

BOARD OF SUPERVISORS

AGENDA



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.

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

TUESDAY, MARCH 07, 2017
6:00 P.M.

Welcome to the Yuba County Board of Supervisors meeting. As a courtesy to others, please turn off cell phones or other electronic devices, which might disrupt the meeting. All items on the agenda other than Correspondence and Board and Staff Members Reports are considered items for which the Board may take action. The public will be given opportunity to comment on action items on the agenda when the item is heard and comments shall be limited to three minutes per individual or group.

5:45 P.M. Finance and Administration Committee – Supervisor Vasquez and Leahy

- 52/2017** Consider implementation of Public Health Nurse Retention Incentive Program Policy and Amendment to Master Labor Agreement (MLA) between County of Yuba and Yuba County Employees' Association - Human Resources/Health and Human Services (Ten minutes estimate)

PLEDGE OF ALLEGIANCE - Led by Supervisor Leahy

ROLL CALL - Supervisors Vasquez, Leahy, Lofton, Bradford, Fletcher

CONSENT AGENDA

All matters listed under Consent Agenda are considered to be routine and can be enacted in one motion.

- 56/2017** Board of Supervisors: Appoint Supervisor Lofton representative to Emergency Medical Care Board of Directors; appoint Supervisor Bradford alternate to Emergency Medical Care and Sierra-Sacramento Valley EMS Board of Directors; and appoint Supervisor Bradford alternate to CSAC Board of Directors. (No background material)
- 43/2017** Board of Supervisors: Rescind appointment of John Lindsay as District Two Planning Commission Representative due to not residing in District Two. (No background material)
- 60/2017** Board of Supervisors: Appoint Dizarea Webber to Yuba County Community Services Commission District Three representative for a term to end December 31, 2020.
- 48/2017** Clerk of the Board: Approve minutes from meetings February 7 and 14, 2017.
- 57/2017** Office of Emergency Services: Adopt resolution proclaiming the existence of an ongoing local emergency due to the Oroville Dam Event.
- 58/2017** Office of Emergency Services: Adopt resolution proclaiming the existence of an ongoing local emergency due to flood waters in the County of Yuba.

**BOARD OF SUPERVISORS
REGULAR MEETING**

- 59/2017** Office of Emergency Services: Adopt a resolution to proclaim an ongoing local emergency due to tree mortality.
- 29/2017** Health and Human Services: Approve first amendment to rental agreement with Extra Self Storage and authorize Chair to execute.
- 45/2017** Human Resources: Approve agreement between the County of Yuba and the Non-Represented employees regarding CalPERS employees additional portion of employers share of costs for Fiscal Year 2017/2018 and authorize the Chair to execute.

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 three 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. Note: No Board action can be taken on comments made under this heading.

ORDINANCES AND PUBLIC HEARINGS

If you challenge in court the action or decision of the Yuba County Board of Supervisors regarding a zoning, planning, land use or environmental protection matter made at any hearing described in this notice, you may be limited to raising only those issues you or someone else raised at such hearing, or in written correspondence delivered to the Yuba County Board of Supervisors at, or prior to, such hearing. Public comments will be limited to three minutes per individual or group.

- 35/2017** Ordinance - Hold public hearing, waive second reading and adopt ordinance amending the number and time of regular board meetings. (County Counsel) (Five minute estimate) (Roll call vote)

CORRESPONDENCE

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

- 40/2017** Letter from SafetyBeltSafeUSA regarding Safety Seat Checkup Week April 2 - 8, 2017.
- 49/2017** Five notices from Fish and Game Commission relating to regulatory actions.

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.

**BOARD OF SUPERVISORS
REGULAR MEETING**

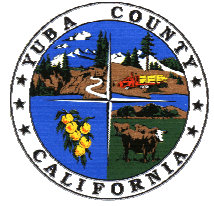
CLOSED SESSION

- 23/2017** Pending litigation pursuant to Government Code Section §54956.9 (d)(1) - Hedrick vs. Grant.
- 30/2017** Labor Negotiations pursuant to Government Code §54947(a) – DSA / Negotiator Jill Abel
- 34/2017** Potential litigation pursuant to Government Code §54956.9(d)(2) - One Case

ADJOURN

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 two full business days 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.

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The County of Yuba

Human Resources and Organizational Services

TO: Finance and Administration Committee

FROM: Human Resources and Organizational Services, Jill Abel
Health and Human Services Department, Jennifer Vasquez

SUBJECT: Approve the implementation of the Public Health Nurse Retention Incentive Program Policy and authorize the Chair to execute an Amendment to the Master Labor Agreement (MLA) between the County of Yuba and the Yuba County Employees' Association

DATE: March 7, 2017

NUMBER: 52/2017

Recommendation

Finance and Administration Committee: Approve the implementation of the Public Health Nurse Retention Incentive Program Policy and authorize the Chair to execute an Amendment to the Master Labor Agreement (MLA) between the County of Yuba and the Yuba County Employees' Association – Human Resources and Health and Human Services – 5 minute estimate

Discussion

Over the last decade, the County has experienced a chronic and severe problem recruiting and retaining Public Health Nurses (PHN). In recent years, we have implemented a myriad of ideas to address the problem, including increasing the base salary on multiple occasions, introducing a PHN Intern position to allow candidates time while employed to apply for their PHN Certificate and offering flexible work schedules. While these efforts have provided some positive results, they have not significantly diminished the attrition rates for this classification. There are two major obstacles we face: 1) a limited qualified applicant pool; and 2) competing with hospitals and other private health care providers for the same applicant pool.

Currently, the Health and Human Services Department (HHSD) has 17 allocated PHN positions, eight of which are vacant. With this 47% vacancy rate, it is a challenge for HHSD to achieve its goals of


increasing access to needed medical services and promoting healthy lifestyle choices through education, prevention and intervention services. Since recruiting and retaining PHNs is required for most Public Health programs and their associated grant funding, the County must face the aforementioned challenges with creativity. It is proposed that the County offer retention incentive compensation to eligible PHN employees to entice current PHNs to remain with the County and prospective PHNs to apply.

Eligible PHN employees that meet the qualification criteria described in the attached Policy would be paid an annual retention incentive beginning after their first year in a PHN classification and concluding on year five, in each PHN classification. The attached policy and MLA Amendment authorizes the County to compensate eligible PHN employees as a retention incentive. In five years, this Program will be evaluated by the County and union to determine its effectiveness.

Fiscal Impact

The fiscal impact for the 2016/2017 fiscal year is anticipated to be \$3,500, all of which will be offset with non-general funding.

Attachments

	<p>COUNTY OF YUBA POLICY MANUAL</p>	<p>POLICY NO.: HROS 2-101 PAGE 1 OF 2</p> <div><p>52-2017 Consider... - 3 of 6</p></div> <p>ORIGINATION DATE: MARCH 2017</p>
<p>Title:</p> <p>Public Health Nurse Retention Incentive Program Policy</p>		<p>Approved By:</p> <p>Board of Supervisors on March 21, 2017</p>

Purpose:

For the Public Health Division within the Health & Human Services Department to recruit and retain Public Health Nurses to meet the needs of the Yuba County community.

Policy:

To offer retention incentive compensation to eligible Public Health Nurses (PHN) to encourage our PHNs to remain employed with Yuba County. While employed in a Public Health Nurse I/II flexibly staffed classification, a Public Health Nurse III classification, Supervising Public Health Nurse I or Supervising Public Health Nurse II classification, an eligible employee will receive an annual retention incentive compensation on his/her position anniversary date, up to year five in each of the listed classifications.

Qualification Criteria

1. To be eligible an employee must be employed as a non-exempt Public Health Nurse I/II, Public Health Nurse III, Supervising Public Health Nurse I or Supervising Public Health Nurse II;
2. To be eligible an employee must possess a valid certification as a Public Health Nurse in the State of California;
3. Each eligible employee must be employed at the beginning of his/her position anniversary year through the conclusion of each position anniversary year;
4. Eligible employees must achieve a “meets standards” or above on his/her annual performance evaluation; and
5. As an eligible employee promotes within the Public Health Nursing series, the placement on the retention incentive schedule will start over based on the employee’s position date.

Procedure:

Eligible employees that meet the qualification criteria described herein will be paid an annual retention incentive beginning on year one and concluding on year five, in each of the Public Health Nurse classifications. The retention incentive compensation will be given to an eligible employee on the payroll period following an employee’s position anniversary date.

TITLE: PHN RETENTION INCENTIVE PROGRAM POLICY	POLICY NO.: HROS-3.10 <div data-bbox="1161 94 1534 157">52-2017 Consider... - 4 of 6</div>
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The Director of Health and Human Services or his/her designee must submit an approved Human Resources status form to Human Resources, which once approved will be given to the Auditor's Office, to initiate the retention incentive for an eligible employee.

Once an eligible employee's qualifications have been determined according to the provisions included herein, an approved Human Resources status form will be required annually for each eligible employee unless there is a change in the eligible employee's qualification status or a break in service has occurred.

This Program will sunset five years from its commencement or no later than December 31, 2022, and will not continue unless renewed based upon a review of the entire program's effectiveness by the County and YCEA.

Compensation:

Once an eligible employee qualifies for the retention incentive compensation in accordance with this policy, s/he will receive such compensation pursuant to the applicable union agreement.

