

BOARD OF SUPERVISORS

AGENDA

Meetings are located at:
Yuba County Government Center
Board Chambers, 915 Eighth Street
Marysville, California



Agenda materials are available at the Yuba County Government Center, 915 8th Street, Marysville and www.co.yuba.ca.us. Any disclosable public record related to an open session item and distributed to all or a majority of the Board less than 72 hours prior to the meeting is available for public inspection at Suite 109 of the Government Center during normal business hours.

JANUARY 3, 2012

- 6:00 P.M. YUBA COUNTY BOARD OF SUPERVISORS - Welcome to the Yuba County Board of Supervisors meeting. As a courtesy to others, please turn off cell phones, pagers, or other electronic devices, which might disrupt the meeting. Thank you.**
- I. **PLEDGE OF ALLEGIANCE** - Led by Supervisor Abe
 - II. **ROLL CALL** - Supervisors Vasquez, Nicoletti, Griego, Abe, Stocker
 - III. **OATH OF OFFICE** - Auditor-Controller C. Richard Eberle
 - IV. **CHAIRMAN OF THE BOARD STATEMENT** - Chairman Roger Abe
 - V. **ADJOURN SINE DIE**
 - VI. **ELECTION OF OFFICERS** - Chair and Vice Chair (Conducted by Clerk of the Board)
 - VII. **CONSENT AGENDA:** All matters listed under the Consent Agenda are considered to be routine and can be enacted in one motion.
 - A. Auditor-Controller
 - 1. Receive independent accountant's report on the Treasurer's Statement of Assets. (001-12)
 - B. Board of Supervisors
 - 1. Approve Board meeting schedule and cancellation of certain meetings for 2012. (002-12)
 - C. Clerk of the Board of Supervisors
 - 1. Approve minutes of the meetings of December 6, 13, and 20, 2011. (003-12)
 - VIII. **PUBLIC COMMUNICATIONS:** Any person may speak about any subject of concern provided it is within the jurisdiction of the Board of Supervisors and is not already on today's agenda. The total amount of time allotted for receiving such public communication shall be limited to a total of 15 minutes and each individual or group will be limited to no more than 5 minutes. Prior to this time speakers are requested to fill out a "Request to Speak" card and submit it to the Clerk of the Board of Supervisors. Please note: No Board action can be taken on comments made under this heading.
 - IX. **CORRESPONDENCE** - (004-12)
 - A. Memo from California Corrections Standards Authority regarding proposed Title 15 regulations and public comment period.
 - B. Letter from Auditor-Controller enclosing independent audit report for Three Rivers Levee Improvement Agency for fiscal year ended June 30, 2011.
 - C. Letter from United States Post Office regarding Challenge feasibility study.
 - D. Notice from California Fish and Game Commission regarding emergency regulatory action of incidental take of the black-backed woodpecker.

X. **BOARD AND STAFF MEMBERS' REPORTS:** This time is provided to allow Board and staff members to report on activities or to raise issues for placement on future agendas.

XI. **ADJOURN**

01/05/2011 – 4:30 P.M. Marysville City/County Liaison Committee - CANCELLED

City of Marysville
Covillaud Room
526 C Street
Marysville, Ca 95901

In compliance with the Americans with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available. If you have a disability and need disability-related modifications or accommodations to participate in this meeting, please contact the Clerk of the Board's office at (530) 749-7510 or (530) 749-7353 (fax). Requests must be made one full business day before the start of the meeting.

To place an item on the agenda, contact the office of the Clerk of the Board of Supervisors at (530) 749-7510.

PUBLIC INFORMATION

PUBLIC COMMUNICATIONS: Members of the public shall be allowed to address the Board of Supervisors on items not appearing on the agenda which are of interest to the public and are within the subject matter jurisdiction of the Board, provided that no action shall be taken unless otherwise authorized by law. The total amount of time allotted for receiving such public communication shall be limited to a total of 15 minutes and each individual or group will be limited to no more than 5 minutes.

AGENDA ITEMS: The opportunity of the public to be heard on an item shall be provided during the consideration of that item. In the interest of time, the Board has limited the length of such comment or input on each item to 15 minutes total, with a limit of no more than 5 minutes per person or group. The period for public comments on a particular item may be extended upon a majority vote of the Board. These time limits do not apply to applicants appearing before the Board on behalf of their applications.

ACTION ITEMS: All items on the Agenda under the headings "Consent," "County Departments," Ordinances and Public Hearings," "Items of Public Interest," and "Closed Session," or any of them, are items on which the Board may take any action at this meetings.

PUBLIC HEARINGS: All members of the public shall be allowed to address the Board as to any item which is noticed on the Board's agenda as a public hearing. The Board has limited each person or group input to no more than 3 minutes. Any person or group may provide the Board with a written statement in lieu of or in supplement to any oral statement made during a public hearing. Written statements shall be submitted to the Clerk of the Board.

ORDINANCES: Ordinances shall not be passed within five days of their introductions, nor at other than a regular meeting or at an adjourned regular meeting. The Board of Supervisors will address ordinances at first readings. The public is urged to address ordinances at first readings. Passage of ordinances will be held at second readings, after reading the title, further reading is waived and adoption of the ordinance is made by majority vote. An urgency ordinance may be passed immediately upon introduction. The Board reserves the right to amend any proposed ordinances and to hold a first reading in lieu of a second reading.

INFORMATIONAL CORRESPONDENCE: The Board may direct any item of informational correspondence to a department head for appropriate action.

SCHEDULED LUNCH BREAK: Between the hours of 12:00 noon and 1:00 p.m. and at the discretion of the Chair, the Board will recess one hour for lunch.

SPECIAL MEETINGS: No public comment shall be allowed during special meetings of the Board of Supervisors, except for items duly noticed on the agenda.

PUBLIC INFORMATION: Copies of §6.7 shall be posted along with agendas.

End



CONSENT

AGENDA

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The County of Yuba

AUDITOR - CONTROLLER

001-12



DEAN E. SELLERS

915 8TH Street, Suite 105
Marysville, CA 95901-5273
(530) 749-7810

INDEPENDENT ACCOUNTANT'S REPORT ON THE TREASURER'S STATEMENT OF ASSETS

To the Honorable
Board of Supervisors
County of Yuba
Marysville, CA 95901

We have reviewed the accompanying Treasurer's Statement of Assets of the County of Yuba as of September 30, 2011 and for the quarter then ended , in accordance with California Government Code Section 26920(a) and Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. All information included in the Treasurer's Statement of Assets is the representation of the Treasurer-Tax Collector of the County of Yuba.

A review consists principally of inquiries of departmental personnel and analytical procedures applied to the financial data. It is substantially less in scope than an audit in accordance with auditing standards generally accepted in the United States of America, the objective of which is the expression of an opinion regarding the Treasurer's Statement of Assets. Accordingly, we do not express such an opinion.

Based on our review, are not aware of any material modifications that should be made to the accompanying Treasurer's Statement of Assets in order for it to be in conformity with accounting principles generally accepted in the United States of America.

Yuba County Auditor Controller

December 14, 2011

cc: Dan Mierzwa, Treasurer-Tax Collector
Robert Bendorf, County Administrator

COUNTY OF YUBA
TREASURER'S STATEMENT OF ASSETS
FOR THE QUARTER ENDED SEPTEMBER 30, 2011

	TREASURER'S BALANCE	FAIR MARKET VALUE
Cash on Hand	\$ 6,033	\$ 6,033
Deposits with Financial Institutions:		
U.S. Bank *	\$ 3,630,821	\$ 1,918,238
Investments:		
CAMP Operating Account	16,750,000	16,751,678
Local Agency Investment Fund	50,000,000	50,000,000
BVID Local Agency	100,000	-
Negotiable Certificates of Deposit	25,000,000	25,042,150
Federal Agency Issues	114,708,484	115,281,681
Medium Term Corporate Notes	85,808,375	83,956,749
Total Pool Portfolio	\$ 292,366,859	\$ 291,032,258
Bonds		
Black Rock Tobacco 1509	1,007,432	1,010,416
CAMP MJUSD COP 119	125,438	125,449
CAMP Yuba Co. WaterAgency	7,600,000	7,600,000
CAMP Yuba Comm. Coll. Dist.	30,862,012	30,865,597
CAMP MJUSD COP Arbitrage	6,458	6,437
CAMP MJUSD GO Bonds (All)	29,755,302	29,759,257
Yuba Co. Water Agency Spec. Inv.	6,029,567	6,126,300
Total Bonds:	\$ 75,386,208	\$ 75,493,456
Yuba Levee Financing Authority		
Federal Agency Issues	21,148,773	22,179,375
Medium Term Corp. & Municipal Notes	2,000,000	1,925,380
U.S. Bank Sweep Account	735,364	735,475
YLFA CAMP	1,976,737	1,976,994
Total Yuba Levee Financing Authority Portfolio	\$ 25,860,874	\$ 26,817,225
Grand Total, All Cash and Investments:	\$ 397,250,795	\$ 395,267,209

* Difference is principally uncashed warrants that have not yet been reduced from Treasury Balances.

The County of Yuba

Office of the Board of Supervisors

002-12



January 3, 2012

TO: Board of Supervisors
FROM: Vice Chairman Stocker
SUBJECT: Cancellation of Certain Board Meetings

Recommendation:

Approve Board of Supervisors meeting schedule for 2012 and cancelling certain meetings.

Background and Discussion:

The meeting calendar for 2012 allows for 34 regular Board meetings. Certain meetings are recommended cancelled for department heads to prepare budgets and presentations for Fiscal Year 2012/13. The regular meetings of January 24 and August 21 are proposed cancelled and instead will be for Board workshops on the budget. Other meetings cancelled allow for a summer meeting schedule similar to 2011.

Committee Action:

This matter is being brought directly to the Board for consideration.

Fiscal Impact:

None.

HS

Ds
Attachment

2012 Meeting Schedule

Jan. 03 6:00 p.m.	Feb. 07 6:00 p.m.	Mar. 06 6:00 p.m.
Jan. 10 9:30 a.m.	Feb. 14 9:30 a.m.	Mar. 13 9:30 a.m.
Jan. 17 9:30 a.m.	<i>Feb. 21 Cancelled</i>	<i>Mar. 20 Cancelled</i>
Jan. 24 9:30 a.m. Budget Wrkshp Only	Feb. 28 9:30 a.m.	Mar. 27 9:30 a.m.
<i>Jan. 31 No Meeting-5th Tuesday</i>		

Apr. 03 6:00 p.m.	<i>May 01 Cancelled</i>	<i>Jun. 05 No Meeting/Election</i>
<i>Apr. 10 Cancelled</i>	May 08 9:30 a.m.	Jun. 12 9:30 a.m.
Apr. 17 9:30 a.m.	May 15 9:30 a.m.	Jun. 19 9:30 a.m.
Apr. 24 9:30 a.m.	May 22 9:30 a.m.	Jun. 26 9:30 a.m.
	<i>May 29 No Meeting-5th Tuesday</i>	

<i>Jul. 03 Cancelled</i>	Aug. 07 6:00 p.m.	Sep. 04 6:00 p.m.
Jul. 10 9:30 a.m.	Aug. 14 9:30 a.m.	Sep. 11 9:30 a.m.
Jul. 17 9:30 a.m.	Aug. 14 1:30 p.m. Bdgt Wrkshp w/Depts	Sep. 18 9:30 am
Jul. 24 9:30 a.m.	Aug. 21 8:30 a.m. Bdgt Wrkshp w/Depts	Sep 18 1:30 p.m. Fnl Bdgt Hrsgs
<i>July 31 No Meeting-5th Tuesday</i>	<i>Aug. 28 Cancelled</i>	<i>Sep. 25 Cancelled</i>

Oct. 02 6:00 p.m.	<i>Nov. 06 No Meeting/Election</i>	Dec. 04 6:00 p.m.
Oct. 09 9:30 a.m.	Nov. 13 9:30 a.m.	Dec. 11 9:30 a.m.
<i>Oct. 16 Cancelled</i>	<i>Nov. 22 No Meeting</i>	Dec. 18 9:30 a.m.
Oct. 23 9:30 a.m.	Nov 27 9:30 a.m.	<i>Dec. 25 No Meeting</i>
<i>Oct. 30 No Meeting-5th Tuesday</i>		

Pursuant to Ordinance Code 2.25.010 "any regular meeting...that falls upon a holiday or Election day is cancelled. There shall be no regular meeting in any work week having 2 County holidays." Pursuant to Ordinance Code 2.25.020 no regular meeting shall be held on the 5th Tuesday in any calendar month..

Holidays - Jan 2 and 16	Feb 20; May 28	July 4; Sept 3
Nov 12, 22 and 23	Dec 24 and 25	Jan 1, 2013 Tuesday
January 7 2013, Noon - Swearing in of Officials		

The County of Yuba

B O A R D O F S U P E R V I S O R S



DECEMBER 6, 2011 - MINUTES

The Honorable Board of Supervisors of the County of Yuba met in special session on the above date, commencing at 6:03 p.m., within the Government Center, Marysville, California, with a quorum being present as follows: Supervisors Andy Vasquez, John Nicoletti, Roger Abe, and Hal Stocker. Mary Jane Griego was absent. Also present were County Administrator Robert Bendorf, County Counsel Angil Morris-Jones, and Clerk of the Board of Supervisors Donna Stottlemeyer. Chairman Abe presided.

- I. PLEDGE OF ALLEGIANCE - Led by Supervisor Griego
- II. ROLL CALL - Supervisors Vasquez, Nicoletti, Griego, Abe, Stocker - Supervisor Griego absent.

MOTION: At the request of Counsel, move to add to the agenda under County Departments/Community Development and Services as Item 3 a resolution regarding a grant application as the need to take action arose subsequent to the agenda being posted

MOVED: Hal Stocker

SECOND: John Nicoletti

AYES: Hal Stocker, John Nicoletti, Andy Vasquez, Roger Abe

NOES: None ABSENT: Mary Jane Griego ABSTAIN: None

- III. CONSENT AGENDA: All matters listed under the Consent Agenda are considered to be routine and can be enacted in one motion.

MOTION: Move to approve Consent Agenda MOVED: Hal Stocker SECOND: John Nicoletti

AYES: Hal Stocker, John Nicoletti, Andy Vasquez, Roger Abe

NOES: None ABSENT: Mary Jane Griego ABSTAIN: None

A. Assessor

1. Adopt resolution authorizing Assessor to execute application for vessel registration information from California Department of Motor Vehicles. (Finance and Administration Committee recommends approval) (516-11) Adopted Resolution No. 2011-105, which is on file in Yuba County Resolution Book No. 42, entitled: "RESOLUTION AUTHORIZING THE ASSESSOR TO EXECUTE AN APPLICATION TO FOR VESSEL REGISTRATION INFORMATION FROM THE CALIFORNIA DEPARTMENT OF MOTOR VEHICLES."
2. Adopt resolution exempting from property taxation all real property having a base year value and all personal property with a full cash value of \$5,000 or less. (Finance and Administration Committee recommends approval) (517-11) Adopted Resolution No. 2011-106, which is on file in Yuba County Resolution Book No. 42 entitled: "RESOLUTION EXEMPTING FROM TAX CERTAIN PROPERTY WITH AN ASSESSED VALUE FOR WHICH PROPERTY TAXES WOULD AMOUNT TO LESS THAN THE COST OF ASSESSING AND COLLECTING THE TAX."

Mr. Rodney Waters and Mr. Al Moody, Lord's Gym of Yuba County, advised the focus of Lord's Gym would be a youth center and requested future consideration of fee waivers related to development.

VI. COUNTY DEPARTMENTS

A. Board of Supervisors

1. Appoint one individual from each supervisory district to the Yuba County Resource/Development Code Advisory Committee with term ending upon adoption of the Development Code update. (Ten minute estimate) (527-11) District Three appointment continued to December 13, 2011.

MOTION: Move to appoint Richard Reiss District 1 Representative

MOVED: Andy Vasquez SECOND: John Nicoletti

AYES: Andy Vasquez, John Nicoletti, Roger Abe, Hal Stocker

NOES: None ABSENT: Mary Jane Griego ABSTAIN: None

MOTION: Move to appoint G. Michael Payne District 2 Representative

MOVED: John Nicoletti SECOND: Hal Stocker

AYES: John Nicoletti, Hal Stocker, Andy Vasquez, Roger Abe,

NOES: None ABSENT: Mary Jane Griego ABSTAIN: None

MOTION: Move to appoint Keith Brown District 4 Representative

MOVED: Roger Abe SECOND: Hal Stocker

AYES: Roger Abe, Hal Stocker, Andy Vasquez, John Nicoletti,

NOES: None ABSENT: Mary Jane Griego ABSTAIN: None

MOTION: Move to appoint Charlie Sexton District 5 Representative

MOVED: Hal Stocker SECOND: John Nicoletti

AYES: Hal Stocker, John Nicoletti, Andy Vasquez, Roger Abe,

NOES: None ABSENT: Mary Jane Griego ABSTAIN: None

2. Reconsider approval of repayment agreement with City of Marysville and take action as appropriate. (Ten minute estimate) (505-11) Continued to December 13, 2011.

B. Community Development and Services

1. Acknowledge typographical corrections to Supervisorial District Two and Five Boundaries contained in adopted Ordinance No. 1510. (Five minute estimate) (528-11) Community Development and Services Director Kevin Mallen briefly recapped corrections.

MOTION: Move to approve MOVED: John Nicoletti SECOND: Andy Vasquez

AYES: John Nicoletti, Andy Vasquez, Roger Abe, Hal Stocker

NOES: None ABSENT: Mary Jane Griego ABSTAIN: None

2. Provide staff direction on Sacramento Area Council of Governments Metropolitan Transportation Plan/Sustainable Communities Strategy for 2035 Draft Environmental Impact Report and authorize preparation of comment letter and the Chair to execute. (Ten minute estimate) Board direction given to bring forward response if necessary to the January 3, 2012 Board meeting.

Mr. Rodney Waters and Mr. Al Moody, Lord's Gym of Yuba County, advised the focus of Lord's Gym would be a youth center and requested future consideration of fee waivers related to development.

VI. COUNTY DEPARTMENTS

A. Board of Supervisors

1. Appoint one individual from each supervisory district to the Yuba County Resource/Development Code Advisory Committee with term ending upon adoption of the Development Code update. (Ten minute estimate) (527-11) District Three appointment continued to December 13, 2011.

MOTION: Move to appoint Richard Reiss District 1 Representative

MOVED: Andy Vasquez SECOND: John Nicoletti

AYES: Andy Vasquez, John Nicoletti, Roger Abe, Hal Stocker

NOES: None ABSENT: Mary Jane Griego ABSTAIN: None

MOTION: Move to appoint G. Michael Payne District 2 Representative

MOVED: John Nicoletti SECOND: Hal Stocker

AYES: John Nicoletti, Hal Stocker, Andy Vasquez, Roger Abe,

NOES: None ABSENT: Mary Jane Griego ABSTAIN: None

MOTION: Move to appoint Keith Brown District 4 Representative

MOVED: Roger Abe SECOND: Hal Stocker

AYES: Roger Abe, Hal Stocker, Andy Vasquez, John Nicoletti,

NOES: None ABSENT: Mary Jane Griego ABSTAIN: None

MOTION: Move to appoint Charlie Sexton District 5 Representative

MOVED: Hal Stocker SECOND: John Nicoletti

AYES: Hal Stocker, John Nicoletti, Andy Vasquez, Roger Abe,

NOES: None ABSENT: Mary Jane Griego ABSTAIN: None

2. Reconsider approval of repayment agreement with City of Marysville and take action as appropriate. (Ten minute estimate) (505-11) Continued to December 13, 2011.

B. Community Development and Services

1. Acknowledge typographical corrections to Supervisorial District Two and Five Boundaries contained in adopted Ordinance No. 1510. (Five minute estimate) (528-11) Community Development and Services Director Kevin Mallen briefly recapped corrections.

