 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3310, 3400, 3405, 3410, 3415

Filed 05/01/07

Effective 05/01/07

Agency Contact: Steven Appel (916) 654-4027

DEPARTMENT OF REAL ESTATE

Filing Fee Regulations

This regulatory action deletes regulation sections containing outdated filing fees and removes sunset dates from, and makes other changes to, regulation sections containing the current filing fees.

Title 10

California Code of Regulations

AMEND: 2716.1, 2790.1.5, 2810.5 REPEAL: 2716, 2790.1, 2810

Filed 05/01/07

Effective 05/31/07

Agency Contact: David B. Seals (916) 227-0789

DIVISION OF WORKERS COMPENSATION

Administrative Penalties Pursuant to Labor Code section 5814.6

Labor Code section 5814.6 authorizes the Administrative Director of the Division of Workers' Compensation to impose administrative penalties in amounts up to \$400,000 on employers or insurers who have knowingly and unreasonably delayed or refused payment of compensation to injured workers in violation of Labor Code section 5814 with a frequency that indicates a general business practice. Administrative penalties under this section are "alternatives" to those authorized under Labor Code section 129.5 (which allows for penalties for single violations of withholding compensa-

tion). All penalties collected pursuant to this new section are deposited into the Workers' Compensation Return-to-Work Fund established pursuant to section 139.48 "to promote the early and sustained return to work of employees following work-related injuries or illnesses." These new regulatory provisions: 1) detail the Schedule of Administrative Penalties (up to \$400,000); 2) detail the Notice of Administrative Penalty Assessment; 3) the Appeal process; and, 4) review.

Title 8

California Code of Regulations

ADOPT: 10225, 10225.1, 10225.2

Filed 04/26/07

Effective 05/26/07

Agency Contact: Destie Overpeck (415) 703-4659

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Update of ANSI Z136.1 Laser Safety Standards

This action updates existing laser safety standards in the Title 8 Construction Safety Orders and Tunnel Safety Orders by adopting and incorporating by reference American National Standards Institute (ANSI) Z136.1-2000.

Title 8

California Code of Regulations

AMEND: 1801, 8416

Filed 04/27/07

Effective 05/27/07

Agency Contact: Marley Hart (916) 274-5721

STATE ALLOCATION BOARD

Leroy F. Greene School Facilities Act of 1998; K-8 Joint-Use Gyms

This rulemaking changes the restriction on receipt of funding to construct gymnasiums to limit funding to K-6 schools only if "there is no multipurpose room or the existing multipurpose room is inadequate on the campus and the Joint-Use Agreement includes gymnasium space rather than a multipurpose room." Previously, the limitation included K-6 and K-8 schools.

Title 2

California Code of Regulations

AMEND: 1859.124.1

Filed 04/30/07

Effective 04/30/07

Agency Contact: Robert Young (916) 445-0083

STATE ALLOCATION BOARD

Leroy F. Greene School Facilities Act of 1998; Grant for Costs of ADA

This action adopts an alternate formula districts have the option of utilizing for funding excessive cost hardship grants used for accessibility and fire code requirements.

Title 2
 California Code of Regulations
 AMEND: 1859.83, 1859.202, 1866
 Filed 04/25/07
 Effective 04/25/07
 Agency Contact: Robert Young (916) 445-0083

**STATE WATER RESOURCES CONTROL BOARD
 Conflict of Interest Code**

This is a Conflict of Interest Code amendment which has been approved by the Fair Political Practices Commission and is being submitted to OAL for filing with the Secretary of State and printing only.

Title 23
 California Code of Regulations
 AMEND: 645
 Filed 05/01/07
 Effective 05/31/07
 Agency Contact: Marleigh Wood (916) 341-5169

**STATE WATER RESOURCES CONTROL BOARD
 Non-Regulatory & Regulatory Provisions of an amendment to the SDRWQCB**

The San Diego Regional Water Quality Control Board (Regional Board) adopted Resolution R9-2006-0029 on April 12, 2006, which amended the Water Quality Control Plan for the San Diego Region (Basin Plan). The State Water Resources Control Board (SWRCB) approved this amendment under Resolution No. 2006-0090 on November 15, 2006. The Basin Plan contains the region's water quality standards which consist of beneficial uses and water quality objectives necessary to protect those uses. The amendment imposes no new regulatory requirements. The amendment incorporates editorial text changes including updated indexes, tables of contents, and endnotes; updated acronyms reflecting terms now in use; and updated graphics that did not translate well into electronic and web-accessible versions of the Basin Plan. This action is intended to improve the clarity of the Basin Plan and its convenience for public use.