AMENDMENT TO THE MASTER LABOR AGREEMENT
Between
The County of Yuba and
Yuba County Employees' Association, Local #1

The County of Yuba (County) and YCEA, Local #1 (YCEA) have previously met and conferred and agreed upon the current Master Labor Agreement (MLA), for which the term runs through June 30, 2017.

The parties have now met and conferred further pursuant to Government Code §3500 et seq and have mutually agreed to modify the current MLA, to reflect additional terms and conditions of employment pertaining to the non-exempt Public Health Nursing class series as follows:

ARTICLE 13 – ADDITIONAL COMPENSATION

Section 13.05 – Retention Incentive for Public Health Nursing series

Non-exempt Public Health Nurse employees that qualify pursuant to the Public Health Nurse Retention Incentive Program Policy shall be paid incentive compensation as follows:

Year 1 - \$1,000
Year 2 - \$1,500
Year 3 - \$2,000
Year 4 - \$2,500
Year 5 - \$3,000

Retention incentive pay will be payable annually, up to year five in each Public Health Nursing classification, on an eligible employee's position anniversary date.

If an eligible employee receives less than an overall "meets standards" on his/her annual performance evaluation, the employee will not receive the retention incentive compensation for that year.

If an eligible employee promotes within the Public Health Nursing series as defined in the Policy, the retention incentive compensation will start over at Year 1.

If an eligible employee has been employed in a Public Health Nurse classification for over five years at the time this Amendment is ratified, said employee will receive a one-time \$3,000 retention incentive compensation on his/her position anniversary date. If said employee promotes within the Public Health Nursing series, the retention incentive will start at Year 1 in accordance with this Section and the Public Health Nurses Retention Incentive Program Policy.

If an eligible employee has been employed in a Public Health Nurse classification within the

retention incentive compensation schedule at the time this Amendment is ratified, said employee will receive the appropriate retention incentive compensation on his/her position anniversary date. If said employee promotes within the Public Health Nursing series, the retention incentive will start at Year 1 in accordance with this Section and the Public Health Nurses Retention Incentive Program Policy.

The Public Health Nurses Retention Incentive Program will sunset five years from its commencement or no later than December 31, 2022, and will not continue unless renewed based upon a review of the entire Program's effectiveness by Yuba County and YCEA.

The parties agree that this amendment represents their full agreement on this matter and that they are not subject to further meeting and conferring on this matter, unless by mutual agreement.

Date:

Date:

County of Yuba

Yuba County Employees Assoc., Local #1

The County of Yuba



TO: Board of Supervisors

FROM: Clerk of the Board, Donna Stottlemeyer

SUBJECT: Yuba County Community Services Commission District Three

DATE: March 7, 2017

NUMBER: 60/2017

Recommendation

Appoint Dizarea Webber to the Yuba County Community Services Commission as the District Three representative for a term to end December 31, 2020.

Background and Discussion

The Local Appointment List of all Boards/Commissions/Committees is continually posted indicating vacancies, appointees, terms of office, qualifications and meeting information and updated bi-monthly. This is a scheduled vacancy and one application has been received which is attached for your review. Supervisor Lofton recommends appointment.

In light of the expressed interest, it would be appropriate to make the appointment at this time.

Committee Action: None required

Fiscal Impact: None.

Attachments

60-2017 Webber App Private
60-2017 Webber App Public

JAN 27 2017

Clerk/Board of Supervisors

60-2017 Appoint ... - 2 of 2

The County of Yuba

Application for Board/Commission/Committee
Appointed by the Board of Supervisors

RETURN APPLICATION WITH ORIGINAL SIGNATURE TO:

CLERK OF THE BOARD OF SUPERVISORS
YUBA COUNTY GOVERNMENT CENTER
915 EIGHTH STREET, SUITE 109
MARYSVILLE, CA 95901
(530) 749-7510



BOARD/COMMISSION/COMMITTEE

ON WHICH YOU WOULD LIKE TO SERVE: Community Services Commission

APPLICANT NAME:

Dizarea Webber

MAILING ADDRESS -
(Street/P.O. Box, City, Zip):

[REDACTED]

Olivehurst, CA 95961

PHYSICAL ADDRESS
(Street, City, Zip):

"

TELEPHONE:

HOM

WO

EMAIL ADDRESS:

OCCUPATION/PROFESSION:
SUPERVISOR/ DISTRICT
NUMBER:

Recruiter

Doug Lofton District 3

REASONS YOU WISH TO
SERVE ON THIS BODY:

I enjoy serving my community.

QUALIFICATIONS:

I work with numerous non-profits in my
Community.

LIST PAST AND CURRENT

PUBLIC POSITIONS HELD:

N/A

DO YOU HAVE ANY CRIMINAL CONVICTION THAT MAY BE CONSIDERED A CONFLICT OF INTEREST WITH THE COMMITTEE YOU
WISH TO SERVE UPON? ☐ YES ☒ NO
IF YES, PLEASE EXPLAIN. NOTE: THAT A FELONY CONVICTION SHALL PRECLUDE YOU FROM SERVICE.

I UNDERSTAND THAT IF APPOINTED TO A BOARD/COMMISSION/COMMITTEE AND WHAT MAY BE CONSIDERED A CONFLICT OF
INTEREST ARISES. THAT I HAVE A DUTY TO GIVE WRITTEN NOTICE OF SUCH TO THE COUNTY.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF
MY KNOWLEDGE.

SIGNATURE

DATE

1/27/17

THIS SECTION FOR OFFICE USE ONLY

☐ NO VACANCY CURRENTLY EXISTS ON ABOVE-MENTIONED BODY. APPLICANT NOTIFIED.

☐ APPLICANT APPOINTED: _____

☐ OTHER: _____

CC: Doug Lofton

The County of Yuba

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

FEBRUARY 7, 2017 – MINUTES



Call to order at 6:05 p.m. with Supervisors Andy Vasquez, Mike Leahy, Doug Lofton, Gary Bradford, and Randy Fletcher present. Also present were County Administrator Robert Bendorf and County Counsel Angil Morris-Jones.

- I. PLEDGE OF ALLEGIANCE - Led by Supervisor Bradford
- II. ROLL CALL - Supervisors Vasquez, Leahy, Lofton, Bradford, Fletcher - 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: Gary Bradford SECOND: Mike Leahy
 AYES: Andrew Vasquez, Mike Leahy, Doug Lofton, Gary Bradford, Randy Fletcher
 NOES: None ABSENT: None ABSTAIN: None

A. Administrative Services

- 1. 5-2017 Approve contract amendment for the Sheriff Tenant Improvement project completion of Phase 2 work with Vanir Construction Management, and authorize Chair to execute same. Approved.

B. Board of Supervisors

- 1. 10-2017 Approve Certification Statement Regarding Composition of Local Planning Council Membership and authorize Chair to execute. Approved.
- 2. (9-0217) Approve appointment of Sutter County Supervisor Mat Conant as Alternate to the Feather River Air Quality Management District. Approved.

C. Clerk of the Board of Supervisors

- 1. 7-2017 Approve meeting minutes of January 9, 10, and 24, 2017. Approved.

D. County Administrator

- 1. 8-2017 Approve letter of support for SB1 and AB1 as they relate to transportation funding for road maintenance and repair and authorize Chair to execute. Approved.
- 2. 12-2017 Approve letter opposing State Water Resource Control Board 35-75 percent unimpaired flow of water into the Delta and authorize Chair to execute. Approved.

E. Health and Human Services

1. 6-2017 Adopt resolution authorizing Director to execute certain contracts for Fiscal Year 2017-2018 or multi years and to accept and appropriate funds. Adopted Resolution No. 2017-9, which is on file in Resolution Book No. 48.
2. 1-2017 Adopt resolution authorizing application for Prescription Drug Overdose Prevention Initiative Grant for June 1 - February 28, 2019, authorizing Director to execute application and any documents required by application and resultant grant award. Adopted Resolution No. 2017-10, which is on file in Resolution Book No. 48.

F. Probation

1. 16-2017 Approve the hire of Amanda Malucchi for the position of Deputy Probation Officer III at the advanced index rate of 1.15. Approved.

IV. PUBLIC COMMUNICATIONS: None.

V. COUNTY DEPARTMENTS

A. Board of Supervisors

1. 13-2017 Receive update from Fish and Game Ad Hoc Committee regarding an advisory commission, use of funds, and approve recommendation to authorize funding to Friends of Fish and Game a non-profit 501(c). (No background material) (Ten minute estimate) Supervisor Vaquez and Supervisor Leahy briefly recapped their research, meetings with public, and recommended funding for this fiscal year. AV/ML

Ms. Debbie Burn, Secretary of Friends of Fish and Game, recapped events including pheasant hunt, boating and safety event, river cleanup day, county fair, and assets of commission in county storage.

Following Board discussion, County Administrator Robert Bendorf recommended organizations should submit requests for funds through the budget process.

MOTION: Move to approve as recommended by County Administrator

MOVED: Andrew Vasquez SECOND: Mike Leahy

AYES: Andrew Vasquez, Randy Fletcher, Mike Leahy, Doug Lofton, Gary Bradford

NOES: None ABSENT: None ABSTAIN: None

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

- A. 3-2017 Two notices from California Fish and Game Commission regarding regulatory actions. Received.