MOTION: Move to approve

MOVED: John Nicoletti

SECOND: Andy Vasquez

AYES: John Nicoletti, Andy Vasquez, Roger Abe, Hal Stocker

NOES: None ABSENT: Mary Jane Griego ABSTAIN: None

2. Provide staff direction on Sacramento Area Council of Governments Metropolitan Transportation Plan/Sustainable Communities Strategy for 2035 Draft Environmental Impact Report and authorize preparation of comment letter and the Chair to execute. (Ten minute estimate) Board direction given to bring forward response if necessary to the January 3, 2012 Board meeting.

3. Adopt resolution approving grant application to California Public Health's Safe Drinking Water State Revolving fund on behalf of River Highlands Community Services District for water supply and operational improvements and authorizing Public Works Director to execute all necessary documents for grant and completion of project. (533-11) Public Works Director Mike Lee recapped the grant, project improvements, and responded to Board inquiries.

MOTION: Move to adopt resolution MOVED: Hal Stocker SECOND: John Nicoletti
AYES: Hal Stocker, John Nicoletti, Andy Vasquez, Roger Abe
NOES: None ABSENT: Mary Jane Griego ABSTAIN: None

Adopted Resolution No. 2011-109, which is on file in Yuba County Resolution Book No. 42 entitled: "APPROVE GRANT APPLICATION TO THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH'S SAFE DRINKING WATER STATE REVOLVING FUND ON BEHALF OF THE RIVER HIGHLANDS COMMUNITY SERVICES DISTRICT FOR WATER SUPPLY AND OPERATIONAL IMPROVEMENTS."

VII. ORDINANCES AND PUBLIC HEARINGS: The clerk read the disclaimer.

- A. Ordinance - Hold public hearing, waive reading, and introduce ordinance amending section 13.00.050 and 13.00.056 of Chapter 13, Title XIII of the Yuba County Ordinance Code relating to the Sheriff's Department. (Law and Justice Committee recommends approval) (Ten minute estimate) (530-11) Sheriff Durfor recapped fees related to the burglary alarm program, adult offender work program and work release program. Mr. Durfor responded to Board inquiries.

Chairman Abe opened the public hearing. No one came forward.

MOTION: Move to close public hearing
MOVED: John Nicoletti SECOND: Andy Vasquez
AYES: John Nicoletti, Andy Vasquez, Roger Abe, Hal Stocker
NOES: None ABSENT: Mary Jane Griego ABSTAIN: None

- B. Appeal - Record appeal of the Staff Development Committee/Zoning Administrator's decision to approve AP2011-0002 (Oregon House Farms Produce Stand) and take action as appropriate. (30 minute estimate) (531-11) Planning Director Wendy Hartman provided a Power Point presentation recapping the application, process, conditions of approval, subsequent traffic survey and responded to Board inquiries.

Appellant David Soares recapped California Environmental Quality Act guidelines requiring environmental review of the project and responded to Board inquiries.

Applicant Jeanette Cavaliere responded to concerns raised and discussed traffic impacts.

Public Comment:

- Mr. Rick Brown, Oregon House
- Ms. Sandra Grabowski, Oregon House
- Mr. Greg Crompton, Dobbins
- Mr. William Bozza, Dobbins letter read by David Soares
- Mr. Thomas Hart, Oregon House
- Mr. Charles Sharp, Oregon House
- Ms. Janet Marchant, Dobbins

- Mr. Rod Hisken, Oregon House
- Mr. Larry Moller, Seward Lane
- Ms. Shirley Storey, Broyles Trail
- Ms. Marieke Perla, Oregon House
- Mr. Nick Spaulding, Oregon House
- Ms. Emily Gordon, Frenchtown Dobbins Road
- Ms. Catherine Summers, Dobbins
- Mr. Eric Johnson, Oregon House
- Mr. Phillip Story, Oregon House

Public Works Director Mike Lee recapped the traffic study performed.

MOTION: Move to close public hearing and waive reading
 MOVED: Hal Stocker SECOND: Andy Vasquez
 AYES: Hal Stocker, Andy Vasquez, John Nicoletti, Roger Abe
 NOES: None ABSENT: Mary Jane Griego ABSTAIN: None

Ms. Hartman responded to Board inquiries.

MOTION: Move to uphold the appeal and deny the project
 MOVED: Hal Stocker SECOND: Roger Abe
 AYES: Hal Stocker, Roger Abe NOES: Andy Vasquez, John Nicoletti
 ABSENT: Mary Jane Griego ABSTAIN: None
 Motion Failed.

MOTION: Move to deny the appeal and uphold the project
 AYES: Andy Vasquez, John Nicoletti NOES: Hal Stocker, Roger Abe
 ABSENT: Mary Jane Griego ABSTAIN: None
 Motion Failed.

Community Development and Services Director Kevin Mallen recapped possible conditions regarding traffic concerns and responded to Board inquiries.

MOTION: Move to deny the appeal, grant the permit with additional conditions of no parking on county right of way and accommodate all parking on site
 MOVED: Hal Stocker SECOND: Andy Vasquez
 AYES: Hal Stocker, Andy Vasquez, John Nicoletti, Roger Abe
 ABSENT: Mary Jane Griego ABSTAIN: None

VIII. CORRESPONDENCE - (532-11)

- A. Letter from Donald Rae regarding flood protection and Three Rivers Levee Improvement Authority (TRLIA). Accepted. Mr. Rae provided further comments regarding a change in TRLIA board members, conducting a performance audit, and goldfields level of protection.
- B. Two notices from California Fish and Game Commission regarding the American pika and cedars buckwheat. Accepted.

- C. Notice from State of California Board of Forestry and Fire Protection regarding Emergency Rules to Implement State Responsibility Area Fees public comment period ended December 2, 2011. Accepted.
- D. Letter from North Coast Long-term Services and Support Coalition regarding template for restructuring services for the 28 fee-for-service counties. Accepted.

IX. BOARD AND STAFF MEMBERS' REPORTS:

Supervisor Nicoletti: Memorial Adjournment - Mr. Virgil Buttz Jr. and Mr. Monty Payne

Supervisor Stocker: Memorial Adjournment - Mrs. Myrtle Wolf and Mr. Gary Ellison

X. CLOSED SESSION: The Board retired into closed session at 9:30 p.m. to discuss the following:

- A. Potential litigation pursuant to Government Code §54956.9(b) - One Case

The Board returned from closed session at 9:38 p.m. with all present as indicated above.

Counsel Angil Morris-Jones advised by unanimous vote the Board gave authority and approved the claim.

XI. ADJOURN: 9:40 p.m. in memory of Mrs. Myrtle Wolf, Mr. Virgil Buttz Jr., Mr. Gary Ellison, and Mr. Monty Payne by Chairman Abe.

Chair

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS

Approved: _____

The County of Yuba

B O A R D O F S U P E R V I S O R S

DECEMBER 13, 2011 - MINUTES



The Honorable Board of Supervisors of the County of Yuba met in regular session on the above date, commencing at 9:58 a.m., within the Government Center, Marysville, California, with a quorum being present as follows: Supervisors Andy Vasquez, John Nicoletti, Mary Jane Griego, Roger Abe, and Hal Stocker. Also present were County Administrator Robert Bendorf, County Counsel Angil Morris-Jones, and Deputy Clerk of the Board of Supervisors Rachel Ferris. Chair Abe presided.

- I. PLEDGE OF ALLEGIANCE - Led by Supervisor Abe
- II. ROLL CALL - Supervisors Vasquez, Nicoletti, Griego, Abe, Stocker – All present
- III. CONSENT AGENDA: All matters listed under the Consent Agenda are considered to be routine and can be enacted in one motion.

MOTION: Move to approve Consent Agenda MOVED: Hal Stocker SECOND: John Nicoletti
AYES: Hal Stocker, John Nicoletti, Andy Vasquez, Mary Jane Griego, Roger Abe
NOES: None ABSENT: None ABSTAIN: None

A. Administrative Services

1. Authorize budget transfer in the amount of \$300,000 from Account No. 129-0000-361-4650 to various accounts as it relates to allocating Economic Development Block Grant 10-EDEF-7271 funds. (534-11) Authorized.
2. Approve lease agreement with Federal Aviation Administration for office space located at the Yuba County Airport and authorize the Chair to execute same. (535-11) Approved.

B. Clerk of the Board of Supervisors

1. Adopt list of ongoing Boards, Commissions, and Committees appointed by the Board of Supervisors as of December 1, 2011. (536-11) Approved.

C. Community Development and Services

1. Adopt resolution adopting a reservation process and establishing fees and fee waivers at Hammon Grove and Sycamore Ranch. (Land Use and Public Works Committee recommends approval) (537-11)
Adopted Resolution No. 2011-110, which is on file in Yuba County Resolution Book No. 42 entitled: "RESOLUTION ADOPTING A RESERVATION PROCESS AND ESTABLISHING FEES AT AND FEE WAIVERS AT HAMMON GROVE AND SYCAMORE RANCH."

2. Approve plans, specifications, estimate, and authorize advertisement of bids for La Porte Road at New York Creek bridge replacement project with a tentative bid opening date of January 17, 2012. (538-11) Approved.
3. Accept POW/MIA spray park restroom and flagpole project as complete and release the Performance Bond No. 1000835264 Contract No. 2009-5038. (539-11) Approved.
4. Accept Riverside Meadows Village 2 as complete and release the Performance Bond, Tract Map No. 2004-20. (540-11) Approved.
5. Adopt resolution authorizing Community Development and Services Director or his designee to complete the purchase of single family residence APN 021-450-006 as part of the Neighborhood Stabilization Program and execute all documents needed for completion of purchase, rehabilitation, and resale. (541-11)
Adopted Resolution No. 2011-111, which is on file in Yuba County Resolution Book No. 42 entitled: "RESOLUTION AUTHORIZING YUBA COUNTY COMMUNITY DEVELOPMENT AND SERVICES AGENCY DIRECTOR OF HIS DESIGNEES TO COMPLETE THE PURCHASE OF SINGLE FAMILY RESIDENCE APN 021-450-006 AS PART OF THE NEIGHBORHOOD STABILIZATION PROGRAM AND EXECUTE ALL DOCUMENTS NEEDED FOR COMPLETION OF PURCHASE, REHABILITATION, AND RESALE."

D. County Administrator

1. Approve amendment to agreement with Sierra-Sacramento Valley Emergency Medical Services Agency (S-SV EMS Agency) for administration of Yuba County Ordinance Chapter 6.05 related to ambulance services and authorize the Chair to execute same. (542-11) Approved.

E. Health and Human Services

1. Adopt resolution authorizing the 2011-12 Public Health Emergency Preparedness, State General Fund Pandemic Influenza, Hospital Preparedness program funding agreement with the California Department of Public Health. (543-11)
Adopted Resolution No. 2011-112, which is on file in Yuba County Resolution Book No. 42 entitled: "RESOLUTION AUTHORIZING THE YUBA COUNTY HEALTH DEPARTMENT AND HUMAN SERVICES DEPARTMENT TO ENTER THE 2011-12 CDC PUBLIC HEALTH EMERGENCY PREPAREDNESS (PHEP), STATE GENERAL FUND (GF) PANDEMIC INFLUENZA, HHS HOSPITAL PREPAREDNESS PROGRAM (HPP) FUNDING AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH AND FURTHER, AUTHORIZES THE CHAIRMAN TO EXECUTE DOCUMENTS AS REQUIRED BY THE AGREEMENT."

F. Human Resources

1. Approve amendment to the Catastrophic Leave Policy and authorize the Human Resources Director and County Administrator to implement changes and execute all necessary documents. (544-11) Approved.

G. Library

1. Approve hours of operation and holiday schedule for 2012. (545-11) Approved.

H. Treasurer-Tax Collector

1. Adopt resolution delegating investment authority to the Treasurer for the year 2012. (546-11)
Adopted Resolution No. 2011-113, which is on file in Yuba County Resolution Book No. 42 entitled:
"RESOLUTION DELEGATING INVESTMENT AUTHORITY TO THE YUBA COUNTY
TREASURER FOR THE YEAR 2012."

IV. PUBLIC COMMUNICATIONS: No one came forward.

V. COUNTY DEPARTMENTS

A. County Administrator

1. Adopt resolution appointing C. Richard Eberle to the position of Auditor-Controller for Yuba County effective December 30, 2011. (547-11)

County Administrator Robert Bendorf provided a brief recap and introduced Mr. Richard Eberle to the Board. Mr. Richard Eberle advised he was looking forward to his appointment.

MOTION: Move to adopt MOVED: Mary Jane Griego SECOND: Andy Vasquez
AYES: Mary Jane Griego, Andy Vasquez, John Nicoletti, Roger Abe, Hal Stocker
NOES: None ABSENT: None ABSTAIN: None

Adopted Resolution No. 2011-114, which is on file in Yuba County Resolution Book No. 42 entitled:
"RESOLUTION APPOINTING C. RICHARD EBERLE AS THE YUBA COUNTY AUDITOR-
CONTROLLER TO FILL THE VACANCY OF SUCH OFFICE UPON THE EFFECTIVE DATE OF
THE VACANCY, DECEMBER 30, 2011 AND TO SERVE AND HOLD SUCH OFFICE UNTIL HIS
SUCCESSOR IS ELECTED AND TAKES OFFICE IN ACCORDANCE WITH STATE LAW."

2. Authorize the County Administrator to dual encumber the position of Assistant Auditor-Controller effective December 19 and ending December 30, 2011. (548-11) County Administrator Robert Bendorf recapped the recommendation and responded to Board inquiries.

MOTION: Move to approve MOVED: John Nicoletti SECOND: Mary Jane Griego
AYES: John Nicoletti, Mary Jane Griego, Andy Vasquez, Roger Abe, Hal Stocker
NOES: None ABSENT: None ABSTAIN: None

3. Approve agreement with Gallina LLP to perform the County's independent audit for fiscal years ending June 30, 2010, 2011, 2012, and 2013 and authorize the Chair to execute same. (Ten minute estimate) (549-11) County Administrator Robert Bendorf provided a brief recap and responded to Board inquiries.

MOTION: Move to approve MOVED: John Nicoletti SECOND: Andy Vasquez
AYES: John Nicoletti, Andy Vasquez, Mary Jane Griego, Roger Abe, Hal Stocker
NOES: None ABSENT: None ABSTAIN: None

4. Approve contract extension for Paul Brunner, Executive Director of the Three Rivers Levee Improvement Authority (TRLIA) and authorize the Chair to execute same. (550-11) County Administrator Robert Bendorf recapped the contract extension approved by the TRLIA Board and responded to Board inquiries.

MOTION: Move to approve MOVED: Andy Vasquez SECOND: Mary Jane Griego
AYES: Andy Vasquez, Mary Jane Griego, John Nicoletti, Roger Abe, Hal Stocker
NOES: None ABSENT: None ABSTAIN: None

5. Adopt resolution approving Franchise Agreement with Recology for waste collection/disposal and authorizing Chairman to execute all necessary documents; provide designation for use of road maintenance fee provided in the agreement and direct staff to return with appropriate policy; provide direction as appropriate. (551-11) County Administrator Robert Bendorf recapped the agreement including the following and advised of technical changes to the agreement:
- Funding Waste Collection and Disposal Services
 - Rate Calculations
 - Local Agency Fees
 - Rate Stabilization and Capitalization Fund
 - Term of Contract
 - Road Maintenance Fee
 - Bulky Item Coupon
 - Transfer Station and Host Fees

Mr. Bendorf and Recology Yuba-Sutter General Manager Dave Vaughn responded to Board inquiries relating to Road Maintenance Fee, Alternative Daily Cover and changes to the agreement.

The following individuals spoke:

Mr. David Kuhnen, Recycling Industries Yuba City
Mr. Richard Paskowitz, Wheatland

Mr. Ryan Rogers, Yuba City
Mr. Jeff Donlevy, Recycling Industries Yuba City

Supervisor Stocker left the meeting at 11:47 a.m. and returned at 11:52 a.m.

Ms. Brigit Barnes, YUGAG
Ms. Brynda Stranix, Yuba Sutter Economic Development
Mr. Doug Gibbs, Green Freak, Yuba City
Mr. Keith Martin, Regional Waste Management Authority

MOTION: Move to adopt resolution and approve agreement as amended
MOVED: John Nicoletti SECOND: Mary Jane Griego
AYES: John Nicoletti, Mary Jane Griego, Andy Vasquez
NOES: Roger Abe, Hal Stocker ABSENT: None ABSTAIN: None

Adopted Resolution No. 2011-115, which is on file in Yuba County Resolution Book No. 42 entitled:
"RESOLUTION OF THE YUBA COUNTY BOARD OF SUPERVISORS APPROVING A SOLID
WASTE COLLECTION FRANCHISE AGREEMENT BY AND BETWEEN THE COUNTY OF YUBA
AND RECOLOGY."

B. Board of Supervisors

1. Appoint individual as District Three representative to the Yuba County Resource/Development Code Advisory Committee with term ending upon adoption of the Development Code update. (Ten minute estimate) (527-11) (Continued from December 6, 2011)

MOTION: Move to appoint Victor Cuate District 3 Representative

MOVED: Mary Jane Griego SECOND: John Nicoletti

AYES: Mary Jane Griego, John Nicoletti, Andy Vasquez, Roger Abe, Hal Stocker

NOES: None ABSENT: None ABSTAIN: None

2. Reconsider approval of repayment agreement with City of Marysville and take action as appropriate. (Ten minute estimate) (505-11) (Continued from December 6, 2011) County Administrator Robert Bendorf recapped discussions with the City of Marysville regarding repayment and advised the County Auditor-Controller captured the entire amount owed of \$220,000. Mr. Bendorf responded to Board inquiries.

C. Human Resources

1. Approve establishment of a Legal Services Coordinator classification and adopt resolutions amending the Position Allocation Schedule and Classification System - Basic Salary / Hourly schedule as it relates to County Counsel Department effective December 1, 2011. (552-11) Human Resource Director Martha Wilson recapped the request stating this position would free the legal staff from performing administrative duties and responded to Board inquiries.

MOTION: Move to adopt MOVED: John Nicoletti SECOND: Mary Jane Griego

AYES: John Nicoletti, Mary Jane Griego, Andy Vasquez, Roger Abe, Hal Stocker

NOES: None ABSENT: None ABSTAIN: None

Adopted Resolution No. 2011-116, which is on file in Yuba County Resolution Book No. 42 entitled: "RESOLUTION AMENDING THE DEPARTMENTAL POSITION ALLOCATION SCHEDULE NO." and, Resolution No. 2011-117 entitled: "RESOLUTION AMENDING THE CLASSIFICATION SYSTEM - BASIC SALARY SCHEDULE."

VI. ORDINANCES AND PUBLIC HEARINGS: The Deputy Clerk read the disclaimer.

- A. Ordinance - Hold public hearing, waive reading and adopt ordinance amending section 13.00.050 and 13.00.056 of Chapter 13, Title XIII of the Yuba County Ordinance Code relating to the Sheriff's Department. (Ten minute estimate) (530-11) Sheriff Steve Durfor provided a brief recap and responded to Board inquiries.

Chairman Abe opened the public hearing. No one came forward.

MOTION: Move to close the public hearing, waive reading and adopt ordinance

MOVED: Hal Stocker SECOND: Mary Jane Griego

AYES: Hal Stocker, Mary Jane Griego, Andy Vasquez, John Nicoletti, Roger Abe

NOES: None ABSENT: None ABSTAIN: None

Adopted Ordinance No. 1511, which is on file in Yuba County Ordinance Book No. 22 entitled: "ORDINANCE AMENDING SECTION 13.00.050 AND 13.00.056 OF CHAPTER 13, TITLE XIII, OF THE YUBA COUNTY ORDINANCE CODE."

- B. Ordinance - Hold public hearing, waive reading, and introduce ordinance amending Title VII of the Yuba County Ordinance Code by repealing in their entirety sections 7.05.220 and 7.05.230 and re-enacting section 7.05.220 regarding payment and collection of unpaid refuse service bills. (Land Use and Public Works Committee recommends approval) (Ten minute estimate) (553-11) Environmental Health Director Tej Maan recapped ordinance changes and responded to board inquiries.

Chairman Abe opened the public hearing. No one came forward.