Title 23
 California Code of Regulations
 AMEND: 3983
 Filed 04/25/07
 Effective 04/25/07
 Agency Contact: Nirmal Sandhar (916) 341-5571

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN NOVEMBER 29, 2006 TO
 MAY 02, 2007**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

- Title 2**
- 04/30/07 AMEND: 1859.124.1
 - 04/25/07 AMEND: 1859.83, 1859.202, 1866
 - 04/16/07 AMEND: 18401
 - 04/04/07 AMEND: 28010 REPEAL: 36000
 - 03/27/07 AMEND: 59560
 - 03/20/07 ADOPT: 18746.3
 - 03/15/07 AMEND: div. 8, ch. 102, section 59100
 - 03/14/07 AMEND: div. 8, ch. 73, section 56200
 - 03/01/07 AMEND: 21922
 - 02/28/07 AMEND: 714
 - 02/16/07 AMEND: 1859.2, 1859.76, 1859.83, 1859.163.1, 1859.167, 1859.202, 1866
 - 02/02/07 AMEND: 2561, 2563, 2564, 2565, 2566, 2567
 - 01/26/07 ADOPT: 599.550, 599.552, 599.553, 599.554 AMEND: 599.500
 - 01/19/07 ADOPT: 18531.62, 18531.63, 18531.64 AMEND: 18544
 - 01/11/07 AMEND: 1894.4, 1896.12
 - 01/09/07 AMEND: 18707.1
 - 01/09/07 ADOPT: 18530.3
 - 01/09/07 ADOPT: 18534
 - 01/08/07 ADOPT: 1859.106.1 AMEND: 1859.106
 - 12/22/06 AMEND: 21906
 - 12/18/06 ADOPT: 18421.3
 - 12/18/06 AMEND: 18312, 18316.5, 18326, 18401, 18521, 18537.1, 18704.5, 18705.5, 18730, 18746.2
 - 12/18/06 AMEND: 1859.2, 1859.70.1, 1859.71.3, 1859.78.5
 - 12/18/06 AMEND: 18703.4, 18730, 18940.2, 18942.1, 18943
 - 12/18/06 AMEND: 18545
 - 12/14/06 ADOPT: 18707.10
 - 12/13/06 ADOPT: 20108, 20108.1, 20108.12, 20108.15, 20108.18, 20108.20,

20108.25, 20108.30, 20108.35,
 20108.36, 20108.37, 20108.38,
 20108.40, 20108.45, 20108.50,
 20108.51, 20108.55, 20108.60,
 20108.65, 20108.70, 20108.75, 20108.80

03/13/07 ADOPT: 7075, 7076, 7077, 7078, 7079,
 7080, 7081, 7082, 7083, 7084, 7085,
 7086, 7087, 7088, 7089, 7090, 7091,
 7092, 7093, 7094, 7095, 7096, 7097,
 7098, 7099 REPEAL: 7000, 7001, 7002,
 7003, 7004, 7005, 7006, 7007, 7008,
 7009, 7010, 7011, 7012, 7013, 7014,
 7015, 7016, 7017

Title 3

04/25/07 AMEND: 3433(b)
 04/23/07 AMEND: 3591.20
 04/20/07 AMEND: 3591.20(a)
 04/20/07 ADOPT: 3434
 04/03/07 AMEND: 3591.20(a), 3591.20(b)
 04/02/07 AMEND: 752, 796.6, 1301
 03/28/07 AMEND: 3591.2(a)
 03/27/07 ADOPT: 1446.9, 1454.16
 03/21/07 ADOPT: 3591.20
 03/15/07 ADOPT: 1371, 1371.1, 1371.2
 03/07/07 AMEND: 3423(b)
 03/06/07 AMEND: 3700(c)
 02/15/07 ADOPT: 499.5, 513, 513.5 AMEND:
 498, 499, 500, 501, 502, 504, 505, 509,
 510, 511, 512, 512.1, 512.2, 514, 515,
 516, 517, 525, 551, 552, 553, 554, 604.1
 REPEAL: 499.5, 503, 506, 508, 512.3,
 527, 536, 537, 538, 539, 540, 541, 543,
 544, 546, 547, 550
 02/14/07 AMEND: 3700(c)
 02/08/07 AMEND: 3433(b)
 02/08/07 AMEND: 6170, 6172, 6200
 02/07/07 AMEND: 6170, 6172, 6200
 01/31/07 AMEND: 3591.12(a)
 01/24/07 AMEND: 3591.13(a)
 01/18/07 AMEND: 3433(b)
 01/18/07 AMEND: 3433(b)
 01/18/07 AMEND: 3423(b)
 01/18/07 AMEND: 3800.1, 3800.2
 01/09/07 AMEND: 3433(b)
 01/08/07 AMEND: 3591.2(a)
 01/08/07 AMEND: 3591.6(a)
 01/05/07 AMEND: 3433(b)
 01/05/07 AMEND: 6625
 01/05/07 AMEND: 3406(b)
 01/03/07 AMEND: 3424(b)
 12/20/06 AMEND: 3423(b)
 12/20/06 AMEND: 3433(b)
 12/19/06 ADOPT: 6310, 6312, 6314 AMEND:
 6170
 12/06/06 AMEND: 3591.6
 12/06/06 AMEND: 3700(c)
 11/30/06 ADOPT: 6128 AMEND: 6130