VII. 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.

Supervisor Vasquez: Water Agency meetings attended

Supervisor Leahy: Requested county funding impacts of SB54

Supervisor Bradford:

- Meetings with Department Heads
- CSAC Institute Seminars attended - most valuable state and county funding relationship

- YSEDC meeting this week regarding PG&E unable to respond to developers on potential costs

County Administrator Robert Bendorf:

- Recommendations for Sheriff Department staffing
- Tour of new Sheriff Facility

Supervisor Fletcher: Received consensus to change Board meeting schedule to 2nd and 4th Tuesday at 9:00 a.m.

VIII. CLOSED SESSION

- A. Pending litigation pursuant to Government Code 54956.9(d)(1) - Hedrick vs. Grant Pulled from consideration.

IX. ADJOURN: 6:34 p.m.

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

FEBRUARY 14, 2017 – MINUTES



Call to order 9:30 a.m. with Supervisors Andy Vasquez, Mike Leahy, Doug Lofton, Gary Bradford, and Randy Fletcher present. Also present were County Administrator Robert Bendorf and County Counsel Angil Morris-Jones.

- I. PLEDGE OF ALLEGIANCE - Led by Supervisor Fletcher
- II. ROLL CALL - Supervisors Vasquez, Leahy, Lofton, Bradford, Fletcher – 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: Andrew Vasquez SECOND: Gray Bradford
 AYES: Andrew Vasquez, Mike Leahy, Doug Lofton, Gary Bradford, Randy Fletcher
 NOES: None ABSENT: None ABSTAIN: None

A. Board of Supervisors

- 1. 14-2017 Appoint John D. Lindsay to Yuba County Planning Commission as a District Two Representative with a term ending January 11, 2021. Approved.
- 2. 15-2017 Appoint Dizarea Webber to Yuba County Community Services Commission as a District Three Representative with a term ending December 31, 2020. Approved.

B. Emergency Services

- 1. 20-2017 Adopt resolution proclaiming the existence of an ongoing local emergency due to tree mortality in the County of Yuba. Adopted Resolution No. 2017-11, which is on file in Resolution Book No. 48.
- 2. 19-2017 Adopt resolution proclaiming termination of ongoing local emergency due to drought emergency in the County of Yuba. Adopted Resolution No. 2017-12, which is on file in Resolution Book No. 48.

IV. PUBLIC COMMUNICATIONS: None

V. COUNTY DEPARTMENTS

MOTION: Move to add to County Department Emergency Services Item 31/2017 a resolution ratifying local emergency due to Oroville Dam event as the need to take action arose subsequent to the agenda being posted.
 MOVED: Andrew Vasquez SECOND: Gray Bradford
 AYES: Andrew Vasquez, Mike Leahy, Doug Lofton, Gary Bradford, Randy Fletcher,
 NOES: None ABSENT: None ABSTAIN: None

A. Emergency Services

1. 31-2017 Adopt resolution ratifying Proclamation of local emergency due to Oroville Dam emergency spillway event. County Administrator Robert Bendorf provided a brief recap of the need for the resolution.

MOTION: Move to adopt resolution MOVED: Andrew Vasquez SECOND: Doug Lofton
 AYES: Andrew Vasquez, Mike Leahy, Doug Lofton, Gary Bradford, Randy Fletcher
 NOES: None ABSENT: None ABSTAIN: None

Chairman Fletcher advised all other items listed on the posted agenda for February 14 would be continued to February 21 at 9:30 a.m.

VI. ADJOURNED: 9:06 a.m. to February 21, 2017 at 9:30 a.m.

Call to order 9:30 a.m. with Supervisors Andy Vasquez, Mike Leahy, Doug Lofton, Gary Bradford, and Randy Fletcher present. Also present were County Administrator Robert Bendorf and County Counsel Angil Morris-Jones.

I. PLEDGE OF ALLEGIANCE - Led by Supervisor Fletcher

II. ROLL CALL - Supervisors Vasquez, Leahy, Lofton, Bradford, Fletcher – All present.

III. SPECIAL PRESENTATION

- A. 17-2017 Present Proclamation Teen Dating Violence Awareness and Prevention Month February 2017. (Five minute estimate) Postponed.

IV. PUBLIC COMMUNICATIONS: None.

V. COUNTY DEPARTMENTS

A. Emergency Services

1. 18-2017 Adopt resolution proclaiming existence of ongoing local emergency due to flood waters in County of Yuba per California Government Code §8630. (Ten minute estimate) Emergency Manager Scott Bryan recapped the need for the declaration of the on-going emergency and responded to Board inquiries.

MOTION: Move to adopt MOVED: Andrew Vasquez SECOND: Doug Lofton
 AYES: Andrew Vasquez, Mike Leahy, Doug Lofton, Gary Bradford, Randy Fletcher
 NOES: None ABSENT: None ABSTAIN: None

B. Administrative Services

1. 21-2017 Award contract for unarmed security services to Elite Universal Security and authorize Chair to execute. (Ten minute estimate) Director Doug McCoy recapped request for proposals, review, and recommended approval.

MOTION: Move to approve MOVED: Andrew Vasquez SECOND: Doug Lofton
 AYES: Andrew Vasquez, Mike Leahy, Doug Lofton, Gary Bradford, Randy Fletcher
 NOES: None ABSENT: None ABSTAIN: None

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

- A. 22-2017 Public Hearing - Hold public hearing and adopt 2016 amendment to Yuba County Conflict of Interest Code. (Ten minute estimate) Chief Deputy County Counsel Courtney Abril recapped code and responded to inquiries.

There were no public comments.

MOTION: Move to close public hearing and approve Conflict of Interest

MOVED: Andrew Vasquez SECOND: Gary Bradford

AYES: Andrew Vasquez, Mike Leahy, Doug Lofton, Gary Bradford, Randy Fletcher

NOES: None ABSENT: None ABSTAIN: None

- B. 24-2017 Ordinance - Hold public hearing, waive first reading, and introduce ordinance repealing and reenacting as amended Chapter 8.80 of the Yuba County Ordinance Code relating to Shooting Restrictions in the unincorporated area of the County of Yuba. (Ten minute estimate). Planning Manager Kevin Perkins recapped changes to not allow shooting in certain areas and responded to inquiries.

The Board removed “park like areas and any future parks or” from section 8.80.020.

The Chairman opened the public hearing. No comments.

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

MOVED: Andrew Vasquez SECOND: Gary Bradford

AYES: Andrew Vasquez, Mike Leahy, Doug Lofton, Gary Bradford, Randy Fletcher

NOES: None ABSENT: None ABSTAIN: None

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

- A. 26-2017 Notice from Central Valley Regional Water Quality Control Board regarding scheduled public Meeting dates and locations. Received.

VIII. BOARD AND STAFF MEMBERS REPORTS:

Board members commended staff, Sheriff, and the flow of information between districts during the evacuation and Oroville dam auxiliary emergency spillway event.

County Administrator Robert Bendorf: Summary of events from Sunday, February 19 regarding Oroville Dam Auxiliary Emergency Spillway and evacuation notice issued by Yuba County

Sheriff Steve Durfor: Recapped sheriff operations during emergency event

Emergency Manager Scott Bryan: Commended Board and County Administrator support

Linda Fire Chief Rich Webb: Commended relationships with allied agencies and commended his staff during incident

Legislative Affairs Coordinator Russ Brown: Received consensus to join with CSAC and RCRC to oppose shift of IHSS funding responsibilities to counties and support transportation funding SB1

Supervisor Fletcher: Memorial Adjournments - Mr. Jim Sullivan and Mr. Ed Myer

- IX. CLOSED SESSION: The Board retired into closed session at 10:37 a.m. and returned at 11:01 a.m. with all present.
- A. 23-2017 Pending litigation pursuant to Government Code Section §54956.9 (d)(1) - Hedrick vs. Grant. Pulled from consideration.
 - B. 30-2017 Labor Negotiations pursuant to Government Code §54947(a) DSA / Negotiator Jill Abel Pulled from consideration.
 - C. 34-2017 Potential litigation pursuant to Government Code Section §54956.9(d)(2) - One Case By unanimous vote the Board authorized settlement. By 4/1 vote with Supervisor Leahy opposing, terms of settlement authorized.
- X. ADJOURN: 11:02 a.m. in memory of Mr. Jim Sullivan and Mr. Ed Myer.

Chair

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS

Approved: _____

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The County of Yuba



TO: Board of Supervisors

FROM: Emergency Operations Manager, Scott Bryan

SUBJECT: Adopt a Resolution Proclaiming the existence of an ongoing local emergency due to the Oroville Dam Event.

DATE: 03/07/2017

NUMBER: 57/2017

Recommendation:

The Board of Supervisors adopt a resolution proclaiming the existence of an ongoing local emergency due to the Oroville Dam Event.

Background:

The County of Yuba has been affected by the existence of extreme peril to the safety of persons and property within the county caused by historic precipitation, Lake Oroville in Butte County reached capacity and the main spillway at the Oroville Dam suffered significant damage that necessitated using the emergency spillway. The series of events resulted in necessary evacuations for majority of the residents in Yuba County, damage to private and public property, for which damages and fiscal impact cannot yet be calculated and resources in Yuba County are faced with conditions that exceed their functional capabilities.