MOTION: Move to close the public hearing, waive reading, and introduce ordinance

MOVED: Hal Stocker

SECOND: John Nicoletti

AYES: Hal Stocker, John Nicoletti, Andy Vasquez, Mary Jane Griego, Roger Abe

NOES: None ABSENT: None ABSTAIN: None

VII. CORRESPONDENCE - (554-11)

- A. Letter from Lance Hatfield requesting Board inquiry/review of Environmental Health regarding actions related to Travelers Hotel. Mr. Hatfield responded to Board inquiries. Referred to Environmental Health.
- B. Letter from California Department of Fish and Game regarding 2012-13 deer hunts for Yuba County. Accepted.
- C. Letter from California Sudden Infant Death Syndrome Advisory Council Chair Thomas G. Keens, M.D. commending Sheriff Stephen Durfor for his dedicated service on the California SIDS Advisory Council. Accepted.
- D. Letter from Auditor-Controller enclosing independent audit report for Sutter-Yuba Mosquito and Vector Control District for fiscal year ended June 30, 2011. Accepted.

VIII. BOARD AND STAFF MEMBERS' REPORTS: The following reports were received:

Supervisor Stocker:

- o Memorial Adjournment - Ms. Edith Marie Kelley
- o Memorial Adjournment - Mr. Walter Chappell
- o Memorial Adjournment - Mrs. Anita Peacemaker
- o Memorial Adjournment - Mr. Robert K Parker

Supervisor Griego:

- o Memorial Adjournment – Mr. Joe London

Supervisor Nicoletti:

- o Veterans Clinic selling bricks to memorialize service members locally
- o Commended Agricultural Commissioner Louie Mendoza's recent appointment as president to the California Agricultural Commission and Sealers Association

Supervisor Vasquez

- o Linda Lions Winter Wonderland toy giveaway

Supervisor Abe: California State Association of Counties sponsoring an initiative relating to constitutional protections for counties to fund the realignment process.

IX. CLOSED SESSION: The Board recessed into closed session at 1:11 p.m.

A. Pending litigation pursuant to Government Code §54956.9(a) - Brown vs. McGrath et al

B. Personnel pursuant to Government Code §54957 - Department Head Evaluation/Public Guardian Continued to January 17, 2011

The Board returned from closed session at 1:25 p.m. with all present as indicated above.

Counsel Angil Morris-Jones advised by unanimous vote the Board gave direction. Chairman Abe advised the personnel matter was continued.

X. RECESS TO 1:30 P.M. Reconvened at 1:39 p.m. with all present as indicated above.

XI. WORKSHOP/STUDY SESSION

A. Presentation from Dr. Ronald Hayman MD regarding usage of medical marijuana. (Fifteen minute estimate) (555-11) No one present to present.

B. Receive information on cultivation of medical marijuana. (60 minute estimate) (556-11) Community Development Director Kevin Mallen provided a Power Point presentation recapping the following regarding consideration of an ordinance:

- Defining thresholds for a public nuisance
- Quantity/location/code violations/dwellings/enforcement authority
- Photos illustrating threshold topics

Sheriff Steve Durfor continued the Power Point recapping crime involving marijuana cultivation, advising a majority of compliance checks of grow sites are operating within intent of law and a sharp increase of complaints that grows are affecting ability to enjoy home and safety concerns.

Mr. Mallen responded to Board inquiries regarding possible components to ordinance relating to balancing patient needs versus residents and thresholds which would not create a public nuisance

Planning Director Wendy Hartman responded to Board inquiries regarding ordinance code relating to fencing requirements.

Public Comment:

Mr. Ian Mack, Olivehurst

Mr. Dennis McCleod, Olivehurst

Mr. Eric Salerno, Redhill Way

Ms. Ruby Hamel, Browns Valley

Ms. Kathie Thelen, Browns Valley

Mr. James Maral Jr., Live Oak

Mr. Beau Green, Sutter County

Mr. Robert House, Walnut Avenue

Mr. Jose Peraita, Yuba City

Ms. Carmel Garcia, Yuba County

Ms. Elaine Arslan, Loma Rica

Mr. Bob Brown, Browns Valley

Ms. Jenny Cavaliere, Oregon House
Mr. Charlie Sexton, Browns Valley
Mr. Dan Sullivan, Arboga
Mr. Bob Trask, Olivehurst
Mr. Glenn Green, Olivehurst
Mr. Ken Davis, Yuba County Foothills
Ms. Diane Ferguson, Like Oak

Following additional Board discussion regarding commercial grows, smell, effects on children, and related criminal activity, staff was directed to draft an ordinance and return to the Board in January 2012.

- XII. ADJOURN: 4:07 p.m. by Chairman Abe in memory of Ms. Edith Marie Kelley, Mrs. Anita Peacemaker, Mr. Walter Chappell, Mr. Robert Parker and Mr. Joe London.

Chair

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS

BY: Rachel Ferris, Deputy Clerk

Approved: _____

The County of Yuba

B O A R D O F S U P E R V I S O R S



DECEMBER 20, 2011 - MINUTES

The Honorable Board of Supervisors of the County of Yuba met in special session on the above date, commencing at 9:32 a.m., within the Government Center, Marysville, California, with a quorum being present as follows: Supervisors Andy Vasquez, John Nicoletti, Mary Jane Griego, Roger Abe, and Hal Stocker. Also present were County Administrator Robert Bendorf, Deputy Counsel Maria Bryant-Pollard, and Clerk of the Board of Supervisors Donna Stottlemeyer. Chairman Abe presided.

- I. PLEDGE OF ALLEGIANCE - Led by Supervisor Stocker
- II. ROLL CALL - Supervisors Vasquez, Nicoletti, Griego, Abe, Stocker - All Present
- III. CLOSED SESSION: The Board retired into closed session at 9:33 a.m. to discuss the following:
 - A. Threatened litigation pursuant to Government Code §54956.9(b) - One Case
 - B. Pending litigation pursuant Government Code §54956.9(a) - Yuba County Probation Peace Officers Association vs. County of Yuba et al

The Board returned from closed session at 10:43 a.m. with all present as indicated above.

Chairman Abe advised by unanimous vote pending litigation was referred to outside counsel and direction provided on threatened litigation.

Supervisor Abe: Memorial Adjournment - Mr. Richard Kenneth Manley

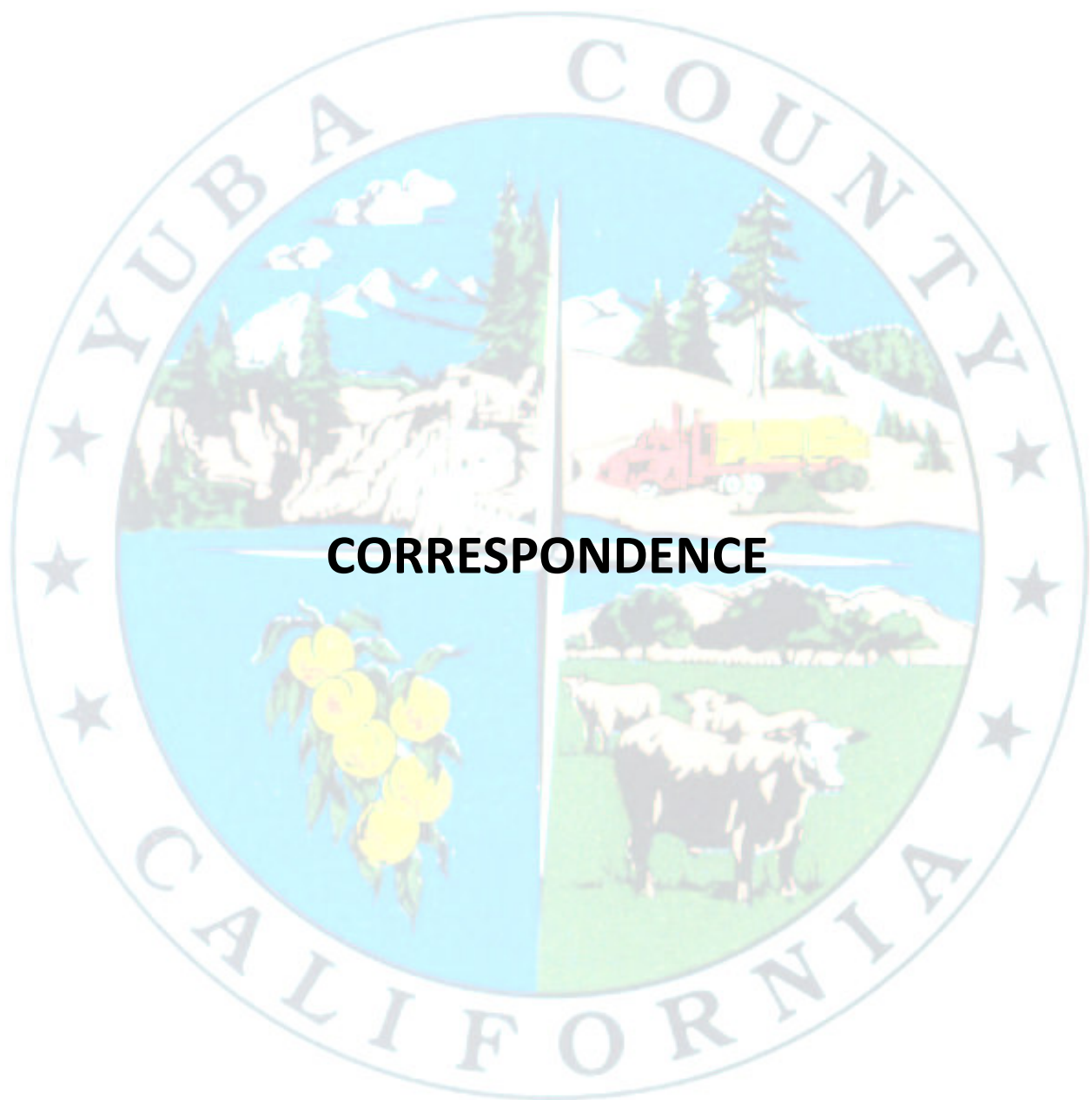
- IV. ADJOURN: 10:44 a.m. in memory of Mr. Richard Kenneth Manley by Chairman Abe.

Chair

ATTEST: DONNA STOTTEMEYER
CLERK OF THE BOARD OF SUPERVISORS

Approved: _____

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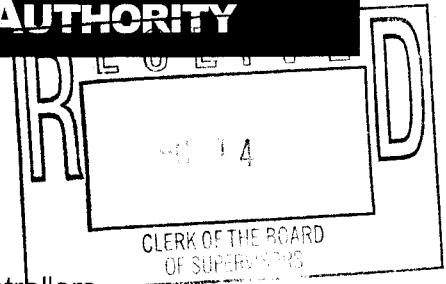




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Charlene Aboytes, Field Representative
 County Facilities Construction Division
 600 Bercut Drive
 Sacramento, CA 95811
 Voice: (916) 324-1914
 E-Mail: charlene.aboytes@cdcr.ca.gov

CORRECTIONS STANDARDS AUTHORITY



Memo

To: Sheriffs
 Chair, Board of Supervisors
 County Administrative/Executive Officers
From: Charlene Aboytes, Field Representative
Date: December 16, 2011
Re: Proposed Title 15 Regulations

Auditor/Controllers
 Director, Department of Public Works
 AB 900 Phase I Project Contact Persons

Pursuant to the Administrative Procedure Act, enclosed you will find the Notice of Proposed Action for the Adoption of Emergency Regulations for the 2007 Local Jail Construction Funding Program. The purpose of these regulations is to implement, interpret and make specific Government Code Sections 15820.90 through 15820.917 (Assembly Bill 900, Financing of County Jail Facilities).

The purpose of this notice is to announce the opening of the 45-day public comment period for these regulations. **This is a re-notice of a proposed action that we initially published in the California Regulatory Notice Register (Notice Register) on November 25, 2011. Due to technical difficulties, we were unable to receive any public comments, and as a result, we published a Notice of Decision Not to Proceed (Notice Register, December 9, 2011), terminating that prior notice. With this re-notice (published December 16, 2011), we are commencing a new notice and public hearing/comment periods.**

The Notice of Proposed Action, the text of proposed regulations and the Initial Statement of Reasons are available on the Corrections Standards Authority's (CSA) website at http://www.cdcr.ca.gov/Divisions_Boards/CSA/index.html.

The public comment period will close **January 23, 2012 at 5:00 p.m.** Any person may submit public comments in writing (by mail, fax or by e-mail) regarding the proposed changes. To be considered by the CSA, comments must be submitted to the CSA, County Facilities Construction Division, 600 Bercut Drive, Sacramento, CA 95811; by fax at (916) 322-8756; or by e-mail at adulthoodfacilityconstruction@cdcr.ca.gov before the close of the comment period.

Please see the enclosed notice for further information.

BOS CORRESPONDENCE A

**NOTICE OF PROPOSED ACTION
AMENDMENT OF REGULATIONS**

**California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation
Corrections Standards Authority**

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Sections 15820.906 and 15820.916, in order to implement, interpret and make specific Government Code Sections 15820.90 through 15820.917, proposes to: amend Sections 1700, 1706, 1712, 1714, 1730, 1731, 1740, 1747, 1747.1, 1747.5, 1748, 1751, 1752, 1753, 1754, 1756, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778 and 1788; delete section 1757; and add Sections 1712.1, 1714.1, 1730.1, 1740.1 and 1748.5 of Title 15, California Code of Regulations, Division 1, Chapter 1, Subchapter 6, concerning local jail construction financing. **This is a re-notice of a proposed action that we initially published in the California Regulatory Notice Register (Notice Register) on November 25, 2011. Due to technical difficulties, we were unable to receive any public comments, and as a result, we published a Notice of Decision Not to Proceed (Notice Register, December 9, 2011), terminating that prior notice. With this re-notice (published December 16, 2011), we are commencing a new notice and public hearing/comment periods.**

AMENDED PUBLIC HEARING DATE:

Date and Time: February 8, 2012 at 11:00 a.m.
Place: 660 Bercut Drive, Sacramento, 95811
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period **will begin on December 16, 2011 and will close on January 30 2012 at 5:00 p.m.** The text with proposed amendments, Initial Statement of Reasons and the Notice of Proposed Action will be made available on the CSA's website at www.cdcr.ca.gov/CSA/index.html. To be considered by the CSA, comments regarding the proposed changes must be submitted to the CSA, County Facilities Construction Division, 600 Bercut Drive, Sacramento, CA 95811; by fax at (916) 327-3317; or by e-mail at adultfacilityconstruction@cdcr.ca.gov before the close of the comment period.

CONTACT PERSONS:

Please direct any inquiries regarding this action to:

Charlene Aboytes, Field Representative
Corrections Standards Authority
Dept. of Corrections and Rehabilitation
600 Bercut Drive, Sacramento, CA 95811
Voice: (916) 445-5073
E-Mail: Charlene.aboytes@cdcr.ca.gov

Leslie Heller, Field Representative
Corrections Standards Authority
Dept. of Corrections and Rehabilitation
600 Bercut Drive, Sacramento, CA 95811
Voice: (916) 445-5073
E-Mail: Leslie.heller@cdcr.ca.gov

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Sections 17500-17630.

FISCAL IMPACT STATEMENT:

- Cost or savings to any state agency

There will be a cost to the state through debt service paid on the lease revenue bonds, but the CSA does not anticipate any debt services payments within the next two years.

- Other nondiscretionary cost or savings imposed on local agencies:

None. To be eligible for this voluntary funding program, counties must provide matching funds of 10% of total project costs. This will vary depending on the total funds counties request.

- Cost or savings in federal funding to the state:

None

EFFECT ON HOUSING COSTS:

The CSA has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The CSA 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 BUSINESS:

The CSA has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The CSA has determined that the proposed regulations will indirectly positively affect small businesses. Among other provisions, the Public Safety and Offender Rehabilitation Services Act of 2007 provides \$1.2 billion (in two phases) to counties for the construction or expansion of local jails. This will mean more construction and custody related jobs in the communities where this construction takes place.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:

The CSA has determined that the proposed regulations will indirectly positively affect jobs in California. Among other provisions, the Public Safety and Offender Rehabilitation Services Act of 2007 provides \$1.2 billion (in two phases) to counties for the construction or expansion

of local jails. This will mean more construction related jobs in the communities where this construction takes place.

CONSIDERATION OF ALTERNATIVES:

The CSA must determine that no reasonable alternative considered by the CSA, or that has otherwise been identified and brought to the attention of the CSA, 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 regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The CSA has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the amended regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR and the Notice of Proposed Action will also be made available on the CSA's website at www.cdcr.ca.gov/CSA/index.html.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the CSA's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the CSA may adopt the proposed modified regulations substantially as described in this Notice. If the CSA 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 CSA adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The CSA will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Summary of Existing Laws:

In May 2007, Assembly Bill 900 (Chapter 7, Statutes of 2007), the Public Safety and Offender Rehabilitation Services Act of 2007 was signed into law. In April 2011, the 2011 Realignment Legislation Addressing Public Safety (AB 111, Chapter 16, Statutes of 2011) became law, followed by AB 94 (Chapter 23, Statutes of 2011), in May 2011, with additional provisions to the 2011 Realignment Legislation Addressing Public Safety. Both AB 111 and AB 94 amended the provisions in AB 900 with respect to the administration of local jail construction financing. Those requirements are now reflected in Government Code Sections 15820.90 through and 15820.917. Specifically, Sections 15820.906 and 15820.916 require the CSA to adopt regulations for the approval or disapproval of local jail facilities.

Summary of Existing Regulations:

On November 28, 2008, the 2007 Local Jail Construction Funding Program Title 15 regulations were effective. These regulations describe the CSA's responsibilities pertaining to the administration local jail construction financing. Since then, these regulations have been revised twice (regulatory actions approved November 16, 2010 and May 26, 2011. (Previously, the Board of Corrections¹ administered the County Jail Capital Expenditure Bond Acts of 1981 and 1984, the County Correctional Facility Capital Expenditure Bond Act of 1986 and the County Correctional Facility Capital Expenditure and Youth Facility Bond Act of 1988. Regulations in effect at that time were located in Title 15, California Code of Regulations, Division 1, Chapter 1, Subchapter 2.) There are no comparable federal regulations or statutes.

**TITLE 15, DIVISION 1, CHAPTER 1, SUBCHAPTER 6
2007 LOCAL JAIL CONSTRUCTION FUNDING PROGRAM**

The title of the regulations found in Title 15, Division 1, Chapter 1, Subchapter 6 has been changed to "Local Jail Construction Financing Program."

There were numerous punctuation changes throughout these regulations.

ARTICLE 1, GENERAL PROVISIONS**Section 1700, Purpose.**

This regulation describes the scope of the regulations found in Title 15, California Code of Regulations, Division 1, Chapter 1, Subchapter 6. "Government Code Sections 15820.90 through 15820.918" is deleted and "Chapter 3.11 and 3.12 of Title 2, Division 3, Part 10.5 of the California Government Code" has been added.

In the Authority cited section, "and" was added before "Section 6030." In the Reference section, a comma was deleted after "15820.916" and "and" was added before "15820.917" and "and 15820.918," was deleted.

Section 1706, Definitions.

This regulation defines terms used throughout these regulations. At the request of the Department of Finance, several changes were made to more accurately describe the distribution of state reimbursements. In the following definitions, the term "financing" or "financed" replaced the terms "funds," "funded" or "funding."

- 2007 Local Jail Construction Funding Program
- Applicant
- Evaluating and rating process
- Lease-revenue bonds
- Local jail
- Match
- Needs assessment study

¹ As a result of the reorganization of California's correctional system in 2005, the Board of Corrections was renamed the Corrections Standards Authority.

- Net gain in beds
- Operational program statement
- Project
- Proposal
- Proposal evaluation criteria
- State bond funds

The term “2007 Local Jail Construction Financing Program” describes these regulations that implement and specify Chapters 3.11 and 3.12 of Title 2, Division 3, Part 10.5 of the California Government Code. The title of this construction administration program originally included the year of the implementing legislation (the Public Safety and Offender Rehabilitation Services Act of 2007). The year “2007” has been deleted.

The term “Applicant” describes those counties that are eligible for applying for financing from the Local Jail Construction Financing Program. The definition of “Applicant” has been amended to delete the year “2007” from the title of this construction financing program.