02/08/07 ADOPT: 12550, 12552, 12554, 12556,
 12558, 12560, 12562, 12564, 12566,
 12568, 12572
 02/08/07 ADOPT: 12341
 01/31/07 AMEND: 12590
 01/30/07 AMEND: 12101, 12301.1, 12309
 01/30/07 AMEND: 12358
 01/30/07 ADOPT: 12460, 12461, 12462, 12463,
 12464, 12466
 01/26/07 AMEND: 1433
 01/17/07 ADOPT: 523
 01/11/07 AMEND: 1536
 12/05/06 AMEND: 1582

Title 5

04/23/07 ADOPT: 30710, 30711, 30712, 30713,
 30714, 30715, 30716, 30717, 30718
 04/17/07 AMEND: 18013, 18054, 18068
 04/09/07 ADOPT: 11962, 11962.1
 04/06/07 AMEND: 41301
 03/29/07 AMEND: 42356
 03/19/07 AMEND: 41550
 03/19/07 AMEND: 41301
 03/01/07 AMEND: 19816, 19851, 19852, 19853
 02/28/07 AMEND: 80028, 80487
 02/16/07 ADOPT: 11987, 11987.1, 11987.2,
 11987.3, 11987.4, 11987.5, 11987.6,
 11987.7
 02/08/07 ADOPT: 1000, 1000.1, 1000.2, 1000.3,
 1000.4, 1000.5, 1000.6, 1000.7
 01/17/07 ADOPT: 55151, 55151.5 AMEND:
 55002, 55150, 58160
 01/17/07 ADOPT: 58707 AMEND: 58704, 58770,
 58771, 58773, 58774, 58776, 58777,
 58779 REPEAL: 58706, 58775
 01/10/07 AMEND: 55806

Title 8

04/27/07 AMEND: 1801, 8416
 04/26/07 ADOPT: 10225, 10225.1, 10225.2
 04/24/07 AMEND: 5004, 5047, 8379
 04/20/07 AMEND: 5148(c)
 04/20/07 AMEND: 1620, 1626, 1629
 04/18/07 AMEND: 20299, 20363, 20407
 03/29/07 AMEND: 3664(a)
 03/27/07 AMEND: 3291, 3292, 3295, 3296

Title 4

04/24/07 ADOPT: 9071, 9072, 9073, 9074, 9075
 04/19/07 AMEND: 10176, 10177, 10178, 10179,
 10180, 10181, 10182, 10183, 10188

CALIFORNIA REGULATORY NOTICE REGISTER 2007, VOLUME NO. 19-Z

03/06/07 AMEND: 1529, 1532, 1532.1, 1535, 5144, 5190, 5198, 5200, 5202, 5207, 5208, 5210, 5211, 5213, 5214, 5217, 5218, 5220, 8358

03/02/07 ADOPT: 1731 AMEND: 1730

03/01/07 AMEND: 1541

02/28/07 AMEND: 9789.40

02/21/07 AMEND: 9780, 9783

02/15/07 AMEND: 9789.11

12/29/06 AMEND: 1598, 1599

12/27/06 AMEND: 3385

12/21/06 AMEND: 5031

12/15/06 AMEND: 5006.1

Title 9

05/01/07 ADOPT: 3100, 3200.010, 3200.020, 3200.030, 3200.040, 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3200.170, 3200.180, 3200.190, 3200.210, 3200.220, 3200.230, 3200.240, 3200.250, 3200.260, 3200.270, 3200.280, 3200.300, 3200.310, 3300, 3310, 3315, 3320, 3350, 3360, 3400, 3410, 3500, 3505, 3510, 3520, 3530, 3530.10, 3530.20, 3530.30, 3530.40, 3540, 3610, 3615, 3620, 3620.05, 3620.10, 3630, 3640, 3650 Repeal: 3100, 3200.000, 3200.010, 3200.020, 3200.030, 3200.040, 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3310, 3400, 3405, 3410, 3415