Discussion:

On February 14, 2017, the Yuba County Board of Supervisors did proclaim the existence of a local emergency due to the Oroville Spillway event.

Fiscal Impact:

Fiscal impact is unknown at this time due to the ongoing efforts to calculate the full extent of damages.

Attachments:

57/2017: Resolution Oroville Event

57/2017: State Proclamation for Oroville Spillway Event

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF YUBA

RESOLUTION:

THE BOARD OF SUPERVISORS)	
ADOPT A RESOLUTION)	
PROCLAIMING THE EXISTENCE OF)	
AN ONGOING LOCAL EMERGENCY)	
DUE TO THE OROVILLE DAM EVENT)	
)	RESOLUTION NO. _____

WHEREAS, in January and February of 2017 historic precipitation inundated the Yuba, Sutter and Butte County areas, including lakes, rivers, and streams therein; and

WHEREAS, on February 12, 2017 as a result of this historic precipitation, Lake Oroville in Butte County reached capacity and the main spillway at the Oroville dam suffered significant damage that necessitated using the emergency spillway; and

WHEREAS, thereafter emergency officials determined that the emergency spillway at Lake Oroville dam was at risk of failing, potentially causing widespread flooding throughout the County of Yuba; and

WHEREAS, mandatory evacuations were then ordered for the majority of the residents of Yuba County; and

WHEREAS, extreme peril to the safety and property has arisen in Yuba County, caused by the damage to the spillways at the Oroville dam and potential flooding within the County;

WHEREAS, local resources in Yuba County are faced with conditions that exceed their functional capabilities; and

WHEREAS, these conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of the County of Yuba; and

WHEREAS, on February 12, 2017 the Governor of the State of California issued a Proclamation of a State of Emergency, which included Yuba County; and

WHEREAS, on February 13, 2017 the County Administrative Officer issued a Proclamation of a Countywide Local Emergency due to the Oroville Dam Event pursuant to Yuba County Ordinance code section 4.20 et seq; and

WHEREAS, pursuant to section 8630 of the California Government Code, the Board of Supervisors must review, at least every 30 days, the need for the continuance of the local emergency; and

NOW, THEREFORE IT BE SOLVED, that the Board of Supervisors hereby Proclaims the existence of an on-going emergency in the County of Yuba; and

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BE IR FURTHER RESOLVED that the Board of Supervisors shall review, at least every 30 days, until such emergency is terminated, the need for the continuing said emergency and the governing body shall proclaim the termination of the local emergency at the earliest possible date.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Yuba, State of California on the _____ day of _____ 2017.

AYES:

NOES:

ABSENT:

ABSTAIN:

Chair

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS

APPROVE AS TO FORM:
COUNTY COUNSEL



The County of Yuba

County Administrator



TO: Board of Supervisors

FROM: Emergency Operations Manager, Scott Bryan

SUBJECT: Adopt resolution proclaiming the existence of an ongoing local emergency due to flood waters in the County of Yuba

DATE: 03/07/2017

NUMBER: 58/2017

Recommendation:

The Board of Supervisors adopt a resolution proclaiming an ongoing local emergency in the County of Yuba due to the inundation of floodwaters.

Background:

Due to historic precipitation and snowmelt beginning on approximately January 7, already full tributaries and reservoirs swelled causing widespread flooding within the Levee Systems along the Yuba and Feather Rivers on January 9, 2017.

Discussion:

The flooding which occurred along the Yuba and Feather Rivers of the County, required the evacuation of persons from their homes and businesses, emergency response by law enforcement, fire services and emergency services personnel and caused damage to public and private property. Due to ongoing flood water inundation the damages cannot yet be calculated. Therefore it is recommended that your Board proclamation a local emergency until the end of the incident period per (*Govt. Code Section 8630 (c)*). This proclamation of emergency will be reviewed and renewed no less than once every thirty days. Per (*Govt. Code Section 8630(d)*) this proclamation of emergency shall be terminated as soon as reasonably possible.

Fiscal Impact:

There is an unknown impact to the general fund as of this date.

Attachments:

58/2017 Resolution Floodwaters

**BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF YUBA**

RESOLUTION:

**THE BOARD OF SUPERVISORS
ADOPT A RESOLUTION
PROCLAIMING THE EXISTENCE OF
AN ONGOING LOCAL EMERGENCY
DUE TO FLOOD WATERS IN THE
COUNTY OF YUBA.**

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RESOLUTION NO. _____

WHEREAS, County Ordinance Code 4.20 empowers the Yuba County Board of Supervisors to proclaim the existence of a local emergency in the County when the County is affected by the existence or threatened conditions of emergency or extreme peril to the safety of persons and property within the County; and

WHEREAS, extreme peril to the safety and property have arisen in Yuba County, caused by the inundation of flood waters; and

WHEREAS, Northern California has seen historical precipitation causing damage to public and private property, for which damages cannot yet be calculated; and

WHEREAS, local resources in Yuba County are faced with conditions that exceeds their functional capabilities; and

WHEREAS, on January 10, 2017 the Yuba County Board of Supervisors did proclaim the existence of a local emergency due to flood waters; and

WHEREAS, the County of Yuba Board of Supervisors does hereby find that the aforesaid conditions of peril do warrant and necessitate a proclamation of the existence of an ongoing local emergency due to flood waters from historical precipitation; and

WHEREAS, this proclamation of emergency will be reviewed and renewed no less than once every thirty days. Per *Govt. Code Section 8630(d)*, this proclamation of emergency shall be terminated as soon as reasonably possible.

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NOW, THEREFORE, IT IS HEREBY PROCLAIMED, that a local emergency exists in the County of Yuba and the Board of Supervisors Proclaims through this resolution the existence of a Local Emergency in the County of Yuba.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Yuba, State of California on the _____ day of _____ 2017.

AYES:

NOES:

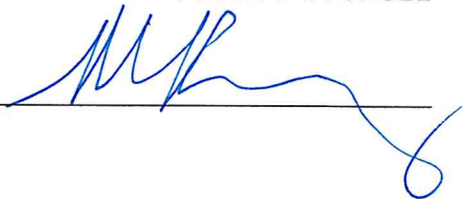
ABSENT:

ABSTAIN:

Chair

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS

APPROVE AS TO FORM:
COUNTY COUNSEL





The County of Yuba

County Administrator

TO: Board of Supervisors

FROM: Emergency Operations Manager, Scott Bryan

SUBJECT: Adopt a resolution to proclaim an ongoing local emergency due to inundation of tree mortality.

DATE: 03/07/2017

NUMBER: 59/2017

Recommendation:

The Board of Supervisors adopts a resolution proclaiming the existence of an on-going local emergency in the County of Yuba due to tree mortality.

Background:

On January 17, 2014, Governor Edmund G Brown Jr. declared a Statewide Drought Emergency due to the impacts on the State of California as a result of four continuous years of drought. On February 18, 2014, the Director of Emergency Services proclaimed a local emergency due to the effects the drought has had within the County of Yuba.

The current drought has put tremendous stress on trees resulting in widespread mortality throughout the State. The County of Yuba is not immune to the loss of trees due to the on-going drought as thousands of dead and dying trees line our landscape. On October 30, 2015 Governor Edmund G Brown Jr. declared a Statewide Tree Mortality Emergency which included California Disaster Assistance Act (CDAA) funding to mitigate the most severely affected counties. On December 13, 2016 the Yuba County Board of Supervisors proclaimed a local emergency in the County due to tree mortality.

Discussion:

There are currently 10 counties designated as "Priority Counties", which include two contiguous counties to Yuba, in Nevada and Placer. Although Yuba County's tree mortality emergency has yet to reach the severity of Nevada and Placer Counties, significant tree mortality exists in Yuba County, which requires mitigation efforts to remove hazard trees threatening public infrastructure and safety.

Fiscal Impact:

If approved, CDAA funding will reimburse 75% of eligible costs for removing hazardous trees with a 25% cost share

Attachments:

59/2017: Resolution Tree Mortality

**BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF YUBA**

RESOLUTION:

THE BOARD OF SUPERVISORS)
ADOPT A RESOLUTION)
PROCLAIMING THE EXISTENCE OF)
AN ONGOING LOCAL EMERGENCY)
DUE TO TREE MORTALITY IN THE)
COUNTY OF YUBA.) RESOLUTION NO.

WHEREAS, County Ordinance Code 4.20 empowers the Yuba County Board of Supervisors to proclaim the existence of a local emergency in the County when the County is affected by the existence or threatened conditions of emergency or extreme peril to the safety of persons and property within the County; and

WHEREAS, extreme peril to the safety and property have arisen in Yuba County, caused by the widespread and rapidly increasing incidence of tree mortality; and

WHEREAS, unprecedented tree mortality is causing damage to the watershed and emergency egress, and to County and other public and district facilities including, but not limited to roads and structures, for which damages cannot yet be calculated; and

WHEREAS, local resources in Yuba County are faced with a disaster that exceeds their functional capabilities; and

WHEREAS, data collected by state and federal agencies demonstrate that tree mortality has reached epidemic levels across the entire western slope of the Sierra Nevada range which includes Yuba County; and

WHEREAS, it is imperative that Yuba County implement full scale, immediate and aggressive measures to isolate and fell dead or dying trees resulting from extreme and prolonged drought in order to begin to reduce the risks to public safety and property; and

WHEREAS, Governor Edmund G. Brown Jr., has proclaimed a State of Emergency for all of California due to tree mortality and has ordered that state agencies, utilities, and local governments to undertake efforts to remove dead or dying trees in order to restore forest and watershed health; and

WHEREAS, on December 16, 2016 the Yuba County Board of Supervisors did proclaim the existence of a local emergency due to tree mortality; and

WHEREAS, the County of Yuba Board of Supervisors does hereby find that the aforesaid conditions of peril do warrant and necessitate a proclamation of the existence of An ongoing local emergency due to tree mortality; and

NOW, THEREFORE, IT IS HEREBY PROCLAIMED, that a local emergency exists in the County of Yuba and the Board of Supervisors Proclaims through this resolution the existence of a Local Emergency in the County of Yuba.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Yuba, State of California on the _____ day of _____ 2017.