The term “Application” was added to describe the document that counties complete and submit to the Corrections Standards Authority to be assessed by factors described in Section 1740.1. This term is used throughout these regulations with respect to Phase II of the Local Jail Construction Financing Program.

The definition of “Application assessment factors” is used in the new Section 1740.1, “Phase II Application Assessment Factors.” This term was added to these regulations to describe the factors with which applications will be assessed through Phase II of the Local Jail Construction Financing Program.

The term “Assist the State in siting mental health day treatment and crisis care, and/or a continuum of care for parolees” refers to original language in AB 900 (Government Code Section 15820.917) that required CDCR to give funding preference in Phase I of the Local Jail Construction Financing Program to counties that assisted the State in siting mental health day treatment and crisis care (pursuant to Penal Code Section 3073), and/or a continuum of care for parolees. The definition was amended to add “in Phase I of the Local Jail Construction Financing Program” at the end of the sentence.

The term “Assist the State in siting reentry facilities” refers to original language in AB 900 (Government Code Section 15820.917) that required CDCR to give funding preference in Phase I of the Local Jail Construction Financing Program to counties that assisted the State in siting reentry facilities (pursuant to Penal Code Section 6270). The definition was amended to add “in Phase I of the Local Jail Construction Financing Program” at the end of the sentence.

The term “cash match” (also known as “hard match”) describes the money that is required to be applied as the county’s share of an award of financing. The definition has been amended to add “and Section 1714.1.”

The definition of “Conditional award” has been added to replace “Conditionally award state bond funds.” Both definitions are very similar; however, “Conditional award” describes the maximum amount of state reimbursement a participating county may receive through the

Local Jail Construction Financing Program (both phases) and what conditions must be met to be eligible for a conditional award. This new term focuses on the award itself, not the awarding of financing.

The definition of "Conditionally award state bond funds," has been deleted because it didn't focus on the award itself, it focused on the awarding of financing. A new definition, "Conditional Award" has been added.

The definition of "Construction bid" is being added to describe the building contractor's bid for a design-bid-build project.

"Corrections Standards Authority agreement" is the title of a specific agreement between the participating county and the Authority that sets forth standard contracting requirements for the State of California as well as other necessary information.

The term "hard match" (also known as "cash match") describes the money that is required to be applied as the county's share of an award of financing. The definition has been amended to add "and Section 1714.1."

The term "In-Kind match" (also known as "soft match") describes the cost of county-paid personnel, land or services that may be applied as a portion of the county's share of an award of financing. The definition has been modified to more accurately describe the types of funds that fit in this category. In addition, this definition has been amended to add "and Section 1714.1."

The definition of "Interim Financing" has been added to describe the loans that will reimburse participating counties for eligible construction costs through the Local Jail Construction Financing Program.

The term "Large county" describes counties with a population of greater than 700,000. The definition has been amended to add "for Phase I and January 1, 2011 for Phase II."

The term "Lease-revenue bonds" (also known as state reimbursements) describes the source of financing for local jail construction or renovation as authorized by Chapters 3.11 and 3.12 of the California Government Code. The definition has been modified to include "Title 2, Division 3, Part 10.5 of" for accuracy. The word "means" has been changed to "mean."

The term "Local jail" describes the types of county jails (II, III, and IV as defined in Titles 15 and 24, Minimum Standards for Local Detention Facilities) that are eligible to receive financing as authorized by Chapters 3.11 and 3.12 of Title 2, Division 3, Part 10.5 of the California Government Code. The definition has been amended to add "and Section 1712.1."

The term "Match" describes the local funds in the form of cash, property value, or management/administrative services contributed by a county for a state financed project as authorized by Chapters 3.11 and 3.12 of Title 2, Division 3, Part 10.5 of the California Government Code. The definition has been amended to add "and Section 1714.1."

The term "Medium county" describes counties with a population from 200,001 to 700,000. The definition has been amended to add "for Phase I and January 1, 2011 for Phase II."

The term "Needs assessment study" describes the document that contains data that validates and justifies the scope of the construction/renovation project as required by Chapters 3.11 and 3.12 of Title 2, Division 3, Part 10.5 of the California Government Code. The definition has been amended to delete the year "2007" from the title of this construction financing program.

The term "Net gain in beds" describes the number of beds being added to a county's detention system as a result of this construction financing program. The definition was amended to add "in Phase I of the" and delete the year "2007" from the title of this construction financing program.

The term "Operational program statement" describes the document, submitted early in the design process, which explains how a county intends to operate the local jail. The definition has been amended to delete the year "2007" from the title of this construction financing program.

The term "Participating county" describes a county participating in the Local Jail Construction Financing Program. References to the specific California Government Code sections have been deleted, replaced by "Chapter 3.11 or 3.12 of Title 2, Division 3, Part 10.5 of the California Government Code."

The definition of "Phase I" is being added to identify and distinguish the portions of these regulations that apply to the process and awarding of financing pursuant to Chapter 3.11 of Title 2, Division 3, Part 10.5 of the California Government Code.

The definition of "Phase II" is being added to identify and distinguish the portions of these regulations that apply to the process and awarding of financing pursuant to Chapter 3.12 of Title 2, Division 3, Part 10.5 of the California Government Code.

The definition of "Preliminary plans" is being added to describe the first set of documents submitted by the participating county in the State Public Works Board's lease-revenue bond financing process.

The term "Project" describes the facility that is to be constructed or renovated through the Local Jail Construction Financing Program. The definition has been amended to delete the year "2007" from the title of this construction financing program.

The term "Project delivery and construction agreement" is the title of a specific agreement between the participating county, State Public Works Board, CDCR and the Authority that sets forth standard contracting requirements for the State of California as well as other necessary information. This definition is being amended to add "as described in Section 1748."

The term "Proposal" describes the document that counties complete and submit to the Corrections Standards Authority to be evaluated by criteria described in Section 1740. This definition has been amended to add reference to Phase I to emphasize that the term "proposal" is used in Phase I of the Local Jail Construction Financing Program. The definition

has also been amended to delete the year "2007" from the title of this construction financing program.

The term "Proposal evaluation criteria" describes the elements used in Section 1740 to rate the proposals by a weighted point scale system. This definition has been amended to add reference to Phase I to emphasize that the term "proposal" is used in Phase I of the Local Jail Construction Financing Program. The definition has also been amended to delete the year "2007" from the title of this construction financing program.

The term "Reentry preference" refers to original language in AB 900 (Government Code Section 15820.917) that required CDCR to give funding preference in Phase I of the Local Jail Construction Financing Program to counties that assisted the State in siting reentry facilities (pursuant to Penal Code Section 6270). The definition was amended to add "in Phase I of the Local Jail Construction Financing Program." In addition, reference to Government Code Section 15820.917 has been deleted.

The term "Small county" describes counties with a population of fewer than 200,000. This definition has been amended to add "for Phase I and January 1, 2011 for Phase II."

The term "soft match" (also known as "in-kind match") describes the cost of county-paid personnel, land or services that may be applied as a portion of the county's share of an award of financing. This definition has been modified to more accurately describe the types of funds that fit in this category. In addition, this definition has been amended to add "and Section 1714.1."

"State bond financing" (also known as "lease-revenue bonds") describes the source of financing for local jail construction or renovation as authorized by Chapters 3.11 and 3.12 of the California Government Code. The definition has been modified to include "Title 2, Division 3, Part 10.5 of" for accuracy.

The term "State reimbursements" describes the payments made to the county by CDCR to reimburse the county for eligible project costs.

The definition of "Working drawings" is being added to describe the final set of documents submitted by the participating county in the State Public Works Board's lease-revenue bond financing process.

In the Note section, "and" was added before and a comma was added after "15820.917" and "and 15820.918," was deleted.

ARTICLE 2, ELIGIBILITY REQUIREMENTS

Section 1712, Eligibility Requirements.

This regulation establishes the eligibility requirements for the Phase I of the Local Jail Construction Financing Program. The title of this section has been changed to add "for Phase I" after "Requirements." (The new title will read "Eligibility Requirements for Phase I.")

In subsection (a) Phase I was added to emphasize that this section is only applicable to Phase I of the Local Jail Construction Financing Program. The definition has also been

amended to delete the year "2007" from the title of this construction financing program. In addition, the term "financing" replaced the term "funding."

In subsection (b), "funding" was deleted and "reimbursement" was added.

In subsection (c) "for state bond funding" was deleted and "for state financing" was added.

In subsection (c)(1) "for funding" was deleted.

In the Note section, references to Government Code Sections 15820.91, 15820.916 and 15820.917 have been deleted.

Section 1712.1, Eligibility Requirements for Phase II.

The new regulation establishes the eligibility requirements for Phase II of the Local Jail Construction Financing Program and was developed to explain how a county can be eligible to participate. These requirements are consistent with statute and establish conditions, when met in their entirety by the county, make them eligible for state financing under this program. It also describes what can and cannot be financed through this program. These requirements are consistent with past practice by the Authority in previous jail construction funding programs and were established to ensure conformance with statutory requirements, as well as to create parameters in response to the limited state funds available.

Section 1714, Matching Fund Requirements.

This regulation describes the matching fund requirements for counties participating in this construction program. The title of this section has been changed to add "for Phase I" after "Requirements." (The new title will read "Matching Fund Requirements for Phase I.")

In subsections (a) through (f), "Phase I" has been added. Also in subsection (a), reference to Government Code Section 15280.917 has been deleted.

In subsection (g), "directly" was added between "be" and "for."

Also in this subsection, "funded by the Authority" was deleted.

In the Note section, references to Government Code Sections 15820.916 and 15820.917 have been deleted. "And" has been added between "15820.906" and "15820.907."

Section 1714.1, Matching Fund Requirements for Phase II.

This new regulation specifically pertains to Phase II of the Local Jail Construction Financing Program and describes the matching fund requirements for counties participating in this construction program. It was developed to reflect that statutory language requires counties contribute matching funds totaling a minimum of 10 percent of the total project cost and includes the statutory option that counties below a general population of 200,000 can petition the Authority for a reduction in match. The regulation states that the 10 percent match can be any combination of cash and in-kind match.

The regulation also describes those items that can be considered cash match and in-kind match.

ARTICLE 3, APPLICATION TO PARTICIPATE IN 2007 LOCAL JAIL CONSTRUCTION FUNDING PROGRAM

The title of this article has been changed to "Application to Participate in the Local Jail Construction Financing Program. The year "2007" has been deleted from the title. In addition, the word "financing" has replaced the word "funding."

Section 1730, Proposal.

This regulation describes the requirements and elements for a proposal for the Local Jail Construction Financing Program. The title of this section has been changed to "Proposal Process for Phase I."

Subsections (a) and (b) have been amended to include "for Phase I."

Subsection (b)(2) was amended for consistency with Section 1747.5. The phrase "owned by the city" was deleted and "located within the limits of the city" was added.

In subsection (b)(7) "include identifying" has been deleted and "identify" has been added. Also in this subsection term "financing" replaced the term "funds."

In the Note section, reference to Government Code Section 15820.916 has been deleted.

Section 1730.1, Application Process for Phase II.

This new regulation specifically pertains to Phase II of the Local Jail Construction Financing Program and was developed to describe the requirements and elements for counties to apply for financing through this program. The application is required to be submitted utilizing the 2011 Local Jail Construction Financing Program – AB 900 Phase II Application Form attached to the AB 900 Phase II Construction or Expansion of County Jails, Request for Applications and approved by the Authority. The form provides a clear, concise and consistent format for the counties to record necessary information as listed in subsection (a)(1) through (5) that is essential to the assessment process because the information is used as assessment criteria (see Section 1740.1). The 2011 Local Jail Construction Financing Program – AB 900 Phase II Application Form is a single contract, specific document and does not contain rules of general application.

The 2011 Local Jail Construction Financing Program – AB 900 Phase II Application Form, dated October 6, 2011, is incorporated by reference in the regulations. The form would be impractical, cumbersome and unduly expensive to publish in the California Code of Regulations as it is a twelve (12) page, inter-active form that is to be completed by the counties electronically, printed and submitted as the project application along with other required documents as attachments. The form is reasonably available to the public, via the Authority's website at <http://www.cdcr.ca.gov/CSA/index.html> and upon request, directly from the Authority's business office located in Sacramento, CA.

Subsection (c)(1) is being added to establish the requirements for a county relinquishing a Phase I conditional award and applying for a Phase II award.

Section 1731. Needs Assessment Study.

This regulation describes how counties must document their need for financing through the Local Jail Construction Financing Program. The terms "Phase I" and "Phase II" have been added.

Section 1740. Proposal Evaluation Criteria.

This regulation describes the criteria by which proposals will be evaluated. The title of this section has been changed to add "Phase I" before "Proposal Evaluation Criteria." (The new title will read "Phase I Proposal Evaluation Criteria.")

The comma after 15820.906 was deleted, "and" was added before 15820.907 and reference to 15820.916 and 15820.917 are deleted.

The term "Phase I" was added to the first paragraph.

In the Note section, after "Authority cited:" the word "Sections" was changed to "Section," and reference to Government Code Sections 15820.916 and 15820.917 have been deleted as they are not applicable to Phase I. "And" has been added between "15820.906" and "15820.907."

Section 1740.1, Phase II Application Assessment Factors.

This new regulation describes the factors by which applications will be assessed. This regulation specifically pertains to Phase II of the Local Jail Construction Financing Program. Applications submitted by counties will be assessed to determine their eligibility for financing through this program. It reflects statutory language that requires the Authority to grant preference in the assessment process to 1) those counties that committed the largest percentage of inmates to state custody in relation to the total inmate population of CDCR in 2010 and 2) those counties that received a Phase I conditional award and wish to relinquish their conditional award and reapply for a Phase II conditional award provided that those counties agree to continue to assist the state in siting reentry facilities.

The assessment factor for cost effectiveness is referenced in Government Code Section 15820.916 as a factor for approval or disapproval of local jail facilities.

Government Code Section 15820.916 requires that in order to be eligible to receive funds through this program, counties must document their need for jail beds. The assessment factor for the documentation of need for the project was added to meet this legislative requirement.

The factor for the use of detention alternatives was included to evaluate the county's commitment to effectively relieve jail overcrowding and reduce recidivism by utilizing alternative-to-jail programs.

The assessment factor for scope of work and project impact will be based on the degree to which the county's application describes the proposed project and demonstrates the impact the project will have on the county's detention system.

The assessment factor for an administrative work plan will be based on the degree to which the county's proposal provides a clear and comprehensive plan for designing, performing and managing the proposed project that is likely to result in success.

Counties are required to safely staff and operate the constructed facility within 90 days of its completion. The assessment factor for a plan for adequate staffing of the facility was included in this regulation.

Assembly Bill 109 provided for a fundamental realignment of responsibilities for lower level offenders and adult parolees from state prisons to local jurisdictions. The assessment factor for the effects of realignment was included in this regulation.

The assessment factor for budget was included to enable the evaluators to understand how the county intends to budget for the construction project in a reasonable and cost effective manner.

Section 1747, Steps to Proceed with Construction for Design-Bid-Build Projects.

This regulation describes the requirements to be fulfilled in order to begin construction for design-bid-build projects in the Local Jail Construction Program. In subsection (a) "Prior to a participating county receiving state bond funds" was deleted.

Subsection (a)(1) was amended to add reference to Section 1730.1 of these regulations.

Subsection (a)(3) was added to show CDCR's involvement in confirming that participating counties have completed the various steps required before they can proceed with construction. The new language also describes the oversight role of the State Department of Finance and the Board.

In the new subsection (a)(4), "financing from state bond funds" was deleted.

In the new subsection (a)(5), "by the financing of state bond funds" was deleted.

In the new subsection (a)(7), "a final notice of determination on its environmental impact report" was deleted and "documentation of California Environmental Quality Act compliance" was added.

In the new subsection (a)(8), "(minimum of a 40 plus year site lease or use permit)," was deleted. Adequate control of the site is subject to a case-by-case analysis that could lead to more or less than 40 years to be deemed adequate.

Section 1747.1, Steps to Proceed with Construction for Design-Build Projects.

This regulation describes the requirements to be fulfilled in order to begin construction for design-build projects in the Local Jail Construction Program. In subsection (a) "Prior to a participating county receiving state bond financing" was deleted.

Subsection (a)(1) was amended to add reference to Section 1730.1 of these regulations.

A new subsection (a)(3) was added to show CDCR's involvement in confirming that participating counties have completed the various steps required before they can proceed

with construction. The new language also describes the oversight role of the State Department of Finance and the Board.

In the new subsection (a)(4), "financing from ...bond financing" was deleted.

In the new subsection (a)(5), "by the financing of state bond financing" was deleted.

In the new subsection (a)(7), "a final notice of determination on its environmental impact report" was deleted and "documentation of California Environmental Quality Act compliance" was added.

In the new subsection (a)(8), "(minimum of a 40 plus year site lease or use permit)," was deleted. Adequate control of the site is subject to a case-by-case analysis that could lead to more or less than 40 years to be deemed adequate.

Section 1747.5, Requirements for the Siting Agreement.

This regulation describes the roles, responsibilities and performance expectations of the participating county and the CDCR to establish a reentry facility. The title of this regulation has been changed to read "Requirements for the Siting Agreement in Phase I."

"In Phase I" was added at the beginning of subsection (a). The term "financing" replaced the term "funds" and "funding" in subsection (a).

In the Note section, "and" was added before "Section 6030". After "15820.907," "and" was deleted, a comma was deleted after 15820.915 and "and" was added.

Sections 1748, Project Delivery and Construction Agreement, 1748.5, Corrections Standards Authority Agreement, 1752, Ground Lease, 1753, Right of Entry for Construction and 1754 Facility Sublease describe the various agreements, leases and subleases that counties must enter into to participate in this lease-revenue bond financing program. Each of these agreements, leases and subleases are entered into separately with each individual county for each individual construction project and all the provisions in the documents are subject to negotiation between the parties on a case-by-case basis.

Section 1748, Requirements for the Project Delivery and Construction Agreement.

This regulation describes the elements of the project delivery and construction agreement. Subsection (a) was amended to read that this agreement will be executed after the Board establishes the scope, cost and schedule for the participating county's project.

Subsection (b)(1) and (b)(8) were deleted because they duplicate language from the project delivery and construction agreement. Subsections (b)(2), (4) and (5) and subsection (c) were deleted because these requirements reside in the CSA agreement. Although these requirements have been deleted and now appear as provisions in the project delivery and construction agreement and the CSA agreement, it should be noted that these agreements are entered into separately with each individual county for each individual construction project and all these provisions in the documents are subject to negotiation between the parties on a case-by-case basis.

Subsection (b)(7) was deleted because it duplicates language from Section 1751, General Requirements (subsection (e), and is not necessary to repeat here.

Subsection (b)(3) was deleted because the project delivery and construction agreement does not contain this detailed information. (This regulation was crafted before the project delivery and construction agreement was developed. It has been determined this information is no longer relevant.)

Subsection (b)(6) was deleted due to its vagueness. There is some information from the formal project proposal in the project delivery and construction agreement.

Section 1748.5, Corrections Standards Authority Agreement.

This regulation was added to describe the basic elements of the CSA agreement between the participating county and the Authority. This agreement is entered into separately with each individual county for each individual construction project and all these provisions in the document are subject to negotiation between the parties on a case-by-case basis.

Section 1751, General County Requirements.

This regulation describes a participating county's responsibilities as delineated in statute. Subsection (e) was amended to clarify that as a general county requirement, in all agreements, the county must indemnify the State of California. This subsection was also amended to add acquisition, design, construction, operation and maintenance to those situations that the county must indemnify the state.

Section 1752, Ground Lease.

This regulation describes the transfer of the possession and control of the property upon which the local jail facility will be constructed, from the county to CDCR. Subsection (a) has been amended to delete "In the situation involving a ground lease." "with Board consent" has been added. "only after the county has certified the site pursuant to Government Code Section 15820.906(b)(1) and" has been deleted. The remainder of this subsection was deleted because it duplicates language from the Ground Lease.

Subsection (b) has been amended to reflect that an easement is needed over adjacent county property as necessary for the project footprint.

Subsection (c) has been amended to provide a more simple description of the absolute minimum requirements for a legal description.

Subsection (d) was deleted because it is a requirement that the State is placing upon itself – the State will be requesting recordation rather than requiring the county to do the recordation.