12/29/06 ADOPT: 3100 3200.010, 3200.020, 3200.030, 3200.040 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3200.170, 3200.180, 3200.190, 3200.210, 3200.220, 3200.230, 3200.240, 3200.250, 3200.260, 3200.270, 3200.280, 3200.300, 3200.310, 3300, 3310, 3315, 3320, 3350, 3360, 3400, 3405, 3410, 3415, 3500, 3505, 3510, 3520, 3530, 3530.10, 3530.20, 3530.30, 3530.40, 3540, 3610, 3615, 3620, 3620.05, 3620.10, 3630, 3640, 3650 REPEAL: 3100 3200.010, 3200.020, 3200.030, 3200.040 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100,

Title 10

05/01/07 AMEND: 2716.1, 2790.1.5, 2810.5 REPEAL: 2716, 2790.1, 2810

04/26/07 ADOPT: 5357, 5357.1, 5358, 5358.1 AMEND: 5350, 5352

04/25/07 AMEND: 2697.6, 2697.61

04/25/07 AMEND: 250.30

04/24/07 AMEND: 2498.6

04/16/07 AMEND: 2318.6, 2353.1, 2354

03/23/07 AMEND: 2695.8(b)(2)

03/09/07 AMEND: 2498.6

03/06/07 AMEND: 260.230, 260.231, 260.236.1, 260.241.4, 260.242 REPEAL: 260.231.2, 260.236.2

01/23/07 ADOPT: 2183, 2183.1, 2183.2, 2183.3, 2183.4 REPEAL: 2691.18, 2691.19

01/10/07 AMEND: 3528

01/08/07 AMEND: 2698.52(c), 2698.53(b), 2698.56(c)

01/03/07 ADOPT: 2642.4, 2643.8, 2644.24, 2644.25, 2644.26, 2644.27, 2644.50 AMEND: 2642.5, 2642.6, 2642.7, 2643.6, 2644.2, 2644.3, 2644.4, 2644.5, 2644.6, 2644.7, 2644.8, 2644.10, 2644.12, 2644.15, 2644.16, 2644.17, 2644.18, 2644.19, 2644.20, 2644.21, 2644.23, 2646.3, 2646.4, 2648.4 REPEAL: 2642.4, 2643.2, 2644.9, 2644.11

12/29/06 AMEND: 2632.5(c)

12/29/06 AMEND: 2052.1, 2052.4

12/29/06 ADOPT: 5327, 5357.1, 5358, 5358.1 AMEND: 5350, 5352

12/29/06 AMEND: 2651.1, 2661.1, 2661.3, 2662.1, 2662.3, 2662.5

12/29/06 AMEND: 2696.1, 2696.2, 2696.3, 2696.5, 2696.6, 2696.7, 2696.9, 2696.10 REPEAL: 2696.4, 2696.8

12/29/06 AMEND: 2222.10, 2222.11, 2222.12, 2222.14, 2222.15, 2222.16, 2222.17, 2222.19 REPEAL: 2222.13

12/27/06 AMEND: 2498.6

12/26/06 ADOPT: 2698.80, 2698.81, 2698.82, 2698.83, 2698.84, 2698.85, 2698.86, 2698.87, 2698.88, 2698.89, 2698.89.1 AMEND: 2698.80, 2698.81, 2698.82, 2698.83, 2698.84, 2698.85, 2698.86

12/22/06 ADOPT: 2548.1, 2548.2, 2548.3, 2548.4, 2548.5, 2548.6, 2548.7, 2548.8

12/20/06 ADOPT: 2614, 2614.1, 2614.2, 2614.3, 2614.4, 2614.5, 2614.6, 2614.7, 2614.8, 2614.9, 2614.10, 2614.11, 2614.12, 2614.13, 2614.14, 2614.15, 2614.16, 2614.17, 2614.18, 2614.19, 2614.20, 2614.21, 2614.22, 2614.23, 2614.24, 2614.25, 2614.26, 2614.27

12/19/06 AMEND: 2690.90, 2690.91, 2690.92, 2690.93, 2690.94

12/13/06 ADOPT: 2534.40, 2534.41, 2534.42, 2534.43, 2534.44, 2534.45, 2534.46

03/26/07 ADOPT: 182.00, 182.01, 182.02, Form REG 195 (REV. 2/2007) AMEND: Form REG 256 (REV. 9/2005)