AYES:

NOES:

ABSENT:

ABSTAIN:

Chair

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS

APPROVE AS TO FORM:
COUNTY COUNSEL





The County of Yuba

Health and Human Services Department

TO: Board of Supervisors

FROM: Health and Human Services Department
Jennifer Vasquez, Director
Homer Rice, MPH, PhD, Health Administrator

SUBJECT: Health and Human Services: Approve first amendment to rental agreement.

DATE: March 7, 2017

NUMBER: 29/2017

Recommendation

It is recommended that the Board of Supervisors approve the first amendment to the rental agreement between its Health and Human Services Department and Extra Self Storage.

Background

The Health and Human Services Department uses off-site storage for the storage of Maternal, Child and Adolescent Health (MCAH), Tobacco and other general Public Health program supplies.

Discussion

The current self-storage facility utilized by the Public Health is for storage of MCAH, Tobacco and other general Public Health program supplies. The owner of the Extra Self Storage facility is planning some modifications and has initiated the amendment to the rental agreement to allow for a transfer of storage unit from SO12 to G004; the unit size will decrease from 24 x 30 to 20 x 30 and will now include paid electricity. The rate of \$200.00 per month will not change.

Committee Action:

The Human Services Committee was by-passed as there is no impact to any other department.

Fiscal Impact:

Approval of the first amendment to the rental agreement with Extra Self Storage will not impact County General Funds, as these costs will be paid through the MCAH Grant, Tobacco Grant and other general Public Health grants.

Attachments

29/2017 First amendment to rental agreement between County and Extra Self Storage.

**FIRST AMENDMENT TO THE RENTAL AGREEMENT
BETWEEN THE COUNTY OF YUBA
AND EXTRA SELF-STORAGE**

This is the First Amendment to the Rental Agreement between the County of Yuba, a political subdivision of the State of California, on behalf of its Health and Human Services Department, Public Health Division hereinafter referred to as "COUNTY," and Extra Self-Storage hereinafter referred to as "CONTRACTOR," dated September 9, 2015, for the purpose of a storage unit for storage of Maternal, Child and Adolescent Health, Tobacco and other general Public Health program supplies.

Pursuant to Operative Provision "No Oral Agreements" on page 3 of the Rental Agreement, the following changes are hereby made to page 1 of 4 of the Rental Agreement:

- 1) Extra Self Storage Linda, rents to Occupant the storage space number G004 pursuant to the following terms and conditions:

- a) G004 is a 20' x 30' unit which includes paid electricity

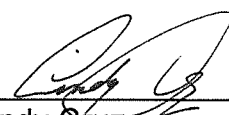
All remaining provisions of the Rental Agreement between the COUNTY and CONTRACTOR entered into on November 6, 2015, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment this _____ day of _____, 2017.

"COUNTY"
COUNTY OF YUBA

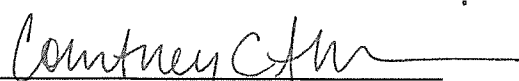
"CONTRACTOR"
EXTRA SELF STORAGE

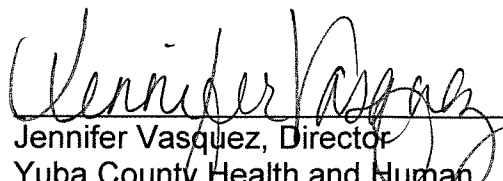
_____, Chair


Cindy Cruz
Manager

APPROVED AS TO FORM:
COUNTY COUNSEL

RECOMMENDED FOR APPROVAL:


Angil P. Morris Jones
County Counsel


Jennifer Vasquez, Director
Yuba County Health and Human
Services Department

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The County of Yuba

Human Resources and Organizational Services

TO: Board of Supervisors

FROM: Human Resources and Organizational Services, Jill Abel

SUBJECT: Approve Agreement between the County of Yuba and the Non-Represented employees and authorize the Chair to execute

DATE: March 7, 2017

NUMBER: 45/2017

Recommendation

Approve the attached Agreement between the County of Yuba and the Non-Represented employees and authorize the Chair to sign.

Discussion

On August 23, 2016, the Board adopted policy indicating Non-Represented Safety Classic employees would begin paying a portion of the employer's share of pension cost each fiscal year. Effective July 1, 2017, Non-Represented Safety Classic members shall pay an additional 1.5% toward the employer's CalPERS pension contribution, increasing the employee contribution to 10.5%.

The attached Agreement is required to begin the CalPERS contract amendment process to execute the negotiated cost share increase.

Committee:

This item has bypassed Committee as it has already been approved by the Board on August 23, 2017.

Fiscal Impact:

This item is administrative only and has no fiscal impact.

Attachments

45-2017 Agreement between County of Yuba and Non-Represented Safety employees

AGREEMENT
Between the
NON-REPRESENTED SAFETY CLASSIC MANAGEMENT GROUP, ELECTED OFFICIALS GROUP
AND EXTRA HELP GROUP EMPLOYEES
and the
COUNTY OF YUBA

The County of Yuba (County) and the Yuba County Non-Represented Employees identified as Classic Safety Employees have agreed to a policy adopted by the Board of Supervisors on August 23, 2016. The policy states Non-Represented Classic Safety employees will pay an additional portion of the employer's share of pension cost beginning in the 2017/18 Fiscal Year.

Effective July 1, 2017, or as soon thereafter as the CalPERS retirement contract can be amended, the CalPERS Employer Pension Contribution will be as follows:

- Non-Represented Safety Classic Management Group, Elected Officials Group and Extra Help Group Members agree to pay an additional **1.5%** toward the Employer Contribution.

This Agreement is dated this _____ of March 2017.

APPROVED:

Randy Fletcher, Chair
Board of Supervisors

APPROVED AS TO FORM:

Angil Morris-Jones
County Counsel

By: _____



The County of Yuba

County Counsel



TO: Board of Supervisors

FROM: County Counsel, Angil Morris-Jones

SUBJECT: An ordinance amending the number and time of regular board meetings.

DATE: February 28, 2017

NUMBER: 35/2017

RECOMMENDATION:

Adopt the attached ordinance amending §2.25.010 and §2.25.030 to Title II of the Yuba County Ordinance Code relating to the Regular Meetings of the Board of Supervisors.

DISCUSSION:

Pursuant to a consensus of the Board of Supervisors, County Counsel was directed at the February 7, 2017 Board Meeting to draft an ordinance amending the Regular Meetings of the BOS to twice a month, on the Second and Fourth Tuesday at 9:00a.m.

COMMITTEE ACTION:

Proposed ordinance amendment is pursuant to Board direction.

FISCAL IMPACT:

None.

COUNTY OF YUBA**SUMMARY OF PROPOSED ORDINANCE
AMENDING SECTIONS 2.25.010 AND 2.25.030 TO TITLE II OF
THE YUBA COUNTY ORDINANCE CODE
RELATING TO THE BOARD OF SUPERVISORS MEETINGS**

The following is a summary of a proposed ordinance which would amend Sections 2.25.010 and 2.25.030 to Title II of the Yuba County Ordinance Code relating to the Board of Supervisors meetings which is proposed to be adopted by the Board of Supervisors of the County of Yuba on _____ 2017.

The proposed ordinance would amend Section 2.25.010 by reducing the number of regular meetings of the Board of Supervisors from four every calendar month to two every calendar month, set on the second and fourth Tuesday of every month at 9:00 a.m. rather than as previously set to commence at 9:30 a.m. Additionally, the proposed ordinance would amend Section 2.25.030 by limiting the number of regular meeting that may be cancelled in the same calendar month to one.

The complete text of the proposed ordinance may be reviewed in the Office of the Clerk of the Board of Supervisors of Yuba County.

DONNA STOTTLEMEYER
Clerk of the Board of Supervisors

COUNTY OF YUBA**SUMMARY OF ADOPTED ORDINANCE NO. _____****AMENDING SECTIONS 2.25.010 AND 2.25.030 TO TITLE II OF
THE YUBA COUNTY ORDINANCE CODE
RELATING TO THE BOARD OF SUPERVISORS MEETINGS**

The following is a summary of an adopted ordinance which amended Sections 2.25.010 and 2.25.030 to Title II of the Yuba County Ordinance Code relating to the Board of Supervisors meetings which is proposed to be adopted by the Board of Supervisors of the County of Yuba on _____ 2017.