Subsection (e) was deleted because it is a precondition to the Ground Lease and is part of the Board's determination that the site is adequate as referenced in subsection (a).

Subsection (f) was deleted because the term and termination provisions are included in the Ground Lease. Subsection (g) was deleted because it is just one of many specific requirements in the Ground Lease. Subsection (i) was deleted because this requirement is included in the Ground Lease. Although these requirements have been deleted and now appear as provisions in the Ground Lease, it should be noted that the Ground Lease is

entered into separately with each individual county for each individual construction project and all these provisions in the documents are subject to negotiation between the parties on a case-by-case basis.

Subsection (j) was deleted because it is not technically correct. The title remains with the county throughout the term of the lease. This requirement is included in the Ground Lease.

Section 1753, Right of Entry for Construction.

This regulation authorizes the participating county and their contractors to use the site that has been leased to CDCR via the above referenced ground lease. The last sentence in subsection (a) was deleted because termination language resides in the Right of Entry for Construction agreement.

Subsection (c) was deleted because this concept is addressed in Section 1751, General Requirements, subsection (e), and is not necessary to repeat here.

Section 1754, Facility Sublease.

This regulation describes the requirements to sublease the local jail facility to the county for its use, operation and maintenance. It also contains language that protects the State of California and describes the parameters of how the county may use and occupy the local jail facility. The first sentence in subsection (a) was amended to delete "Immediately after" and in its place "If" was added. At the end of the first sentence, "with Board consent" was added to reflect the Board's oversight in this process. A new sentence was added that describes, in broad terms, the content of the facility sublease.

Subsections (c)(1)(2) and (7) through (10) were deleted because these requirements reside in the Facility Sublease agreement. Although these requirements have been deleted and now appear as provisions in the Facility Sublease, it should be noted that Facility Sublease is entered into separately with each individual county for each individual construction project and all these provisions in the documents are subject to negotiation between the parties on a case-by-case basis.

With respect to subsection (c)(3), this is not a county responsibility but a responsibility of CDCR; therefore this statement was deleted. In subsection (c)(4), it is a matter of Board consent whether a county may make additions, betterments or improvements to the facility. The Board's consent will consider the abatement issue, among others. In subsection (c)(6), indemnification is addressed in Section 1751, General County Requirements.

ARTICLE 4, ADMINISTRATION OF THE PROCEEDS OF THE STATE BOND FUNDS AND PROJECT MONITORING

The title of this article has been changed. "Reimbursements" has replaced "the Proceeds of the State Bond Funds." (The new title is "Administration of Reimbursements and Project Monitoring.")

Section 1756, Disbursement of the Proceeds from the Lease-Revenue Bond Funds.

This regulation describes how state reimbursements are disbursed to participating counties. The title of this regulation was changed to reflect that participating counties are reimbursed

by the state for eligible project costs for the Local Jail Construction Financing Program. (The title will read "Disbursement of State Reimbursements.")

In subsection (b), "or application" was added after "proposal." Also, "project delivery and construction" was deleted and "CSA" was added before "agreement." Finally, "payment" was deleted and "state reimbursement" was added.

Subsection (c) was deleted because, while technically true, it is a misleading statement. There are many other activities that must take place before reimbursement to counties may occur.

In the new subsection (c) "payments from the proceeds of lease-revenue bonds" was deleted and "state reimbursements" was added. "the Board and/or" was deleted and "/or CDCR and" was added to reflect that the Authority and CDCR are the entities that may be questioning the supporting documentation.

Subsection (e) was deleted because it was unnecessary. The following subsections describe the conditions under which state reimbursements are made.

The following format changes were made: subsection (e)(1) was renumbered (d) and (e)(2) was renumbered (e).

The new subsection (d) was amended to delete the word "payment." The section was also amended to allow counties to submit for payment on a schedule mutually agreed to by the Authority and the participating county and written in the CSA agreement.

The new subsection (e) was amended to delete the word "payment." Due to the reformatting of this regulation, ";and," was deleted.

The former subsection (e)(3), now the new subsection (f), has been amended to delete "from the proceeds of lease-revenue bonds to the participating county" and add "of anticipated total state reimbursements." This subsection was also amended to reflect CSA Board action that changed the retention amount withheld from the proceeds of the lease-revenue financing from 20% to 5%. This section was also amended to add reference to the CSA agreement and to emphasize that in order to release the withheld amount, the participating county must comply with the applicable terms of the CSA agreement, project delivery and construction agreement and other agreements applicable to financing and applicable conditions and requirements of law and regulation.

The former subsection (e)(3) partially described the conditions with which counties must comply before funds withheld would be released to the participating county. Subsections (f)(1), (2), (3) and (5) were added to complete the list of conditions that participating counties must meet. Subsection (4) is one of the elements from the previous (e)(3). Finally, at the end of subsection (f)(5) "receipt and approval of the final project audit report, and final construction inspection and approval by appropriate officials." was deleted because these elements are captured in subsections (f)(2) and (3).

The former subsection (e)(3) has been amended and reformatted to (f)(4) and (5).

Section 1757, Pooled Money Investment Board.

This regulation describes the financing provided by the Pooled Money Investment Board (pursuant to statute) through the CDCR to the participating county, for the local jail project until lease-revenue bonds are available. This regulation was deleted.

Section 1760, Accounting.

This regulation describes the accounting requirements that participating counties must adhere to if awarded state financing through the Local Jail Construction Financing Program. The title of this regulation has been changed to Record Keeping and Accounting.

A new subsection (a) was added to reflect the requirement that participating counties must establish an official project file for the project. This subsection also describes the required contents of the file and that a copy of this file would be forwarded to the CDCR upon termination of the CSA agreement, marking the completion of the project. The required documents (contracts, payment of invoices, transfer of funds and other related accounting records) describe how the state reimbursements and county funds were appropriately received and distributed.

The new subsection (b) requires that the file shall be protected from fire or other damage and the new subsection (c) requires that the file be preserved for a minimum of three years after the last date on which no lease-revenue bonds are outstanding.

The former subsections (a) and (b) have been renumbered to (d) and (e) respectively. Subsections (d) and (e) were amended to delete "proceeds of lease-revenue bonds" and add "state reimbursements" and subsection (e) was amended to delete "bond funds" and add "reimbursements."

Section 1766, Monitoring of Process.

This regulation describes the project monitoring requirements of the Authority and the Board. Subsection (a) was amended to add that both CDCR and the Authority shall monitor the administration of the project.

This subsection was also amended to reflect that participating counties are not paid by the proceeds of lease-revenue bonds, but are reimbursed by the state.

Subsection (b) was amended to add the Authority and the State Department of Finance to clarify that the Board, the Authority and the Department of Finance have administrative oversight of the project.

Subsection (c) was added to require state officials' access to the project site, project files and contractors' records.

Section 1767, Completion of Project.

This regulation requires the county to construct the project in accordance with the agreements, plans and specifications as approved by the Board and the Authority. This regulation was reformatted into two subsections. Subsection (a) was amended to delete reference to the project delivery and construction agreement and add reference to the CSA agreement. The reference to plans and specifications was added after "(with respect to a design-build project)" to clarify that participating counties utilizing the design-build method of

construction must complete their projects in accordance with approved plans and specifications (as required by 1749.1) as well as the approved performance criteria or performance criteria and concept drawings. The last sentence in this section was also deleted.

Subsection (b) now contains reference to the repercussions of failure to proceed with the project on the agreed schedule and adds reference to the CSA agreement. Subsection (c) was added to require the participating county to submit a final project summary to the Authority upon completion of the project.

1768, Project Modifications.

This regulation describes the process that participating counties must follow if modifications are needed to their project. Subsection (a) was amended to delete the "project delivery and construction" and add "CSA" before "agreement." In addition, the words "written amendment and" was deleted and in its place, the word "advance" was added.

As part of establishing a project with the Board, participating counties must develop a scope of work, a budget and a schedule for the approval of staff of the Board. These items are approved by the Board and included in the project delivery and construction agreement and the CSA agreement. The project delivery and construction agreement will not be amended after approval by the Board (hence its deletion from this regulation); however, the CSA agreement may be amended. In order for an amendment to be made to the CSA agreement, counties must obtain prior written approval of the Board and the Authority.

To assure that a project is suitable for lease-revenue bond financing, careful scrutiny is given to a project's scope, design, configuration, cost and schedule. Once a participating county's project is established by the Board (and all parties have signed the required agreements), any significant change to a project's scope, design, configuration, cost and schedule must be preceded by advance approval of the Board and the Authority.

Due to changes to subsections (1), (2) and (3), the last sentence in Subsection (a) has been amended to delete "if the modifications" and add "upon any of the following events or circumstances:" to be grammatically correct.

Subsection (a)(1) was amended to accurately reflect language in the project delivery and construction agreement.

Subsection (a)(2) was added to reflect the importance of the previously approved completion date with respect to the project's ability to be bond saleable.

In subsection (3), "Substantially alter" was deleted and "A more than minor change to" was added to reflect language in both the project delivery and construction agreement and the CSA agreement.

Subsection (4) was added because any project modification that would impact the Authority's or the State Fire Marshal's construction or operational regulations, or the security and fire and life safety of the facility or change the number of beds, must be reviewed and approved by those state entities and requires advance approval of the Board and the Authority.

In subsection (3), "Change the number of beds or otherwise impact the Authority construction or operations regulations." was deleted. These two issues are now included in subsection (4).

A new subsection (b) was added to require the participating county to provide written notification to the Authority of any modifications to the county's agreement for construction with its contractor.

The former subsection (b), now subsection (c), was modified to clarify when change orders are to be submitted.

In the former subsection (c), now subsection (d), "project delivery and construction" was deleted and "CSA" was added before agreement. In addition, the term "financing" replaced the term "funds" in subsection (d).

Section 1770, Audits.

This regulation describes the audit requirements that participating counties must adhere to if awarded state financing through the Local Jail Construction Financing Program. Subsection (a) was amended to require that the participating county obtain an audit performed in accordance with Government Auditing Standards, issued by the Comptroller General of the United States.

In the second sentence of subsection (a), "participating" was added in front of "county."

The third and fourth sentences in subsection (a) were reformatted into a new subsection (d).

A new subsection (b) was added to describe the auditor's final audit report and require that the final audit report be submitted to the county Board of Supervisors.

In the event that the auditor determines any findings and recommendations, a corrective action plan must be prepared. Subsection (c) was added to describe the requirements for the corrective action plan.

"CDCR" was added to the first sentence of the new subsection (d). In the second sentence, "CDCR" was added, "Board and" was deleted and "or the" was added. In addition, "the proceeds of lease-revenue bonds" was deleted and "state reimbursements" was added. Finally, "the" was deleted, "established" was added and "of the bond contract" was deleted.

The former subsection (b), now the new subsection (e) was amended to add the term "state reimbursements" and delete the term "payments."

Section 1772, Unused Proceeds of Lease-Revenue Bonds.

This regulation clarifies that counties will not receive the state reimbursement in excess of the amount of the conditional award provided by the Authority and further stipulates the process that occurs in the event a participating county does not use all the state financing that was awarded to them. The title of this regulation has been changed to "Unused Conditional Awards."

Subsection (a) was amended to add "participating" in front of "county." "the proceeds of lease-revenue bonds" was deleted and "state reimbursements" was added. The word "provided" was deleted and "approved" was added.

The first sentence in subsection (c) was moved to be the new subsection (b). This sentence was restructured for clarity. "Any proceeds of lease-revenue bonds not expended by" was deleted and replaced by "If a participating county does not fully use the amount of the conditional award." "pursuant to the approved proposals, project delivery and construction agreement or approved construction plans" was deleted. "that unused amount" and "available for redistribution" was added and "redistributed" was deleted.

Subsection (b) was moved to subsection (c). It was amended to delete "proceeds of lease-revenue bonds" and "state reimbursements" was added. The word "spent" was deleted and "made" was added. The word "payments" was deleted and "state reimbursements" was added.

All of subsection (c) was deleted because it was unnecessary; this language is in the CSA agreement.

ARTICLE 5, APPEAL PROCEDURES

Section 1776, Purpose.

This regulation describes the purpose of the regulations in this article and applies to both phases of the Local Jail Construction Financing Program. The term "or application assessment process" was added at the end of the first sentence and at the end of the last sentence. The term "evaluation or assessment" replaced the term "funding" in the last sentence.

Section 1778, Definitions.

This regulation defines terms used throughout the following regulations. In subsection (ii) of the definition of "Hearing panel," "state reimbursements" replaced "proceeds of lease-revenue bonds."

Section 1788, Request for Corrections Standards Authority Appeal Hearing.

This regulation describes the process for participating counties to request an appeal hearing. It has been amended to add "or the application assessment process."

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The County of Yuba

AUDITOR - CONTROLLER

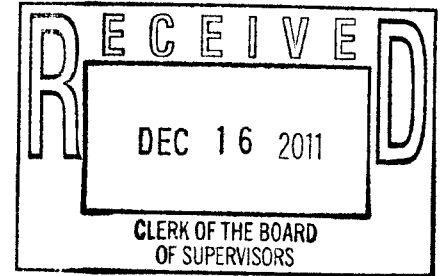


DEAN E. SELLERS

915 8TH Street, Suite 105
Marysville, CA 95901-5273
(530) 749-7810

December 15, 2011

Board of Supervisors
County of Yuba
915 8th Street Suite 109
Marysville CA 95901



Honorable Members:

An Independent Audit of the financial records for the following agency has been completed for the year(s) specified:

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

JUNE 30, 2011

Yours truly,

Dean E. Sellers

Dean E. Sellers,
Auditor-Controller

DES/mrj
Enclosure (1)

BOS CORRESPONDENCE **B**

**THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY**

FINANCIAL STATEMENTS

JUNE 30, 2011

MICHAEL L. HINZ, CPA, INC
CERTIFIED PUBLIC ACCOUNTANT

476 Century Park Drive, Ste. A
Yuba City, CA 95991

TEL: (530) 673-9500
FAX: (530) 673-2535

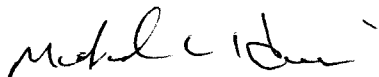
INDEPENDENT AUDITOR'S REPORT

Board of Directors
Three Rivers Levee Improvement Authority
Marysville, California

I have audited the accompanying Statement of Financial Position of Three Rivers Levee Improvement Authority as of June 30, 2011 and the related Statement of Activities and Changes in Net Assets and Combined Statement of Cash Flows for the year then ended. These financial statements are the responsibility of management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with generally accepted auditing standards and government auditing standards, issued by the Comptroller General of the United States. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. I believe that my audit provides a reasonable basis for my opinion.

In my opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Three Rivers Levee Improvement Authority as of June 30, 2011 and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles.



November 28, 2011

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
STATEMENTS OF FINANCIAL POSITION
JUNE 30, 2011

ASSETS

	General Fund	Levee Assessment Fund
	<u> </u>	<u> </u>
Current Assets:		
Cash in County Treasury (Note)	12,369,206	33,984
Accounts Receivable	2,551,531	
Interest Receivable	<u>47,098</u>	<u>1,254</u>
Total Current Assets	<u>14,967,835</u>	<u>35,238</u>
Fixed Assets:		
Deposit – Condemnation Fund	<u>252,558</u>	
Total Other Assets	<u>252,558</u>	
Total Assets	<u>15,220,393</u>	<u>35,238</u>

LIABILITIES AND NET ASSETS

Current Liabilities:		
Accounts Payable	<u>1,731,211</u>	
Total Current Liabilities	<u>1,731,211</u>	
Net Assets		
Unrestricted	<u>13,489,182</u>	<u>35,238</u>
Total Liabilities and Net Assets	<u>15,220,393</u>	<u>35,238</u>

See accompanying notes to financial statements

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
STATEMENT OF ACTIVITIES AND CHANGES IN NET ASSETS
JUNE 30, 2011

	<u>General Fund</u>	<u>Levee Assessment</u>
Revenue:		
Local Share – Yuba County (Note)	3,340	
Proposition 1E Funding	14,525,493	
Property Assessment		814,374
Interest	221,023	2,988
Landowner Funding	15,505	
Other Income (Note)	<u>84,263</u>	
Total Revenue	<u>14,849,624</u>	<u>817,362</u>
Expenditures:		
Special Projects		
Levee Improvement Costs (Schedule)	14,111,717	
Maintenance Reimbursement		782,124
Administrative Expenses:		
Yuba County Reimbursements		
Salaries and Benefits	224,533	
Office Costs	177,463	
Utilities	33,892	
Insurance	287,827	
Directors Fees	3,650	
Rent	35,323	
Office and Miscellaneous	9,648	
Travel	11,718	
Memberships	<u>10,305</u>	
Total Expenditures	<u>14,906,076</u>	<u>782,124</u>
Excess of Revenues over Expenditures	(<u>56,542</u>)	35,238
Net Assets – Beginning of Year	<u>13,545,724</u>	<u>-0-</u>
Net Assets – End of Year	<u><u>13,489,182</u></u>	<u><u>35,238</u></u>

See accompanying notes to financial statements

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
STATEMENT OF CASH FLOWS
JUNE 30, 2010

Cash Flows From Operating Activities:

Cash Received from Local Funding	103,108
Cash Received – Grants, etc.	14,952,870
Cash Disbursed for Operating Activities	<u>(19,253,875)</u>

Net Cash Flows Used in Operation Activities: (4,197,897)

Cash Flows From Investing Activities:

Interest Income	221,023
Condemnation Fund Receipts (Net)	<u>(98,876)</u>

Net Cash Flows From Investing Activities 122,147

Cash Flows From Financing Activities -0-

Net Decrease in Cash (4,075,750)

Cash at Beginning of Year 16,444,956

Cash at End of Year 12,369,206

See accompanying notes to financial statements

**THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
SCHEDULE OF LEVEE IMPROVEMENT COSTS
FOR THE YEAR ENDED JUNE 30, 2011**

Phase 2		112,553
Phase 3		33,367
Phase 4 – Yuba:		
Design	574,670	
Permit	258,445	
Environmental Mitigation	109,479	
Construction	145,062	
Construction Management	43,206	
Right of Way	<u>2,549,632</u>	
		3,680,494
Phase 4 – Feather:		
Segment 1:		
Design	18,241	
Construction Management	54,465	
Right of Way Support	40,724	
Segment 2:		
Design	339,715	
Construction	6,192,458	
Construction Management	876,226	
Right of Way Support	738,114	
Right of Way – Direct Purchase (Note)	615,694	
Segment 3:		
Design	19,738	
Construction Management	7,855	
Right of Way Support	<u>56,592</u>	
		8,905,605
Goldfields Technical Analysis		599,471
Environmental Mitigation Costs		777,060
Interim Operating Costs		<u>3,167</u>
Total		<u><u>14,111,717</u></u>

**THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
COMMUNITY FACILITIES DISTRICT BOND FUND
STATEMENT OF NET ASSETS
JUNE 30, 2011**

ASSETS

	<u>June 30, 2011</u>	
	<u>CFD 2006-1</u>	<u>CFD 2006-2</u>
Cash in Treasury	<u>968,022</u>	<u>217,544</u>
Total Assets	<u>968,022</u>	<u>217,544</u>

LIABILITIES AND NET ASSETS

Liabilities	-0-	-0-
Net Assets	<u>968,022</u>	<u>217,544</u>
Total Liabilities and Net Assets	<u>968,022</u>	<u>217,544</u>

See accompanying notes to financial statements

**THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
COMMUNITY FACILITIES DISTRICT BOND FUND
STATEMENT OF ACTIVITIES
JUNE 30, 2011**

	<u>CFD 2006-1</u>	<u>CFD 2006-2</u>
Revenue:		
Current Secured Taxes	396,760	84,139
Prior Taxes	<u>1,768</u>	<u>-0-</u>
Total Taxes	398,528	84,139
Interest	<u>9,529</u>	<u>2,215</u>
Total Revenue	408,057	86,354
Expenditures	<u>-0-</u>	<u>-0-</u>
Excess Revenues over Expenditures	408,057	86,354
Beginning Net Assets	<u>559,965</u>	<u>131,190</u>
Ending Net Assets	<u>968,022</u>	<u>217,544</u>

See accompanying notes to financial statements

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011

History and Organization

The Three Rivers Levee Improvement Authority (TRLIA) was formed in April 2004 as a Joint Powers Authority (JPA) between Yuba County and Reclamation District No. 784. Section 2.01 from the JPA agreement describes TRLIA's purpose.