02/09/07 AMEND: 2702, 2703, 2704, 2706, 2707, 2709

01/18/07 AMEND: 1961, 1976, 1978

01/16/07 ADOPT: 2189 AMEND: 2180, 2180.1, 2181, 2182, 2183, 2185, 2186, 2187, 2188

12/27/06 ADOPT: 1300 REPEAL: 1300, 1301, 1302, 1303, 1304, 1304.1, 1305, 1310, 1311, 1312, 1313, 1314, 1315, 1320, 1321, 1322, 1323, 1324, 1325, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1339.1, 1339.2, 1339.3, 1339.4, 1339.5, 1339.6, 1340, 1341, 1342, 1343, 1344, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1370, 1371, 1372, 1373, 1374, 1375, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1420, 1421, 1422, 1423, 1424, 1425

12/13/06 AMEND: 553.70

12/06/06 ADOPT: 2022, 2022.1

12/01/06 ADOPT: 2479

Title 11

04/19/07 ADOPT: 64.4

04/19/07 ADOPT: 64.6

04/19/07 ADOPT: 64.5

04/18/07 ADOPT: 64.3

03/06/07 AMEND: 1070, 1082

02/02/07 ADOPT: 999.40

02/02/07 ADOPT: 9070, 9071, 9072, 9073, 9076, 9077, 9078 AMEND: 1005, 1018, 1055 REPEAL: 1011

01/30/07 AMEND: 20

01/25/07 AMEND: 30.5

01/25/07 AMEND: 30.1

01/19/07 AMEND: 1005, 1007, 1080

12/21/06 ADOPT: 80.3

12/21/06 AMEND: 1070, 1081, 1082

12/21/06 AMEND: 48.6

Title 13, 17

12/27/06 ADOPT: 93116.3.1 AMEND: 2452, 2456, 2461, 93115, 93116.2, 93116.3

12/06/06 ADOPT: 2299.1, 93118

Title 13

05/01/07 ADOPT: 1300, 1400, 1401, 1402, 1403, 1404, 1405 REPEAL: 1300, 1301, 1302, 1303, 1304, 1304.1, 1305, 1310, 1311, 1312, 1313, 1314, 1315, 1320, 1321, 1322, 1323, 1324, 1325, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1339.1, 1339.2, 1339.3, 1339.4, 1339.5, 1339.6, 1340, 1341, 1342, 1343, 1344, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1370, 1371, 1372, 1373, 1374, 1375, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1420, 1421, 1422, 1423, 1424, 1425, and Article 15 text

04/26/07 AMEND: 2451, 2452, 2453, 2455, 2456, 2458, 2459, 2460, 2461, 2462

04/26/07 AMEND: 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465

04/12/07 ADOPT: 2775, 2775.1, 2775.2, 2780, 2781, 2782, 2783, 2784, 2785, 2786, 2787, 2788, 2789 AMEND: 2430, 2431, 2433, 2434, 2438

Title 14

04/30/07 AMEND: 1257

04/13/07 ADOPT: 18751.2.1, Form CIWMB 303a, Form CIWMB 303b AMEND: 18751.2 REPEAL: Form CIWMB 303

04/02/07 AMEND: 679

03/27/07 AMEND: 11945

03/27/07 AMEND: 11900

03/26/07 AMEND: 2305, 2310, 2320

03/21/07 AMEND: 7.50

03/20/07 AMEND: 11945

03/20/07 AMEND: 790, 815.01, 815.02, 815.03, 815.04, 815.05, 815.06, 815.07, 815.08, 815.09, 816.01, 816.02, 816.03, 816.04, 816.05, 816.06, 817.02, 817.03, 818.01, 818.02, 818.03, 819.01, 819.02, 819.03, 819.04, 819.06, 819.07, 820.01, 825.03, 825.05, 825.07, 826.01, 826.02, 826.03, 826.04, 826.05, 826.06, 827.01, 827.02

03/01/07 AMEND: 10121, 11900(a)(5)

02/28/07 ADOPT: 5.81, 27.91 AMEND: 1.62, 1.63, 1.67, 2.00, 5.00, 5.80, 7.00, 7.50,

8.00, 27.60, 27.65, 27.90, 27.95, 28.20, 29.70, 29.80, 29.85, 195, 701
 02/23/07 AMEND: 671.5
 02/16/07 AMEND: 10214, 10381, 10500, 10620, 11002, 11003, 11005
 02/13/07 AMEND: 53.03, 149, 149.1
 02/08/07 AMEND: 880
 02/05/07 ADOPT: 2990, 2995, 2997 AMEND: 2125, 2518
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