The adopted ordinance amended Section 2.25.010 by reducing the number of regular meetings of the Board of Supervisors from four every calendar month to two every calendar month, set on the second and fourth Tuesday of every month at 9:00 a.m. rather than as previously set to commence at 9:30 a.m. Additionally, the adopted ordinance amended Section 2.25.030 by limiting the number of regular meeting that may be cancelled in the same month to one.

The complete text of the proposed ordinance may be reviewed in the Office of the Clerk of the Board of Supervisors of Yuba County.

AYES:

NOES:

ABSENT:

ABSTAIN:

The complete text of the ordinance may be reviewed in the Office of the Clerk of the Board of Supervisors of Yuba County.

DONNA STOTTLEMEYER
Clerk of the Board of Supervisors

ORDINANCE NO. _____

AN ORDINANCE AMENDING

**SECTIONS 2.25.010 AND 2.25.030 TO TITLE II OF
THE YUBA COUNTY ORDINANCE CODE
RELATING TO THE BOARD OF SUPERVISORS MEETINGS**

The following ordinance, consisting of three (3) sections, was duly and regularly passed and adopted by the Board of Supervisors of the County of Yuba, State of California, at a regular meeting of the Board of Supervisors held on _____ day of _____, 2017, by the following vote:

AYES:

NOES:

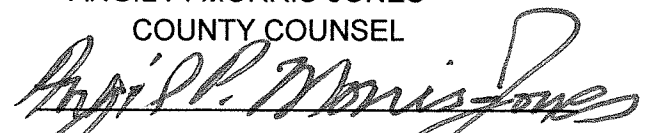
ABSENT:

ABSTAIN:

ATTEST: DONNA STOTTLEMEYER
Clerk of the Board of Supervisors

By: _____

APPROVED AS TO FORM
ANGIL P. MORRIS-JONES
COUNTY COUNSEL


Angil P. Morris-Jones, County Counsel

THE BOARD OF SUPERVISORS OF THE COUNTY OF YUBA, STATE OF CALIFORNIA DOES ORDAIN AS FOLLOWS:

Section 1. This ordinance shall take effect Thirty (30) days after its passage, and before the expiration of fifteen (15) days after its passage a summary shall be published with the names of the members voting for and against the same, once in a local newspaper of general circulation in the County of Yuba, State of California.

Section 2. Sections 2.25.010 and 2.25.030 to Title II of the Yuba County Ordinance Code is hereby amended as set forth herein below:

CHAPTER 2.25 - BOARD OF SUPERVISORS MEETINGS

2.25.010. - Regular meetings; time; continuation; holidays; cancellation by membership.

The regular meetings of the Board of Supervisors of the County of Yuba shall be held every second and fourth ~~each~~ Tuesday of every calendar month at 9:30 a.m. ~~except on the first Tuesday of each month such meetings shall commence at 6:00 p.m.~~ All such meetings where action may be taken shall be held in the chambers of the Board of Supervisors located at the Yuba County Government Center, 915 8th Street, Marysville, California, except upon a four-fifths vote of the Board of Supervisors, a regular meeting may be held at any location within the boundaries of the County of Yuba which complies with and is in accordance to State and Federal Laws. Each meeting may be continued from time to time until final adjournment. Any regular meeting of the Board of Supervisors that falls upon a holiday or election day is cancelled. There shall be no regular meeting of the Board of Supervisors in any County work week having two County holidays. By a three-fifths vote of the Board, regular meetings may be cancelled.

State law reference— Board of Supervisors to provide by ordinance for regular meetings, Government Code § 25081; publication of notice of proceedings, Government Code § 25151.

2.25.030. - Regular meetings; cancellation by Chairperson.

Notwithstanding Section 2.25.010, the Chairperson of the Board of Supervisors or a majority of the Board of Supervisors may cancel a regular meeting of the Board of Supervisors. Cancellation as provided in this Section is limited to no more than ~~two~~ one regular meeting scheduled in the same month. Cancellation shall occur at a regularly scheduled meeting of the Board or by the Chairperson of the Board of Supervisors at any time. Notice of the cancellation of a regular meeting shall be given in the same manner as notice of the holding of a regular meeting is given. Action by the Chairperson of the Board of Supervisors to cancel a regularly scheduled meeting or meetings may be overridden by a four-fifths vote of the Board of Supervisors taken at a regularly scheduled meeting of the Board of Supervisors.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

THE BOARD OF SUPERVISORS OF THE COUNTY OF YUBA, STATE OF CALIFORNIA DOES ORDAIN AS FOLLOWS:

Section 1. This ordinance shall take effect Thirty (30) days after its passage, and before the expiration of fifteen (15) days after its passage a summary shall be published with the names of the members voting for and against the same, once in a local newspaper of general circulation in the County of Yuba, State of California.

Section 2. Sections 2.25.010 and 2.25.030 to Title II of the Yuba County Ordinance Code is hereby amended as set forth herein below:

CHAPTER 2.25 - BOARD OF SUPERVISORS MEETINGS

2.25.010. - Regular meetings; time; continuation; holidays; cancellation by membership.

The regular meetings of the Board of Supervisors of the County of Yuba shall be held every second and fourth Tuesday of every calendar month at 9:00 a.m. All such meetings where action may be taken shall be held in the chambers of the Board of Supervisors located at the Yuba County Government Center, 915 8th Street, Marysville, California, except upon a four-fifths vote of the Board of Supervisors, a regular meeting may be held at any location within the boundaries of the County of Yuba which complies with and is in accordance to State and Federal Laws. Each meeting may be continued from time to time until final adjournment. Any regular meeting of the Board of Supervisors that falls upon a holiday or election day is cancelled. There shall be no regular meeting of the Board of Supervisors in any County work week having two County holidays. By a three-fifths vote of the Board, regular meetings may be cancelled.

State law reference— Board of Supervisors to provide by ordinance for regular meetings, Government Code § 25081; publication of notice of proceedings, Government Code § 25151.

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Notwithstanding Section 2.25.010, the Chairperson of the Board of Supervisors or a majority of the Board of Supervisors may cancel a regular meeting of the Board of Supervisors. Cancellation as provided in this Section is limited to no more than one regular meeting scheduled in the same month. Cancellation shall occur at a regularly scheduled meeting of the Board or by the Chairperson of the Board of Supervisors at any time. Notice of the cancellation of a regular meeting shall be given in the same manner as notice of the holding of a regular meeting is given. Action by the Chairperson of the Board of Supervisors to cancel a regularly scheduled meeting or meetings may be overridden by a four-fifths vote of the Board of Supervisors taken at a regularly scheduled meeting of the Board of Supervisors.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

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Program Consultant

Heidi Heflin, RN, MN, CNS, CPSTI

Program Consultant

Enc: 130 Co.proclamation; 630CA; 172/s; 664/s

SafetyBeltSafe U.S.A.

514 North Prospect Avenue, L-6, Redondo Beach, CA 90277

Mailing address: P. O. Box 553, Altadena, CA 91003 www.carseat.org
(800) 745-SAFE 310/318-5111 (telephone & FAX) Spanish: (800) 747-SANO

February 9, 2017

To: Board of Supervisors

From: Stephanie M. Tombrello, LCSW, CPSTI
Executive Director, SafetyBeltSafe U.S.A.

Re: Safety Seat Checkup Week, April 2 – 8, 2017

Motor vehicle crashes remain the number 1 cause of death and permanent injury for children in California. You can help save children from suffering preventable injuries by helping to make Safety Seat Checkup Week, April 2 – 8, a special event in your county.

With the passage of the new child restraint law requiring children under 2 to ride rear facing (unless 40" or 40 lbs. or more, enforced from 1/1/17), parents need more help than ever to know how to keep children safe.

SafetyBeltSafe U.S.A. is available to you as a resource for posters, pamphlets, speakers, program ideas, and information about California buckle-up laws. We would appreciate it if the Board of Supervisors would:

- Issue a proclamation in recognition of Safety Seat Checkup Week (sample enclosed). Your support for this effort, shared with your county media, may encourage them to publicize this subject more widely. Send your proclamation to us in advance for display at Safety Seat Checkup Day on April 8.
- Encourage law enforcement agencies to increase the focus on violations of child safety seat and safety belt laws during Special Enforcement Week, March 26 – April 1, sponsored by the Peace Officers Association of Los Angeles County, to protect children's welfare.
- Distribute posters and pamphlets, available from SafetyBeltSafe U.S.A., through county agencies and employees. Put up our permanent "Buckle-Up" parking lot signs.

In Los Angeles County, for example, SafetyBeltSafe U.S.A. is holding a major event as the culmination of the Week:

Safety Seat Checkup Day on Saturday, April 8, from 10:00 a.m. to 2:00 p.m. at USC Verdugo Hills Hospital, Glendale.

Families will receive a detailed inspection of the installation and use of their safety seats; be told of any recalls; and be shown how to use seats correctly. Error rates are typically more than 90%.

Your support for this effort, reported to newspapers in your county, may encourage them to publicize this subject more widely. Please share your ideas for Safety Seat Checkup Week with us.

40-2017

40-2017 Letter f... - 1 of 4

RECEIVED

FEB 21 2017

Clerk/Board of Supervisors

The national non-profit organization dedicated to child passenger safety since 1980

Protect Young Passengers – Ride Rear Facing



Do you care about a child?

Then you need to know that the law on protecting young children in the car has changed.