This Agreement is made pursuant to the Act providing for the joint exercise of powers common to the County and the District, and for other purposes as permitted under the Act, the Bond Law and as agreed by the parties hereto. The primary purpose of this Agreement is to provide for flood control improvements located in the County, including improvements to the levee system and related drainage improvements. The Authority may undertake any activities necessary or desirable to achieve its primary purpose including, but not limited to (a) the power to study, plan for, design, develop, acquire, and construct and repair improvements, (b) the acquisition and holding of title to land, including the acquisition of land by eminent domain proceedings, as necessary for levee system improvements, related drainage improvements and/or habitat mitigation incident to any such improvements, and (c) the provision of financing for improvements and related activities, including financing by means of the creation of one or more community facilities districts, assessment districts or other financing districts, the entering into of lease and/or installment sale obligations, the issuance of revenue or other notes, bonds or evidences of indebtedness, and the imposition of appropriate impact or other fee obligations. The Authority may conduct activities alone, or in cooperation with any Member, any Associate Member, the State of California or any agency or political subdivision thereof, the United States or any department or agency thereof, or other entities. It is not contemplated that the Authority will in any way contract for or finance periodic levee maintenance activities which the District, other reclamation districts or other governmental or nongovernmental entities are obligated to do, or which otherwise in the past have been done by them.

Four work phases have been identified with the goal of achieving 200-year flood protection. The first construction work was initiated September 2004. The final phase was scheduled to be completed by the end of 2011 with the completion of the Upper Yuba Levee Improvement Project, however, additional Phase 4 work has been identified in the Goldfields that is anticipated to last at least for several more years. The cost to complete the four phases is estimated to be \$405 million and will be funded mostly by local sources and State funding.

Significant Accounting Policies

Fund Accounting

The Organization operates as an Enterprise Fund. The Enterprise Fund is used to account for operations that are financed and operated in a manner similar to private business enterprises where the costs (expenses, including depreciation) of providing services to the general public on a continuing basis are financed primarily through landowner charges.

Basis of Accounting

The Organization uses the accrual basis of accounting for financial reporting purposes. Accrual accounting attempts to record the financial effects on an enterprise of transactions and other events and circumstances that have cash consequences for an enterprise in the periods in which those transactions, events and circumstances occur rather than only in the periods in which cash is received or paid by the enterprise. Accrual accounting is concerned with the process by which cash expended on resources and activities is returned as more (or perhaps less) cash to the enterprise, not just with the beginning and end of that process.

Property and Equipment

The Organization was formed to perform repairs and improvements to property owned and maintained by the County of Yuba and Reclamation District No. 784. In addition, the organization has purchased land as a right of way to enable the improvements to the existing levee system.

Construction work for the improvement of the levee system within the Organizations boundaries in Yuba County is reflected on its books as an operating expense. The Organization, as originally formed, will cease to exist upon the completion of the projects for which it was formed. At that time ownership of any property and the completed improvements to the levee system will be transferred to the existing owner, primarily the State of California, and maintenance responsibility will be assumed by Reclamation District No. 784 and/or other entities established to perform this function. The value to be transferred will be the fair market value of levee improvements. The total costs of the levee improvements to date are as follows:

Fiscal Year Ended	
June 30, 2004	701,774
June 30, 2005	5,603,384
June 30, 2006	50,572,148
June 30, 2007	74,257,632
June 30, 2008	24,376,482
June 30, 2009	82,916,631
June 30, 2010	54,496,111
June 30, 2011	<u>14,111,717</u>
	<u>307,035,879</u>

Cash and Reserves

Funds of the Organization are on deposit with the Yuba County Treasurer. These funds consist of a diversified portfolio pool and do not require a category of risk in accordance with GASB #3. The risk of material loss with regard to these funds is not considered to be material.

Use of Estimates

The preparation of the general purpose financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the general purpose financial statements and the reported amount of revenue and expenditures or expenses during the reporting period. Actual results could differ from those estimates.

Deposit - State Condemnation Fund

Deposits with the State Condemnation Fund represent funds contributed for the purchase of property for the right of way for levee improvements, for which the District and the sellers have not reached an agreed upon sales price. The total contribution to the fund represents a 17.175% allocation from Three Rivers Levee Improvement Authority and an 82.825% allocation from the State of California Department of Water Resources. Upon the determination of the actual property fair value additional contributions will be made or any refunds will be received in the same proportion. During this process, the District receives interest on these funds. The total interest for the current year was \$11,939. At the conclusion of the improvement process, the real property acquired for right-of-way purposes will become the property of the State of California. The funds provided directly by the State of California are not included in the property acquisition costs due to the fact that they were not paid through District accounts.

Other Income

A detail of Other Income for the year ended June 30, 2011 is as follows:

Condemnation Fund Interest	11,939
Miscellaneous	<u>72,324</u>
	<u>84,263</u>

Cash in County Treasury

Cash in County Treasury as of June 30, 2011 consisted of the following accounts with the Yuba County Treasurer:

General Account	7,718,402
SMARA Reclamation Assurance Reserve	157,775
Feather River Funding	53,682
Upper Yuba River Funding	<u>4,439,347</u>
	<u>12,369,206</u>

Community Facilities Districts - Capital Improvement Bonds

Three Rivers Levee Improvement Authority issued Capital Improvement Bonds on April 18, 2007 to finance the repayment of proceeds received in accordance with the advance funding agreements with local developers. These are special tax bonds and are issued on specific parcels of landowners within the Community Facilities Districts. These bonds will be repaid by annual special taxes on the parcels within the Districts. These bonds are not an obligation of Three Rivers Levee Improvement Authority for the respective Three Rivers Levee Improvement Community Facilities District, and are payable solely from the proceeds of refundable bonds or special taxes, therefore, they are not reflected as a liability. A summary of the bonds is as follows:

	Community Facilities District of <u>2006-1</u>	Community Facilities District of <u>2006-2</u>
Name of Bond Issue	Special Tax 2007 Series A	Special Tax 2007 Series B
Date of Issue	4-18-2007	4-18-2007
Original Issue Value	14,930,382	8,663,901
Accreted Value – 6/30/11	20,380,255	11,826,390
District Assessed Value	98,892,035	29,231,282

Local Funding – Yuba Levee Financing Authority

The Yuba Levee Financing Authority has authorized the matching funds for the Levee Improvement Program as follows:

Authorizations:

October 2008	13,080,000
November 2008	7,376,000
May 2010	14,200,000
January 2010	7,000,000
November 2010 Adjustment	(<u>2,079,469</u>)
Total Authorized	39,576,531
Amount Funded to June 30, 2010	<u>39,576,531</u>
Authorization Remaining	<u>-0-</u>

Levee Assessment Fund

The Levee Assessment Fund was established to collect to collect funds for the purpose providing for levee maintenance within the operating and maintenance assessment district. Collection from direct property assessment and used to fund two district activities. The first \$16,000 of revenue are used reimburse Three Rivers Levee Improvement Authority for administrative costs. All remaining revenue is transferred to Reclamation District 784 to reimburse the costs of levee maintenance activities. The annual assessments are determined based upon a projected budget for levee maintenance as determined by Reclamation District 784, subject to the maximum allowable levee based upon the Engineer's Report and the Proposition 218 process used to approve and form the district.

MICHAEL L. HINZ, CPA, INC
CERTIFIED PUBLIC ACCOUNTANT

476 Century Park Drive, Ste. A
Yuba City, CA 95991

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INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL
STRUCTURE BASED ON AN AUDIT OF GENERAL PURPOSE
FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE
WITH GOVERNMENT AUDITING STANDARDS

The Board of Directors
Three Rivers Levee Improvement Authority
Marysville, California

I have audited the general purpose financial statements of Three Rivers Levee Improvement Authority as of and for the year ended June 30, 2011, and have issued my report thereon dated November 28, 2011.

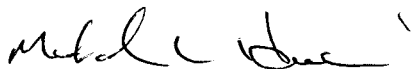
I conducted my audit in accordance with generally accepted auditing standards and Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the general purpose financial statements are free of material misstatements.

The management of Three Rivers Levee Improvement Authority is responsible for establishing and maintaining an internal control structure. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of internal control structure policies and procedures. The objectives of an internal control structure are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of general purpose financial statements in accordance with generally accepted accounting principles. Because of inherent limitations in any internal control structure, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the structure to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the effectiveness of the design and operation of policies and procedures may deteriorate.

In planning and performing my audit of the general purpose financial statements of Three Rivers Levee Improvement Authority for the year ended June 30, 2011, I obtained an understanding of the internal control structure. With respect to the internal control structure, I obtained an understanding of the design of relevant policies and procedures and whether they have been placed in operation, and I assessed control risk in order to determine my auditing procedures for the purpose of expressing my opinion on the general purpose financial statements and not to provide an opinion on the internal control structure. Accordingly, I do not express such an opinion.

My consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be material weaknesses under standards established by the American Institute of Certified Public Accountants. A material weakness is a condition in which the design or operation of one or more of the internal control structure elements does not reduce to a relatively low level the risk that errors and irregularities in amounts that would be material in relation to the general purpose financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. I noted no matters involving the internal control structure and its operation that I consider to be material weaknesses as defined above.

This report is intended for the information of the management and granting agencies. However, this report is a matter of public record and its distribution is not limited.

A handwritten signature in cursive script, appearing to read "Michael C. Jones".

November 28, 2011

MICHAEL L. HINZ, CPA, INC
CERTIFIED PUBLIC ACCOUNTANT

476 Century Park Drive, Ste. A
Yuba City, CA 95991

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FAX: (530) 673-2535

INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE
BASED ON AN AUDIT OF GENERAL PURPOSE
FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH
GOVERNMENT AUDITING STANDARDS

Board of Directors
Three Rivers Levee Improvement Authority
Marysville, California

I have audited the general purpose financial statements of Three Rivers Levee Improvement Authority as of and for the year ended June 30, 2011, and have issued my report thereon dated November 28, 2011.

I conducted my audit in accordance with generally accepted auditing standards and Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

Compliance with laws, regulations, contracts, and grants applicable to Three Rivers Levee Improvement Authority is the responsibility of Three Rivers Levee Improvement Authority's management. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, I performed tests of Three Rivers Levee Improvement Authority's compliance with certain provisions of laws, regulations, contracts, and grants. However, the objective of my audit of the general purpose financial statements was not to provide an opinion on overall compliance with such provisions. Accordingly, I do not express such an opinion.

The results of my tests disclosed no instances of noncompliance that are required to be reported under Government Auditing Standards.

This report is intended for the information of the management and granting agencies. However, this report is a matter of public record and its distribution is not limited.

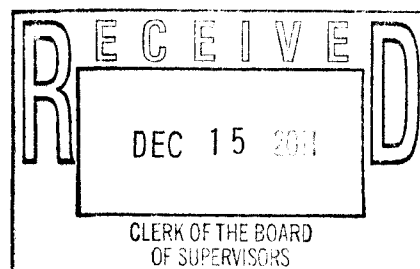


November 28, 2011

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RECEIVED BY EACH
BOARD MEMBER



December 13, 2011

County of Yuba
Board of Supervisors
915 8th Street, Suite 109
Marysville, CA 95901-5273

Subject: Challenge Discontinuance Feasibility Study

Dear Board of Supervisors,

This letter is in response to the written request of November 1, 2011 regarding the Challenge, CA Post Office Study.

Thank you for providing a letter of opposition to this change. This letter will be reviewed during the study process. The Study Review Process identifies all the issues, quantifies the impacts, and determines if the change is operationally feasible for the Postal Service.

A community meeting was held on October 26, 2011 and questionnaires sent out to the community to give customers the opportunity to offer their input prior to a final decision. The Postal Service will make every possible attempt to minimize the impact for customers of changes to Post Office locations.

Thank you for the opportunity to address you in this manner.

Sincerely,

Al Santos
District Manager, Sacramento

cc: file

BOS CORRESPONDENCE C

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COMMISSIONERS
Jim Kellogg, President
Discovery Bay
Richard Rogers, Vice President
Santa Barbara
Michael Sutton, Member
Monterey
Daniel W. Richards, Member
Upland
Jack Baylis, Member
Los Angeles

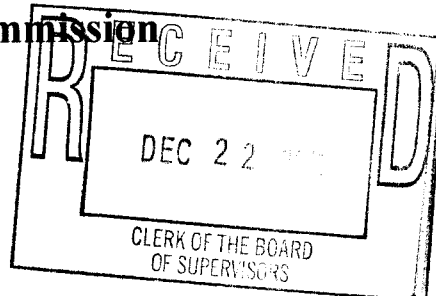
EDMUND G. BROWN, JR



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(916) 653-5040 Fax
fgc@fgc.ca.gov

STATE OF CALIFORNIA
Fish and Game Commission

December 21, 2011



TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a copy of the notice of proposed emergency regulatory action relating to incidental take of Black-backed Woodpecker.

The Commission adopted this emergency regulation at its December 15, 2011 meeting. It is anticipated that the emergency regulation will be filed with the Office of Administrative Law (OAL) on or about December 28, 2011.

Sincerely,


Sheri Tiemann
Staff Services Analyst

Attachments

BOS CORRESPONDENCE D

DEC 22 2011 CC to Fish & Game Advisory Comm / ref

TITLE 14. Fish and Game Commission
Notice of Proposed Emergency Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 240, and 2084, of the Fish and Game Code (FGC) and to implement, interpret or make specific sections 200, 202, 240, 2080, 2084, and 2085 of said Code, proposes to add Section 749.7, Title 14, California Code of Regulations (CCR), relating to incidental take of the Black-backed Woodpecker (*Picoides arcticus*) during candidacy period.

Informative Digest/Policy Statement Overview

The sections below describe laws relating to listing species under CESA, the effect of this emergency regulation, a description of related federal law, and a policy statement overview.

A. Laws Related to the Emergency Regulation - Listing under CESA

1. Petition and Acceptance

FGC Section 2070 requires the Commission to establish a list of endangered species and a list of threatened species. Any interested person may petition the Commission to add a species to the endangered or threatened list by following the requirements in FGC Sections 2072 and 2072.3. If a petition is not factually incomplete and is on the appropriate form, it is forwarded to the Department for evaluation.

FGC Section 2073.5 sets out the process for accepting for further consideration or rejecting a petition to list a species and, if the petition is accepted, a process for actually determining whether listing of the species as threatened or endangered is ultimately warranted. The first step toward petition acceptance involves a 90-day review of the petition by the Department to determine whether the petition contains sufficient information to indicate that the petitioned action may be warranted. The Department prepares a report to the Commission that recommends rejection or acceptance of the petition based on its evaluation.

FGC Section 2074.2 provides that, if the Commission finds that the petition provides sufficient information to indicate that the petitioned action may be warranted, the petition is accepted for consideration and the species that is the subject of the petition becomes a "candidate species" under CESA. CESA prohibits unauthorized take of a candidate species. FGC Section 86 states "take" means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. Killing of a candidate, threatened, or endangered species under CESA that is incidental to an otherwise lawful activity and not the primary purpose of the activity constitutes take under state law. (*Department of Fish and Game v. Anderson-Cottonwood Irrigation District* (1992) 8 Cal.App.4th 1554; see also *Environmental Protection and Information Center v. California Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 (in the context of an ITP issued by the Department under CESA the California Supreme Court stated, "'take' in this context means to catch, capture or kill").)

CESA's take prohibition applies to candidate species pursuant to FGC Section 2085 upon public notice by the Commission of its finding that sufficient information exists to indicate the petitioned action may be warranted. Upon publication of such notice in the California Regulatory Notice Register, take of candidate species is prohibited absent authorization as provided in the FGC.

Following such notice, all activities, whether new or ongoing, that cause incidental take of the candidate species are in violation of CESA unless the take is authorized in regulations adopted by the Commission pursuant to FGC section 2084 or the Department authorizes the take through the issuance of an ITP or other means available under CESA.

2. Status Review and Final Action on the Petition

The Commission's acceptance of a petition initiates a 12-month review of the species' status by the Department, pursuant to FGC Section 2074.6. This status review helps to determine whether the species should be listed as threatened or endangered. Unlike the Department's initial evaluation, which focuses largely on the sufficiency of information submitted in the petition, the 12-month status review involves a broader inquiry into and evaluation of available information from other sources. The Commission is required to solicit data and comments on the proposed listing soon after the petition is accepted, and the Department's written status report must be based upon the best scientific information available.

Within 12 months of the petition's acceptance, the Department must provide the Commission a written report that indicates whether the petitioned action is warranted. (Fish & G. Code, § 2074.6.) The Commission must schedule the petition for final consideration at its next available meeting after receiving the Department's report. (*Id.*, § 2075.) In its final action on the petition, the Commission is required to decide whether listing the species as threatened or endangered "is warranted" or "is not warranted." If listing is not warranted in the Commission's judgment, take of the former candidate species is no longer prohibited under CESA. (*Id.*, § 2075.5.)

B. Effect of the Emergency Action

Section 749.7 of Title 14 of the California Code of Regulations would authorize take, as defined by Fish and Game Code section 86, of the Black-backed Woodpecker during its candidacy subject to the following terms and conditions:

(a) Take Authorization.

Based upon the above finding, the Commission authorizes the take of the Black-backed Woodpecker during the candidacy period subject to the terms and conditions herein.

(1) Scientific, Education or Management Activities.

Take of the Black-backed Woodpecker incidental to scientific, education, or management activities is authorized.

(2) Actions to Protect, Restore, Conserve or Enhance.

Take of the Black-backed Woodpecker incidental to otherwise lawful activities initiated to protect, restore, conserve or enhance a state or federally threatened or endangered species and its habitat is authorized.

(3) Wildland Fire Response and Related Vegetation Management.

Take of the Black-backed Woodpecker incidental to otherwise lawful wildland fire prevention, response, and suppression activities, including related vegetation management, is authorized. For purposes of this authorization, vegetation or fuels management activity shall mean an activity to reduce hazardous fuels and prevent or reduce the risk of

wildland fires authorized or otherwise permitted by the Z'Berg Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.), the Forest Practice Rules of the Board of Forestry, which are found in Chapters 4, 4.5, and 10, of Title 14 of the California Code of Regulations, the Wildland Fire Protection and Resources Management Act of 1978 (Public Resources Code, Section 4461-4480), the California Forest Improvement Act of 1978 (Public Resources Code, Section 4790 et seq.), the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), or other applicable law.

(4) Forest Practices and Timber Harvest.

Take of the Black-backed Woodpecker incidental to otherwise lawful timber operations is authorized. For purposes of this authorization, an otherwise lawful timber operation shall mean a timber operation authorized or otherwise permitted by the Z'Berg Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.), the Forest Practice Rules of the Board of Forestry, which are found in Chapters 4, 4.5, and 10, of Title 14 of the California Code of Regulations, or other applicable law.

(b) Application of the California Environmental Quality Act.

Consistent with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), if a state or local agency determines that an activity identified in subdivision (a) will result in a significant impact on the Black-backed Woodpecker, the agency should not approve the activity as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant impact on the Black-backed Woodpecker. (See Pub. Resources Code, § 21002.) Measures or project changes required as part of a state or local agency authorization to address significant impacts on the Black-backed Woodpecker may include measures to conserve the species, including avoidance or preservation of habitat attributes relied on by the species. Voluntary measures to aid in the conservation of the Black-backed Woodpecker shall also be encouraged.

(c) Reporting.

Any person, individual, organization, or public agency for which incidental take of the Black-backed Woodpecker is authorized pursuant to subdivision (a) shall report observations and detections of the Black-backed Woodpecker, including take, to the Department of Fish and Game on a semi-annual basis during the candidacy period. Observations, detections, and take of the Black-backed Woodpecker pursuant to this subdivision for the previous six months shall be reported by the first day of March and the first day of September, respectively, during the candidacy period for the Black-backed Woodpecker. Observations, detections, and take shall be reported pursuant to this subdivision to the Department of Fish and Game, Wildlife Branch, Attn: Black-backed Woodpecker Observations, 1812 Ninth St., Sacramento, CA 95811, or by email submission to wildlifestrategy@dfg.ca.gov. Information reported to the Department pursuant to this subdivision shall include as available: a contact name; the date and location (GPS coordinates preferred) of the observation, detection, or take; and details regarding the animal(s) observed.