From January 1, 2017, children under age 2 must ride **rear facing** in safety seats (except those 40 inches tall or more or weighing 40 lbs. or more).

Riding rear facing is 5 times safer than riding facing the front of the car. Safety experts recommend that children ride rear facing for as long as possible.

Penalty after 1/1/17: fine with court fees is \$500 & a point on the license (enforced against the parent, or the driver if the parent is not present).

Each one, teach one—or more!

Spread the word: share it, post it, tag it, tweet it...

Make sure the children you care about have the best possible protection.

For help and advice on the correct way to buckle up all children, visit www.carseat.org or call 800/745 SAFE or 800/747-SANO.

Congratulations to California Assembly member Cristina Garcia (Bell Gardens) whose successful introduction of the law will protect young children from the #1 cause of childhood death and injury.

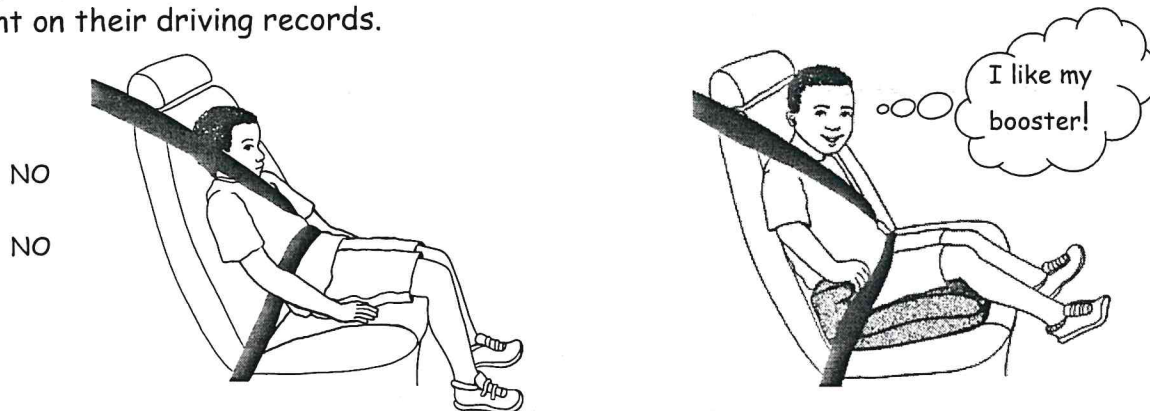
SafetyBeltSafe U.S.A. P.O. Box 553, Altadena, CA 91003 www.carseat.org
310/318-5111 * 800/745-SAFE (English) * 800/747-SANO (Spanish)

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#664 (2-7-17)

CALIFORNIA CHILD PASSENGER SAFETY LAW

- Children under age 8 must be properly buckled into a safety seat or booster in the back seat.
- Children under 2 must ride rear facing (unless 40" or 40 lbs. or more).
- Children age 8 or older may use the vehicle safety belt if it fits properly with the lap belt low on the hips, touching the upper thighs, and the shoulder belt crossing the center of the chest. If children are not tall enough for proper belt fit, they must ride in a booster or child safety seat.
- Everyone in the car must be properly buckled up. For each child under 16 who is not properly secured, parents (if in the car) or drivers can be fined more than \$500 and get a point on their driving records.



Most kids need to ride in a booster seat until age 10 to 12. Using a booster instead of just a belt prevents 45% of crash injuries.

If your child isn't using a booster, try the simple test below the next time you ride together in the car. You may find that your child is not yet ready to use a safety belt without a booster.

The 5-Step Test

1. Does the child sit all the way back against the auto seat?
2. Do the child's knees bend comfortably at the edge of the auto seat?
3. Does the belt cross the shoulder between the neck and arm?
4. Is the lap belt as low as possible, touching the thighs?
5. Can the child stay seated like this for the whole trip?

If you answered "no" to any of these questions, your child needs a booster seat to make both the shoulder belt and the lap belt fit right for the best crash protection. Your child will be more comfortable, too.

For best protection, all children should ride in the back seat. It's twice as safe as the front!

For a list of programs with low-cost safety seats, call your local health department at _____

For assistance with inspecting or installing a safety seat, visit www.seatcheck.org or www.nhtsa.gov/cps/cpsfitting or call 866-SEAT-CHECK or your local CHP office.

For more information: SafetyBeltSafe U.S.A. www.carseat.org 800-745-SAFE (English) 800-747-SANO (Spanish)

Funding for this program was provided by a grant from the California Office of Traffic Safety through the National Highway Traffic Safety Administration.

California Buckle-Up Laws for Parents

Car crashes are the #1 preventable cause of death of children and young adults, as well as a major cause of permanent brain damage, epilepsy, and spinal cord injuries. A sudden stop at 30 miles per hour could cause the same crushing force on your child's brain and body as a fall from a three-story building. Fortunately, by buckling up children, we can prevent most of these deaths and serious injuries.

(V.C. 27360) All children under age 8 must be properly buckled into a safety seat or booster in the back seat.

Exceptions: A child who weighs more than 40 pounds and is riding in a car without lap and shoulder belts in the back seat may wear just a lap belt. A child under age 8 who is at least 4'9" may wear a safety belt if it fits properly. Children under age 8 may ride in the front if there is no forward-facing rear seat in the vehicle, the child restraint cannot be properly installed in rear seat, all rear seats are occupied by other children age 7 or under, or for medical reasons. All children under 2 must ride in a rear-facing safety seat unless they are at least 40" in height or 40 lbs. in weight. A child in a rear-facing safety seat may not ride in front if there is an active passenger air bag.

(V.C. 27360.5) Children age 8 or more may use the vehicle safety belt if it fits properly with the lap belt low on the hips, touching the upper thighs, and the shoulder belt crossing the center of the chest. If children are not tall enough for proper belt fit, they must ride in a booster or safety seat.

Consequences for failing to properly buckle up any child under 16

- **The parent** gets the ticket if a child under 16 is not properly buckled up.
- **The driver** gets the ticket if the parent is not in the car.
- The cost of a ticket could be more than \$500* per child; the fine for a second offense could be more than \$1000* per child. One point is added to the driving record, which could raise insurance rates. Part of the fine money goes to a special fund to help pay for local safety seat education and distribution programs.

Recommendations

- Older babies and toddlers should ride in a rear-facing convertible seat until they are at least two years old or reach the maximum weight and height limits of their convertible safety seat.
- Children should ride in a safety seat with a harness as long as possible (40-90 lbs., depending on the model).
- Children who have outgrown their safety seats need a booster for proper belt fit (usually until age 10-12). To find out if a child is tall enough to wear just a safety belt, try the 5-Step Test (see other side).
- Auto insurers are required to replace safety seats that were in use or damaged during a crash.

(V.C. 27315) Drivers and passengers 16 or older must be **properly buckled up** in vehicle safety belts.

The driver may be ticketed for not wearing a belt and for each unbuckled passenger. Fine is more than \$140* per person. **Passengers** also may be ticketed for not being properly buckled up.

(V.C. 23116) Pickup truck passengers also must be **properly buckled up**.

The driver may be ticketed for letting passengers ride in the back of a pickup truck.

Passengers also may be ticketed for not being properly buckled up.

The cost of a ticket could be more than \$250* for each unbuckled adult. No exemption for camper shells.

Other Laws to Protect Children

- **Children left in vehicle (V.C. 15620):** A child 6 years old or younger may not be left alone in a vehicle if the health or safety of the child is at risk, the engine is running, or the keys are in the ignition. The child must be supervised by someone at least age 12. The cost of a ticket could be more than \$500.*
- **Smoking in a vehicle [Health and Safety Code 118948(a)]** is prohibited if a child under 18 is present. The cost of a ticket could be more than \$500.* (The vehicle must be pulled over for another potential violation.)
- **Helmets (V.C. 21212, 21204, 27803):** Children under age 18 who are skating or riding on a bicycle, scooter, or skateboard must wear a properly fitted and fastened helmet. All drivers and passengers on a motorcycle must wear a helmet that meets federal standards, fits correctly, and has the proper label.

*Fine amounts shown include penalty assessments

SafetyBeltSafe U.S.A.	P.O. Box 553, Altadena, CA 91003	www.carseat.org
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 Saint Helena
Jacque Hostler-Carmesin, Vice President
 McKinleyville
Anthony C. Williams, Member
 Huntington Beach
Russell Burns, Member
 Napa
Peter Silva, Member
 Chula Vista

STATE OF CALIFORNIA
 Edmund G. Brown Jr., Governor

Valerie Termini, Executive Director
 1416 Ninth Street, Room 1320
 Sacramento, CA 95814
 (916) 653-4899
www.fgc.ca.gov

Fish and Game Commission



Wildlife Heritage and Conservation
 Since 1870

RECEIVED
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 Clerk/Board of Supervisors

February 14, 2017

TO ALL AFFECTED AND INTERESTED PARTIES:

Re: Use of Dogs for Pursuit/Take of Mammals, Section 265, Title 14, California Code of Regulations; published in California Notice Register, November 18, 2016, Notice File No. Z2016-1108-06, Register 2016, No. 47-Z.

Notice was given that any person interested may present statements, orally or in writing, relevant to this rulemaking at an adoption hearing which was originally scheduled on February 8, 2017, at 8:00 a.m. At this meeting the Commission voted to agendize two additional public meetings.