(d) Additions, Modifications, or Revocation.

(1) Incidental take of the Black-backed Woodpecker from activities not addressed in this section may be authorized during the candidacy period by the Commission pursuant to Fish and Game Code Section 2084, or by the Department on a case-by-case basis pursuant to Fish and Game Code Section 2081, or other authority provided by law.

(2) The Commission may modify or repeal this regulation in whole or in part, pursuant to law, if it determines that any activity or project may cause jeopardy to the continued existence of the Black-backed Woodpecker.

C. Existing, Comparable Federal Regulations or Statutes

The Federal Endangered Species Act (FESA) (16 U.S.C. § 1531 et seq.) includes a listing process that is comparable to the listing process under CESA, except that take of a candidate species is not prohibited under FESA. The Black-backed Woodpecker is not listed as an endangered or threatened species under FESA.

FESA Section 4(d) (16 U.S.C. § 1533 (d)) is similar in some respects to FGC Section 2084. Section 4(d) authorizes the Service or the National Marine Fisheries Service (NMFS) to issue protective regulations prohibiting the take of species listed as threatened. These regulations, also called "4(d) rules," may include any or all of the prohibitions that apply to protect endangered species and may include exceptions to those prohibitions. The 4(d) rules give the Service and NMFS the ability to craft comprehensive regulations to apply to particular activities that may result in take of a threatened species in a manner similar to the Commission's authority to prescribe terms and conditions pursuant to FGC Section 2084 during the species' candidacy period. Here, no 4(d) rules have been promulgated, because the "warranted but precluded" finding by the Service did not yet effectuate the designation of the Black-backed Woodpecker as a federally listed threatened or endangered species.

D. Policy Statement Overview

The objective of this emergency regulation is to allow specified activities to continue on an interim basis, subject to the measures in the regulation designed to protect the Black-backed Woodpecker, pending final action by the Commission under CESA related to the proposed listing. The Department's evaluation of the species during the candidacy period will result in the status report described in Section A.2 above. The status report provides the basis for the Department's recommendation to the Commission before the Commission takes final action on the petition and decides whether the petitioned action is or is not warranted.

Specific Agency Statutory Requirements

The Commission has complied with the special statutory requirements governing the adoption of emergency regulations pursuant to FGC section 240. The Commission held a public hearing on this regulation on December 15, 2011, and the above finding that this regulation is necessary for the immediate conservation, preservation, or protection of fish and wildlife resources, and for the immediate preservation of the general welfare meets the requirements of section 240.

Section 240 Finding

Pursuant to the authority vested in it by FGC Section 240 and for the reasons set forth in the attached "Statement of Emergency Action," the Commission expressly finds that the adoption of this regulation is necessary for the immediate conservation, preservation, or protection of fish and wildlife resources, and for the immediate preservation of the general welfare. The Commission specifically finds that the adoption of this regulation will allow activities that may affect Black-backed Woodpecker to continue during the candidacy period as long as those activities are conducted in a manner consistent with the protections specified in this regulation.

Public Comments on Proposed Emergency Regulations

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

In order to be considered, public comments on proposed emergency regulations must be submitted in writing to the Office of Administrative Law (OAL), 300 Capitol Mall, Room 1250, Sacramento, CA 95814; AND to the Fish and Game Commission, 1416 Ninth Street, Room 1320, Sacramento, CA 95814, or via fax to (916) 653-5040 or via e-mail to fgc@fgc.ca.gov. Comments must identify the emergency topic and may address the finding of emergency, the standards set forth in sections 11346.1 and 11349.1 of the Government Code and Section 240 of the Fish and Game Code. Comments must be received within five calendar days of filing of the emergency regulations. Please refer to OAL's website (www.oal.ca.gov) to determine the date on which the regulations are filed with OAL.

Impact of Regulatory Action

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

(a) Costs/Savings in Federal Funding to the State:

The Commission has determined that the adoption of Section 749.7 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to FGC Section 2084 will not result in costs or savings in federal funding to the State.

(b) Nondiscretionary Costs/Savings to Local Agencies:

The Commission has determined that adoption of Section 749.7 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to FGC section 2084 will likely provide cost savings to local agencies in an undetermined amount. In the absence of the emergency regulation, the Department would have to authorize take of the Black-backed Woodpecker on a project-by-project basis, which is both time-consuming and costly to local agencies seeking take authorization. Without this emergency regulation, many routine and

ongoing otherwise lawful timber operations on land already managed for timber harvest would be delayed or cancelled entirely, as would vegetation management, wildfire suppression and response and research and monitoring while awaiting the necessary CESA authorization. These delays and cancellations would cause great economic harm to persons already lawfully engaged in such activities, their employees, their local communities, and the State of California.

(c) Programs Mandated on Local Agencies or School Districts:

The Commission has determined that the adoption of Section 749.7 of Title 14 of the California Code of Regulations as an emergency regulation does not impose a mandate on local agencies or school districts.

(d) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4; Government Code; and

(e) Effect on Housing Costs:

The Commission has determined that the adoption of Section 749.7 of Title 14 of the California Code of Regulations as an emergency regulation will not result in any cost to any local agency or school district for which Government Code sections 17500 through 17630 require reimbursement and will not affect housing costs.

(f) Costs or Savings to State Agencies

The Commission has determined that adoption of Section 749.7 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to FGC section 2084 will likely provide cost savings to state agencies in an undetermined amount. In the absence of the emergency regulation, the Department would have to authorize take of the Black-backed Woodpecker on a project-by-project basis, which is both time-consuming and costly for both the Department in processing and authorizing such take, as well as to state agencies seeking take authorization.

Absent adoption of the emergency regulation, state and local agencies, and the regulated community will bear the timing and process costs associated with project-by-project permitting by the Department. Regulations implementing CESA contemplate a roughly six month review by the Department for proposed ITPs. Appropriate CEQA review for individual ITPs also affects the timing of permits issued by the Department. (Cal. Code Regs., tit. 14, §§ 783.3, 783.5.) The number and timing of permits issued by the Department is also a product of economic conditions, the State of California's ongoing fiscal crises, and the resources actually available to the Department to administer the permitting program.

CalFire, for example, with its mandate to prevent, respond, and suppress wildland fires would avoid timing and processing costs for individual ITPs with the adoption of Section 749.7. In some instances, the need for and the timing and process costs associated with individual ITPs could delay important prevention and suppression activities. That could lead, in turn, to a greater number and intensity of wildland fires, and greater overall cost for prevention, response, and suppression activities by CalFire.

Additionally, reopening existing ITPs, in addition to participating in review and issuance of new

ITPs in the Black-backed Woodpecker's range, would pose a significant burden on CalFire, local agencies, and the Department. Without this emergency regulation, many routine and ongoing otherwise lawful timber operations on land already managed for timber harvest would be delayed or cancelled entirely while awaiting the necessary State CESA authorization. These delays and cancellations could cause significant economic harm to persons already lawfully engaged in such activities, their employees, their local communities, and the State of California.

Effect on Small Business

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

Consideration of Alternatives

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: December 21, 2011

Sonke Mastrup
Executive Director

FISH AND GAME COMMISSION STATEMENT OF EMERGENCY ACTION

Emergency Action to Add Section 749.7, Title 14, CCR,
Re: Special Order Relating to Incidental Take of Black-backed Woodpecker
(*Picoides arcticus*) During Candidacy Period

I. Introduction

The Fish and Game Commission ("Commission") is the decision-making body that implements the California Endangered Species Act ("CESA") (Fish & G. Code, § 2050 et seq.). As described in greater detail below, CESA authorizes the Commission to establish lists of threatened and endangered species, and to add or remove species from those lists if it finds, upon receipt of sufficient scientific information, that the action is warranted. Pursuant to Section 2084 of the Fish and Game Code ("FGC"), the Commission may authorize, subject to the terms and conditions it prescribes, the taking of any candidate species while the Department of Fish and Game ("Department") and Commission evaluate whether the species should be listed as threatened or endangered under CESA. The Commission has relied on the authority in Section 2084 to permit take of candidate species on nine previous occasions: in 1994 for the southern torrent salamander; in 1994 for the coho salmon south of San Francisco; in 1997 and 1998 for the spring-run chinook salmon; in 2000 for coho salmon throughout its range in California; in 2002 for the Xantus's murrelet; in 2008 for the longfin smelt; in 2009 for the California tiger salamander; in 2009 for the Pacific fisher; and in 2010 for the mountain yellow-legged frog.

On December 15, 2011, the Commission considered the adoption of findings designating the Black-backed Woodpecker as a candidate species under CESA. The Commission has prepared this Emergency Action Statement under the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) in connection with its subsequent adoption of Section 749.7 of Title 14 of the California Code of Regulations. The Commission's adoption of Section 749.7 as an emergency action under the APA is based, in part, on authority provided by FGC sections 240 and 2084. Pursuant to the latter section of the FGC, Section 749.7 will authorize incidental "take" of the Black-backed Woodpecker during candidacy, subject to certain terms and conditions prescribed by the Commission. (See generally Fish & G. Code, §§ 2080, 2084, 2085, and 86.)

As set forth below, the Commission designated the Black-backed Woodpecker as a candidate species under CESA and finds that adoption of Section 749.7 pursuant to FGC 240 and 2084 constitutes a necessary emergency action by the Commission under the APA. In the absence of this emergency regulation, individuals engaging in activities authorized pursuant to Section 749.7 would need to obtain an incidental take permit ("ITP") or other authorization from the Department on a project-by-project basis to avoid potential criminal liability for

violating CESA. The issuance of individual ITPs authorizing incidental take is a complicated and lengthy process, and the Commission finds specifically that it is not feasible for the regulated community to obtain, and the Department to issue, ITPs or other authorizations on a project-by-project basis for the numerous activities that would otherwise be prohibited during the candidacy period for the Black-backed Woodpecker. Without this emergency regulation, prospective permittees, many of whom already have the necessary entitlements to proceed with their approved projects, would be subject to CESA's take prohibition without, by any reasonable measure, an ability to obtain the necessary state authorization during the candidacy period. As a practical matter, activities that result in the take of the Black-backed Woodpecker would be prohibited and could not be implemented pending final action by the Commission on the listing petition, an action whereby the Black-backed Woodpecker may or may not be listed as endangered or threatened under CESA. As a result, many projects that are planned or underway that provide great economic and other benefits to the permittees, their employees, their local communities, and the State of California would be postponed during the candidacy period or canceled entirely. The Commission finds this threatened result constitutes an emergency under the APA requiring immediate action, especially against the backdrop of the economic crisis currently faced by the State of California.

II. Background

On October 1, 2010, the Commission received a petition from the John Muir Project of Earth Island Institute and the Center for Biological Diversity to list the Black-backed Woodpecker as an endangered or threatened species under CESA. (Cal. Reg. Notice Register 2010, No. 44-Z, p. 1851.)

III. Facts Constituting the Need for Emergency Action

The APA defines an "emergency" to mean "a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare." (Gov. Code § 11342.545.). To make a finding of emergency, the agency must describe the specific facts supported by substantial evidence that demonstrate the existence of an emergency and the need for immediate adoption of the proposed regulation. (Gov. Code § 11346.1(b)(2).). Some factors an agency may consider in determining whether an emergency exists include: (1) the magnitude of the potential harm, (2) the existence of a crisis situation, (3) the immediacy of the need, i.e., whether there is a substantial likelihood that serious harm will be experienced unless immediate action is taken, and (4) whether the anticipation of harm has a basis firmer than simple speculation. The Commission has considered all of these factors and the definition of an emergency provided in the APA, as well as pertinent authority in FGC section 240. Under this latter authority, notwithstanding any other provision of the Fish and Game Code, the Commission may adopt an emergency regulation where doing so is necessary for the immediate conservation,

preservation, or protection of fish and wildlife resources, or for the immediate preservation of the general welfare. The Commission finds that such necessity exists in the present case.

Section 749.7 authorizes incidental take of the Black-backed Woodpecker during candidacy for six categories of activities:

- In connection with scientific, education, or management activities.
- In connection with otherwise lawful activities initiated to protect, restore, conserve, or enhance any state or federally threatened or endangered species and its habitat.
- In connection with otherwise lawful activities necessary to prevent, respond to, or suppress wildland fires.
- In connection with otherwise lawful timber harvest activities and operations authorized by the Z'Berg Nejedly Forest Practice Act (Pub. Resources Code, § 4511 et seq.), the Forest Practice Rules of the Board of Forestry, which are found in Chapters 4, 4.5, and 10, of Title 14 of the California Code of Regulations, or other applicable law.

The Commission finds as set forth below that an emergency exists with respect to each of these covered activities.

A. Scientific, Education, or Management Activities

Section 749.7, subdivision (a)(1), authorizes incidental take of the Black-backed Woodpecker for scientific, education, or management activities, including activities authorized through a scientific collecting permit issued by the Department or through a recovery permit issued by a federal wildlife agency. As explained below, the Commission finds that the designation of the Black-backed Woodpecker as a candidate species under CESA, and the related take prohibition, constitutes an emergency under the APA with respect to otherwise lawful scientific, education, or management activities.

Without Section 749.7, subdivision (a)(1), take of the Black-backed Woodpecker for scientific, education, and management purposes would require authorization by the Department through an individual permit or authorization which is often a lengthy, complicated process. For some of the activities authorized by these subdivisions, there is one other unique form of take authorization available, Fish and Game Code section 2081, subdivision (a). Because this form of take authorization still requires "permits or memorandums of understanding (to) authorize individuals...and scientific or educational institutions" to take, it is unlikely that permits under this section could be issued much more quickly than the standard ITP issued by the Department under section 2081, subdivision (b).

Management, education, and scientific activities (including research and monitoring) are critical during this candidacy period. During this period, the Department is expected to prepare a status review for the Black-backed Woodpecker so the Commission can determine if the species should in fact be listed. During this candidacy period the Department needs all of the scientific information that is available to make the most scientifically sound recommendation to the Commission and the Commission to make the most scientifically sound final listing decision. Black-backed Woodpecker studies conducted pursuant to Department issued scientific collecting permits, which could occur throughout the species' range, must be allowed to commence or continue to ensure a complete data set. Many studies operate on a continuous basis and rely on that predictability in coming to scientific conclusions about the data they acquire. In addition, new studies during this period that might be proposed should also be facilitated without delay to fill in any data gaps relevant to the possible listing of the Black-backed Woodpecker. If these activities are not allowed to continue, adequate evaluation and protection of the Black-backed Woodpecker could be severely impaired and the public will be disserved by decisions being made without the best available science.

Adoption of this emergency regulation would minimize the hardships that would be caused by delays in ongoing or new management, education, and scientific activities while providing safeguards to protect the Black-backed Woodpecker, including continued regulatory oversight by the Department pursuant to its authority to condition scientific collecting permits. (See Cal. Code Regs, tit. 14, § 650.) Therefore, the Commission finds that impacts to management, education, and scientific activities caused by designating the Black-backed Woodpecker as a candidate species, constitute an emergency under the APA requiring immediate action.

B. Actions to Protect, Restore, Conserve, or Enhance

Section 749.7, subdivision (a)(2), authorizes take of the Black-backed Woodpecker incidental to otherwise lawful activities where the purpose of the underlying activity is to protect, restore, conserve, or enhance a state or federally threatened or endangered species and its habitat. As explained below, the Commission finds that the designation of the Black-backed Woodpecker as a candidate species under CESA, and the related take prohibition, constitutes an emergency under the APA with respect to otherwise lawful activities to protect, restore, conserve, or enhance state or federally threatened or endangered species and their habitat. The Commission also finds that immediate emergency action to adopt Section 749.7, subdivision (a)(2), is necessary to conserve, preserve, or protect of fish and wildlife resources, and to preserve the general welfare.

Without Section 749.7, subdivision (a)(2), take of the Black-backed Woodpecker incidental to otherwise lawful activities to protect, restore, conserve, or enhance

state or federally threatened or endangered species and their habitat would require authorization by the Department through an individual ITP which is a lengthy, complicated process. Ongoing and planned activities to protect, restore, conserve, or enhance state or federally threatened or endangered species are critical during this candidacy period. The status of many listed species is precarious, and even the slightest delay in initiated or continued implementation of any related conservation actions could adversely affect or otherwise cause further decline of these species. In addition, any further decline in the status of listed species will lead to increased costs to the Department because more resources will be required to get the species to the point where protective measures are no longer necessary. Increased cost will also be shouldered by prospective permittees, who will be charged with funding the mitigation and related monitoring required for the impacts of their project on the species.

Adoption of this emergency regulation would minimize the hardships that would be caused by delays in ongoing or new lawful activities to protect, restore, conserve, and enhance state or federally threatened or endangered species and their habitat. The Commission finds that impacts to activities to protect, restore, conserve, or enhance state or federally threatened or endangered species and their habitat caused by designating the Black-backed Woodpecker as a candidate species, constitute an emergency under the APA requiring immediate action.

C. Wildland Fire Prevention, Suppression and Response

Section 749.7, subdivision (a)(3), authorizes take of the Black-backed Woodpecker incidental to otherwise lawful wildland fire prevention, response, and suppression activities. As explained below, the Commission finds that the designation of the Black-backed Woodpecker as a candidate species under CESA, and the related take prohibition, constitutes an emergency under the APA with respect to fire prevention, response, and suppression activities. The Commission also finds that immediate emergency action to adopt Section 749.7, subdivision (a)(3), is necessary to preserve public health and safety, and the general welfare.

Without Section 749.7, subdivision (a)(3), take of the Black-backed Woodpecker incidental to otherwise lawful fire prevention, response, and suppression activities, would require authorization by the Department through an individual ITP and, as previously stated doing so is a lengthy and complicated process. (There are other means by which take can be authorized under CESA, however they either take longer than individual ITPs or are not likely to be available for use for wildland fire prevention, suppression and response activities.) It is important to note that unlike many other regulatory statutes, CESA does not contain any exemption from the permitting requirements or the take prohibition for emergency situations like fuel (vegetation) control, wildfire suppression, and response. California's fire seasons have recently involved far-ranging

catastrophic wildland fires. The role of the emergency regulation in allowing activities related to fuel (vegetation) control; and fire suppression and response continues to fall squarely within virtually any statutory definition of "emergency," including one of the most narrow--CEQA's definition of an emergency that states it is an activity "involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services." (Pub. Resources Code, § 21080; see also CEQA Guidelines, § 15359.)

The emergency regulation removes impediments to critical wildland fire suppression and response. Delays due to permitting would cause risks to public safety, should fire suppression activities be delayed or cancelled entirely. In addition, there would be grave social and economic harm to the employees and agencies tasked with carrying out the fire suppression activities and the local communities where those activities might be critically needed.

Adoption of this emergency regulation would minimize these hardships. Therefore, the Commission finds that impacts to wildland fire prevention, response, and suppression activities, caused by designating the Black-backed Woodpecker as a candidate species, constitute an emergency under the APA requiring immediate action.

D. Forest Practices and Timber Harvest Activities

Section 749.7, subdivision (a)(4), authorizes incidental take of the Black-backed Woodpecker incidental to otherwise lawful timber harvest activities. As explained below, the Commission finds that the designation of the Black-backed Woodpecker as a candidate species under CESA, and the related take prohibition, constitutes an emergency under the APA with respect to otherwise lawful timber harvest activities and operations. The Commission also finds that immediate emergency action to adopt Section 749.7, subdivision (a)(4), is necessary to preserve the general welfare.

In general, timber harvest review in California is administered by the California Department of Forestry and Fire Protection ("CalFire") pursuant to the Z'berg Nejedly Forest Practice Act (Pub. Resources Code, § 4511 et seq.). The Forest Practice Rules (Cal. Code Regs., tit. 14, § 895 et seq.) and other applicable law, including the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000 et seq.).

Without Section 749.7, subdivision (a)(4), many existing, already approved, otherwise lawful timber harvest operations in the Black-backed Woodpecker range could not move forward absent additional review and re-approval. Likewise, without Section 749.7, many already-approved, otherwise lawful timber harvest operations and activities would require a project-specific authorization

under CESA from the Department. Yet, the regulatory oversight of timber operations by various public agencies under State law generally requires consideration and protection of various environmental resources and in many instances government approval of individual timber harvest activities requires compliance with CEQA and mitigation of significant environmental impacts to the extent feasible. Therefore, many timber projects that are about to commence or are already underway currently include measures that will reduce the prospect of adverse impacts to, and minimize and mitigate take of the Black-backed Woodpecker. Re-opening and re-negotiating agreements for timber activities to address the Black-backed Woodpecker's legal status as a candidate species and, where necessary, to obtain an ITP or other take authorization under CESA (e.g., FGC section 2835) would unnecessarily delay these already-approved and otherwise lawful timber operations, resulting in undue burden on the Timber Harvest Plan (THP) holder. Without this emergency regulation, many routine and ongoing otherwise lawful timber operations would be delayed while awaiting the necessary State CESA authorization or cancelled entirely. In many cases, the delays would cause THP holders to substantially delay or cancel their projects entirely, resulting in great social and economic harm to the THP holders, their employees, registered professional foresters, the local communities that rely on timber harvest activities, and the State of California.

CalFire review of existing otherwise lawful timber operations, along with project specific CESA permitting by the Department, would also pose a significant burden to these state agencies. Both CalFire and the Department would likely face a sudden and potentially large increase in requests for timber harvest review and related take authorizations under CESA. Neither agency is equipped with appropriate resources to handle and address the likely workload associated with this scenario, creating a significant permitting backlog.

IV. Application of the California Environmental Quality Act

Subdivision (b) of the emergency regulation is different from the previous sections described herein. It is not an additional activity for which take is authorized under the regulation. Subdivision (b) is guidance from the Fish and Game Commission, the entity with responsibility for designating the status of a species under CESA, to other CEQA lead agencies that are reviewing projects that could impact the Black-backed Woodpecker. This guidance is designed to assist lead agencies in their CEQA review by setting out the Commission's expectations as to how this species should be treated under CEQA. This CEQA review may be ongoing or may arise during the candidacy period. The Commission believes that this information is needed as soon as the candidacy period begins so lead agencies will know what measures, if any, are needed to protect the species.

V. Reporting

As discussed in III above, it is vital that during this candidacy period detections and observations of the Black-backed Woodpecker be reported to the Department so it can have the most complete information possible as it prepares its recommendation to the Commission on whether to recommend listing the species, and for the Commission that must make the ultimate decision to list or not.

For these reasons, the immediate adoption of this emergency regulation is necessary to allow numerous projects and activities to continue during the candidacy review period for the Black-backed Woodpecker under CESA. This regulation includes conditions designed to protect the species for all of the activities covered. The Commission believes the activities permitted under this regulation will result in very limited take and will not likely jeopardize the continued existence of the species. The Commission finds, in this respect, that the regulation subject to this determination will ensure appropriate interim protections for the Black-backed Woodpecker while the Department conducts a 12-month review of the status of the candidate species and the Commission makes its final determination regarding listing under CESA.

VI. Express Finding of Emergency

Pursuant to the authority vested in the Commission by FGC Section 240, and for the reasons set forth above, the Commission expressly finds that the adoption of this regulation is necessary for the immediate conservation, preservation, or protection of fish and wildlife resources, or for the immediate preservation of the general welfare. The Commission specifically finds that the adoption of this regulation will allow activities that may affect the Black-backed Woodpecker to continue during the candidacy period as long as those activities are conducted in a manner consistent with the protections specified in this regulation.

VII. Authority and Reference Citations

Authority: FGC Sections 200, 202, 240, and 2084.

Reference: FGC Sections 200, 202, 240, 2080, 2084, and 2085.

VIII. Informative Digest

The sections below describe laws relating to listing species under CESA, the effect of this emergency regulation, a description of related federal law, and a policy statement overview.

A. Laws Related to the Emergency Regulation - Listing under CESA

1. Petition and Acceptance

FGC Section 2070 requires the Commission to establish a list of endangered species and a list of threatened species. Any interested person may petition the Commission to add a species to the endangered or threatened list by following the requirements in FGC Sections 2072 and 2072.3. If a petition is not factually incomplete and is on the appropriate form, it is forwarded to the Department for evaluation.

FGC Section 2073.5 sets out the process for accepting for further consideration or rejecting a petition to list a species and, if the petition is accepted, a process for actually determining whether listing of the species as threatened or endangered is ultimately warranted. The first step toward petition acceptance involves a 90-day review of the petition by the Department to determine whether the petition contains sufficient information to indicate that the petitioned action may be warranted. The Department prepares a report to the Commission that recommends rejection or acceptance of the petition based on its evaluation.

FGC Section 2074.2 provides that, if the Commission finds that the petition provides sufficient information to indicate that the petitioned action may be warranted, the petition is accepted for consideration and the species that is the subject of the petition becomes a "candidate species" under CESA. CESA prohibits unauthorized take of a candidate species. FGC Section 86 states "take" means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. Killing of a candidate, threatened, or endangered species under CESA that is incidental to an otherwise lawful activity and not the primary purpose of the activity constitutes take under state law. (*Department of Fish and Game v. Anderson-Cottonwood Irrigation District* (1992) 8 Cal.App.4th 1554; see also *Environmental Protection and Information Center v. California Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 (in the context of an ITP issued by the Department under CESA the California Supreme Court stated, "'take' in this context means to catch, capture or kill").)

CESA's take prohibition applies to candidate species pursuant to FGC Section 2085 upon public notice by the Commission of its finding that sufficient information exists to indicate the petitioned action may be warranted. Upon publication of such notice in the California Regulatory Notice Register, take of candidate species is prohibited absent authorization as provided in the FGC. Following such notice, all activities, whether new or ongoing, that cause incidental take of the candidate species are in violation of CESA unless the take is authorized in regulations adopted by the Commission pursuant to FGC section 2084 or the Department authorizes the take through the issuance of an ITP or other means available under CESA.

2. Status Review and Final Action on the Petition

The Commission's acceptance of a petition initiates a 12-month review of the species' status by the Department, pursuant to FGC Section 2074.6. This status review helps to determine whether the species should be listed as threatened or endangered. Unlike the Department's initial evaluation, which focuses largely on the sufficiency of information submitted in the petition, the 12-month status review involves a broader inquiry into and evaluation of available information from other sources. The Commission is required to solicit data and comments on the proposed listing soon after the petition is accepted, and the Department's written status report must be based upon the best scientific information available.

Within 12 months of the petition's acceptance, the Department must provide the Commission a written report that indicates whether the petitioned action is warranted. (Fish & G. Code, § 2074.6.) The Commission must schedule the petition for final consideration at its next available meeting after receiving the Department's report. (*Id.*, § 2075.) In its final action on the petition, the Commission is required to decide whether listing the species as threatened or endangered "is warranted" or "is not warranted." If listing is not warranted in the Commission's judgment, take of the former candidate species is no longer prohibited under CESA. (*Id.*, § 2075.5.)

B. Effect of the Emergency Action

Section 749.7 of Title 14 of the California Code of Regulations would authorize take, as defined by Fish and Game Code section 86, of the Black-backed Woodpecker during its candidacy subject to the following terms and conditions:

(a) Take Authorization.

Based upon the above finding, the Commission authorizes the take of the Black-backed Woodpecker during the candidacy period subject to the terms and conditions herein.

(1) Scientific, Education or Management Activities.

Take of the Black-backed Woodpecker incidental to scientific, education, or management activities is authorized.

(2) Actions to Protect, Restore, Conserve or Enhance.

Take of the Black-backed Woodpecker incidental to otherwise lawful activities initiated to protect, restore, conserve or enhance a state or federally threatened or endangered species and its habitat is authorized.

(3) Wildland Fire Response and Related Vegetation Management.

Take of the Black-backed Woodpecker incidental to otherwise lawful wildland fire prevention, response, and suppression activities, including related vegetation

management, is authorized. For purposes of this authorization, vegetation or fuels management activity shall mean an activity to reduce hazardous fuels and prevent or reduce the risk of wildland fires authorized or otherwise permitted by the Z'Berg Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.), the Forest Practice Rules of the Board of Forestry, which are found in Chapters 4, 4.5, and 10, of Title 14 of the California Code of Regulations, the Wildland Fire Protection and Resources Management Act of 1978 (Public Resources Code, Section 4461-4480), the California Forest Improvement Act of 1978 (Public Resources Code, Section 4790 et seq.), the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), or other applicable law.

(4) Forest Practices and Timber Harvest.

Take of the Black-backed Woodpecker incidental to otherwise lawful timber operations is authorized. For purposes of this authorization, an otherwise lawful timber operation shall mean a timber operation authorized or otherwise permitted by the Z'Berg Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.), the Forest Practice Rules of the Board of Forestry, which are found in Chapters 4, 4.5, and 10, of Title 14 of the California Code of Regulations, or other applicable law.

(b) Application of the California Environmental Quality Act.

Consistent with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), if a state or local agency determines that an activity identified in subdivision (a) will result in a significant impact on the Black-backed Woodpecker, the agency should not approve the activity as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant impact on the Black-backed Woodpecker. (See Pub. Resources Code, § 21002.) Measures or project changes required as part of a state or local agency authorization to address significant impacts on the Black-backed Woodpecker may include measures to conserve the species, including avoidance or preservation of habitat attributes relied on by the species. Voluntary measures to aid in the conservation of the Black-backed Woodpecker shall also be encouraged.

(c) Reporting.

Any person, individual, organization, or public agency for which incidental take of the Black-backed Woodpecker is authorized pursuant to subdivision (a) shall report observations and detections of the Black-backed Woodpecker, including take, to the Department of Fish and Game on a semi-annual basis during the candidacy period. Observations, detections, and take of the Black-backed Woodpecker pursuant to this subdivision for the previous six months shall be reported by the first day of March and the first day of September, respectively, during the candidacy period for the Black-backed Woodpecker. Observations, detections, and take shall be reported pursuant to this subdivision to the Department of Fish and Game, Wildlife Branch, Attn: Black-backed Woodpecker Observations, 1812 Ninth St., Sacramento, CA 95811, or by email submission to wildlifestrategy@dfg.ca.gov. Information reported to the Department pursuant to this subdivision shall include as available: a contact name; the date and location (GPS coordinates preferred) of the observation, detection, or take; and details regarding the animal(s) observed.

(d) Additions, Modifications, or Revocation.

(1) Incidental take of the Black-backed Woodpecker from activities not addressed in this section may be authorized during the candidacy period by the Commission pursuant to Fish and Game Code Section 2084, or by the Department on a case-by-case basis pursuant to Fish and Game Code Section 2081, or other authority provided by law.

(2) The Commission may modify or repeal this regulation in whole or in part, pursuant to law, if it determines that any activity or project may cause jeopardy to the continued existence of the Black-backed Woodpecker.

C. Existing, Comparable Federal Regulations or Statutes

The Federal Endangered Species Act (FESA) (16 U.S.C. § 1531 et seq.) includes a listing process that is comparable to the listing process under CESA, except that take of a candidate species is not prohibited under FESA. The Black-backed Woodpecker is not listed as an endangered or threatened species under FESA.

FESA Section 4(d) (16 U.S.C. § 1533 (d)) is similar in some respects to FGC Section 2084. Section 4(d) authorizes the Service or the National Marine Fisheries Service (NMFS) to issue protective regulations prohibiting the take of species listed as threatened. These regulations, also called "4(d) rules," may include any or all of the prohibitions that apply to protect endangered species and may include exceptions to those prohibitions. The 4(d) rules give the Service

and NMFS the ability to craft comprehensive regulations to apply to particular activities that may result in take of a threatened species in a manner similar to the Commission's authority to prescribe terms and conditions pursuant to FGC Section 2084 during the species' candidacy period. Here, no 4(d) rules have been promulgated, because the "warranted but precluded" finding by the Service did not yet effectuate the designation of the Black-backed Woodpecker as a federally listed threatened or endangered species.

D. Policy Statement Overview

The objective of this emergency regulation is to allow specified activities to continue on an interim basis, subject to the measures in the regulation designed to protect the Black-backed Woodpecker, pending final action by the Commission under CESA related to the proposed listing. The Department's evaluation of the species during the candidacy period will result in the status report described in Section VIII.A.2 above. The status report provides the basis for the Department's recommendation to the Commission before the Commission takes final action on the petition and decides whether the petitioned action is or is not warranted.

IX. Specific Agency Statutory Requirements

The Commission has complied with the special statutory requirements governing the adoption of emergency regulations pursuant to FGC section 240. The Commission held a public hearing on this regulation on December 15, 2011, and the above finding that this regulation is necessary for the immediate conservation, preservation, or protection of fish and wildlife resources, and for the immediate preservation of the general welfare meets the requirements of section 240.

X. Impact of Regulatory Action

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

(a) Costs/Savings in Federal Funding to the State:

The Commission has determined that the adoption of Section 749.7 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to FGC Section 2084 will not result in costs or savings in federal funding to the State.

(b) Nondiscretionary Costs/Savings to Local Agencies:

The Commission has determined that adoption of Section 749.7 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to FGC section 2084 will likely provide cost savings to local agencies in an undetermined

amount. In the absence of the emergency regulation, the Department would have to authorize take of the Black-backed Woodpecker on a project-by-project basis, which is both time-consuming and costly to local agencies seeking take authorization. Without this emergency regulation, many routine and ongoing otherwise lawful timber operations on land already managed for timber harvest would be delayed or cancelled entirely, as would vegetation management, wildfire suppression and response and research and monitoring while awaiting the necessary CESA authorization. These delays and cancellations would cause great economic harm to persons already lawfully engaged in such activities, their employees, their local communities, and the State of California.

(c) Programs Mandated on Local Agencies or School Districts:

The Commission has determined that the adoption of Section 749.7 of Title 14 of the California Code of Regulations as an emergency regulation does not impose a mandate on local agencies or school districts.

(d) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4; Government Code; and

(e) Effect on Housing Costs:

The Commission has determined that the adoption of Section 749.7 of Title 14 of the California Code of Regulations as an emergency regulation will not result in any cost to any local agency or school district for which Government Code sections 17500 through 17630 require reimbursement and will not affect housing costs.

(f) Costs or Savings to State Agencies

The Commission has determined that adoption of Section 749.7 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to FGC section 2084 will likely provide cost savings to state agencies in an undetermined amount. In the absence of the emergency regulation, the Department would have to authorize take of the Black-backed Woodpecker on a project-by-project basis, which is both time-consuming and costly for both the Department in processing and authorizing such take, as well as to state agencies seeking take authorization.

Absent adoption of the emergency regulation, state and local agencies, and the regulated community will bear the timing and process costs associated with project-by-project permitting by the Department. Regulations implementing CESA contemplate a roughly six month review by the Department for proposed ITPs. Appropriate CEQA review for individual ITPs also affects the timing of permits issued by the Department. (Cal. Code Regs., tit. 14, §§ 783.3, 783.5.)

The number and timing of permits issued by the Department is also a product of economic conditions, the State of California's ongoing fiscal crises, and the resources actually available to the Department to administer the permitting program.

CalFire, for example, with its mandate to prevent, respond, and suppress wildland fires would avoid timing and processing costs for individual ITPs with the adoption of Section 749.7. In some instances, the need for and the timing and process costs associated with individual ITPs could delay important prevention and suppression activities. That could lead, in turn, to a greater number and intensity of wildland fires, and greater overall cost for prevention, response, and suppression activities by CalFire.

Additionally, reopening existing ITPs, in addition to participating in review and issuance of new ITPs in the Black-backed Woodpecker's range, would pose a significant burden on CalFire, local agencies, and the Department. Without this emergency regulation, many routine and ongoing otherwise lawful timber operations on land already managed for timber harvest would be delayed or cancelled entirely while awaiting the necessary State CESA authorization. These delays and cancellations could cause significant economic harm to persons already lawfully engaged in such activities, their employees, their local communities, and the State of California.

Regulatory Language

Section 749.7, Title 14, CCR, is added to read:

749.7 Incidental Take of Black-Backed Woodpecker (*Picoides arcticus*) During Candidacy Period

This regulation authorizes take, as defined by Fish and Game Code section 86, of the Black-backed woodpecker subject to certain terms and conditions during the species' candidacy under the California Endangered Species Act (Fish & G. Code, §2050 et seq.).

(a) Take Authorization.

The Commission authorizes the take of Black-backed woodpecker during the candidacy period subject to the terms and conditions herein.

(1) Scientific, Education or Management Activities.

Take of the Black-backed woodpecker incidental to scientific, education, or management activities is authorized.

(2) Activities to Protect, Restore, Conserve or Enhance.

Take of the Black-backed woodpecker incidental to otherwise lawful activities initiated to protect, restore, conserve, or enhance a state or federally threatened or endangered species and its habitat is authorized.

(3) Wildland Fire Response and Related Vegetation Management.

Take of the Black-backed woodpecker incidental to otherwise lawful wildland fire prevention, response, and suppression activities, including related vegetation management, is authorized. For purposes of this authorization, vegetation or fuels management activity shall mean an activity to reduce hazardous fuels and prevent or reduce the risk of wildland fires authorized or otherwise permitted by the Z'berg Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.), the Forest Practice Rules of the Board of Forestry, which are found in Chapters 4, 4.5, and 10, of Title 14 of the California Code of Regulations, the Wildland Fire Protection and Resources Management Act of 1978 (Public Resources Code, Section 4461-4480), the California Forest Improvement Act of 1978 (Public Resources Code, Section 4790 et seq.), the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), or other applicable law.

(4) Forest Practices and Timber Harvest.

Take of the Black-backed woodpecker incidental to otherwise lawful timber operations is authorized. For purposes of this authorization, an otherwise lawful timber operation shall mean a timber operation authorized or otherwise permitted by the Z'Berg Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.), the Forest Practice Rules of the Board of Forestry, which are found in Chapters 4, 4.5, and 10, of Title 14 of the California Code of Regulations, or other applicable law.

(b) Application of the California Environmental Quality Act.

Consistent with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), if a state or local agency determines that an activity identified in subdivision (a) will result in a significant impact on the Black-backed woodpecker, the agency should not approve the activity as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant impact on the Black-backed woodpecker. (See Pub. Resources Code, § 21002.) Measures or project changes required as part of a state or local agency authorization to address significant impacts on the Black-backed woodpecker may include measures to conserve the species, including avoidance or preservation of habitat attributes relied on by the species. Voluntary measures to aid in the conservation of the Black-backed woodpecker shall also be encouraged.

(c) Reporting.

Any person, individual, organization, or public agency for which incidental take of the Black-backed woodpecker is authorized pursuant to subdivision (a) shall report observations and detections of the Black-backed woodpecker, including take, to the Department of Fish and Game on a semi-annual basis during the candidacy period. Observations, detections, and take of the Black-backed woodpecker pursuant to this subdivision shall be reported on a semi-annual basis during the candidacy period for the Black-backed woodpecker. Observations, detections, and take shall be reported pursuant to this subdivision to the Department of Fish and Game, Wildlife Branch, Attn: Black-backed Woodpecker Observations, 1812 Ninth St., Sacramento, CA 95814, or by email submission to wildlifestrategy@dfg.ca.gov. Information reported to the Department pursuant to this subdivision shall include as available: a contact name; the date and location (GPS coordinates preferred) of the observation, detection, or take; and details regarding the animal(s) observed.

(d) Additions, Modifications, or Revocation.

(1) Incidental take of the Black-backed woodpecker from activities not addressed in this section may be authorized during the candidacy period by the Commission pursuant to Fish and Game Code Section 2084, or by the Department on a case-

by-case basis pursuant to Fish and Game Code Section 2081, or other authority provided by law.

(2) The Commission may modify or repeal this regulation in whole or in part, pursuant to law, if it determines that any activity or project may cause jeopardy to the continued existence of the Black-backed woodpecker.

Note: Authority cited: Sections 200, 202, 240 and 2084, Fish and Game Code.

Reference: Sections 200, 202, 240, 2080, 2084 and 2085, Fish and Game Code.