NOTICE IS NOW GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be teleconference originating in the Fish and Game Commission conference room, 1416 Ninth Street, Suite 1320, Sacramento, California, on Thursday, April 13, 2017, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Airtel Plaza Hotel, 7277 Valjean Ave., Van Nuys, California, on Wednesday, April 26, 2017, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on April 12, 2017 at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on April 21, 2017. All comments must be received no later than April 26, 2017, at the hearing in Van Nuys, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

Additional information and all associated documents may be found on the Fish and Game Commission website at http://www.fgc.ca.gov/regulations/2016/index.aspx#265_2.

Sincerely,


 Jon D. Snellstrom

Associate Governmental Program Analyst

Commissioners
Eric Sklar, President
Saint Helena

Jacque Hostler-Carmesin, Vice President
McKinleyville

Anthony C. Williams, Member
Huntington Beach

Russell E. Burns, Member
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Fish and Game Commission



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Sacramento, CA 95814
(916) 653-4899
www.fgc.ca.gov

February 22, 2017

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a Notice of Findings regarding the petition to list Lassics lupine as endangered under the California Endangered Species Act. This notice will be published in the California Regulatory Notice Register on February 24, 2017.

Sincerely,

A handwritten signature in cursive script that reads "Sheri Tiemann".

Sheri Tiemann
Associate Governmental Program Analyst

Attachment

1416 Ninth Street, Room 1320
Sacramento, CA 95814
(916) 653-4899
www.fgc.ca.gov

Commissioners
Eric Sklar, President
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CALIFORNIA FISH AND GAME COMMISSION NOTICE OF FINDINGS

Lassics lupine (*Lupinus constancei*)

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2074.2 of the Fish and Game Code, the California Fish and Game Commission (Commission), at its February 8, 2017, meeting in Rohnert Park, California, accepted for consideration the petition submitted to list Lassics lupine as an endangered species. Pursuant to subdivision (e)(2) of Section 2074.2 of the Fish and Game Code, the Commission determined that the amount of information contained in the petition, when considered in light of the Department of Fish and Wildlife's (Department) written report, the comments received, and the remainder of the administrative record, would lead a reasonable person to conclude there is a substantial possibility the requested listing could occur.

Based on that finding and the acceptance of the petition, the Commission is also providing notice that the aforementioned species is a candidate species as defined by Section 2068 of the Fish and Game Code.

Within one year of the date of publication of this notice of findings, the Department shall submit a written report, pursuant to Section 2074.6 of the Fish and Game Code, indicating whether the petitioned action is warranted. Copies of the petition, as well as minutes of the February 8, 2017 Commission meeting, are on file and available for public review from the agency representative, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth Street, Room 1320, Sacramento, California 95814, phone (916) 653-4899. Written comments or data related to the petitioned action should be directed to the Commission at the aforementioned address.

Fish and Game Commission

February 14, 2017

Valerie Termini
Executive Director

Commissioners

Eric Sklar, President
Saint Helena

Jacque Hostler-Carmesin, Vice President
McKinleyville

Anthony C. Williams, Member
Huntington Beach

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Sacramento, CA 95814
(916) 653-4899
www.fgc.ca.gov

February 22, 2017

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a Notice of Findings regarding the petition to list flat-tailed horned lizard as threatened or endangered under the California Endangered Species Act. This notice will be published in the California Regulatory Notice Register on February 24, 2017.

Sincerely,

Sheri Tiemann
Associate Governmental Program Analyst

Attachment

NOTICE OF FINDINGS
Flat-Tailed Horned Lizard
(*Phrynosoma mcallii*)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), at its December 8, 2016 meeting in San Diego, California, made a finding pursuant to Fish and Game Code Section 2075.5, that the petitioned action to add the flat-tailed horned lizard (*Phrynosoma mcallii*) to the list of threatened or endangered species under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.) is not warranted. (See also Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1).)

NOTICE IS ALSO GIVEN that, at its February 8, 2017 meeting in Rohnert Park, California, the Commission adopted the following findings outlining the reasons for its rejection of the petition.

I. BACKGROUND AND PROCEDURAL HISTORY

A. Petition History

The Center for Biological Diversity (Petitioners) submitted a petition (Petition) to the Commission on June 10, 2014 to list the flat-tailed horned lizard (*Phrynosoma mcallii*) as an endangered species pursuant to CESA ("A Petition to List the Flat-tailed Horned Lizard (*Phrynosoma mcallii*) as Endangered under the California Endangered Species Act"). The Commission transmitted the Petition to the Department pursuant to Fish and Game Code Section 2073 on June 12, 2014, and published formal notice of receipt on July 11, 2014 (Cal. Reg. Notice Register 2014, No. 28-Z, p. 1238).

The Department evaluated the Petition, using the information in that document and other relevant information available at that time, and found that the scientific information presented in the Petition was sufficient to indicate that the petitioned action may be warranted. On September 30, 2014, the Department submitted to the Commission its evaluation of the Petition, "Evaluation of the Petition from the Center for Biological Diversity to List the Flat-Tailed Horned Lizard (*Phrynosoma mcallii*) as Endangered Under the California Endangered Species Act" (Petition Evaluation). The Department recommended that the Commission accept the Petition pursuant to Fish and Game Code Section 2073.5.

On February 12, 2015, at its meeting in Sacramento, California, the Commission considered the Petition, the Department's Petition Evaluation, and received public comment. The Commission determined there was sufficient information in the Petition to indicate that the petitioned action may be warranted and accepted for consideration the

Petition. The flat-tailed horned lizard was designated a candidate species on March 6, 2015 (Cal. Reg. Notice Register 2015, No. 10-Z, p. 410).

The Department promptly notified affected parties by issuing a press release, posting notice on the Department's website, and sending targeted letters to stakeholder groups, including scientific researchers holding scientific collecting permits for flat-tailed horned lizard. (Fish & Game Code, § 2074.4).

Consistent with Fish and Game Code Section 2074.6 and its implementing regulations, the Department commenced a twelve-month status review of the flat-tailed horned lizard following published notice of its designation as a candidate species under CESA. As an integral part of that effort, the Department solicited data, comments, and other information from interested members of the public and the scientific and academic communities. The Department received fourteen pieces of correspondence during the public notice period ending September 14, 2015. Comments included those from members of the public without stated affiliation as well as comments on behalf of state and federal agencies, local governments, and special interest groups. Some comments provided additional scientific papers, other reports, GIS files, and photographs. At its scheduled public meeting on February 11, 2016, in Sacramento, California, the Commission granted the Department a six-month extension to facilitate external peer review.

On June 22, 2016, the Department submitted a preliminary draft of its status review for independent scientific peer review by a number of individuals acknowledged to be experts on flat-tailed horned lizard, possessing the knowledge and expertise to critique the scientific validity of the report. (Fish & G. Code, § 2074.8; Cal. Code Regs., tit. 14, § 670.1, subd. (f)(2).) On September 30, 2016, the Department submitted its final "Report to the Fish and Game Commission a Status Review of the Flat-tailed Horned Lizard (*Phrynosoma mcallii*) in California" (Status Review). Based on its Status Review and the best available science, the Department recommended to the Commission that designating flat-tailed horned lizard as threatened or endangered under CESA is not warranted (Fish & G. Code, § 2074.6; Cal. Code Regs., tit. 14, § 670.1, subd. (f).). Following receipt, the Commission made the Department's Status Review available to the public, inviting further review and input. (Cal. Code Regs., tit. 14, § 670.1, subd. (g).)

On December 8, 2016, at its meeting in San Diego, California, the Commission received public comment, accepted additional information from Petitioners and the public, and considered final action regarding the Petition to designate flat-tailed horned lizard as a threatened or endangered species under CESA. (Fish & G. Code, § 2075.5; Cal. Code Regs., tit. 14, § 670.1, subd. (i).) After receiving public comment, the Commission closed the administrative record of proceedings for the Petition. (Fish & G. Code,

§ 2075.5, subd. (a).) The Commission considered the petition, further information submitted by Petitioners, public comment, the Department's 2014 Petition Evaluation, the Department's 2016 Status Review, and other information included in the Commission's administrative record of proceedings. Following public comment and deliberation, the Commission determined, based on the best available science, that designating the flat-tailed horned lizard as a threatened or endangered species under CESA is not warranted. (Fish & G. Code, § 2075.5, subd. (e)(1); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(2)). The Commission directed its staff, in coordination with the Department, to prepare findings of fact consistent with the Commission's determination and to present those findings for consideration and ratification at the Commission's February 8, 2017 meeting in Rohnert Park, California.

B. Species Description

Flat-tailed horned lizards are typical of other horned lizards in the genus *Phrynosoma*, which are characterized by an ant-rich diet, squat dorsoventrally flattened bodies, cranial horns, body fringe, cryptic coloration, reluctance to run when approached, and a long active period. Flat-tailed horned lizards have a relatively low reproductive output compared to other horned lizards and rarely live beyond three years. Ants, primarily harvester ants, comprise 97% of their diet, higher than any other species of horned lizard, but they also can opportunistically consume large quantities of smaller ants and other invertebrates. They have relatively long active seasons compared to other horned lizards and large home ranges for their size.

The flat-tailed horned lizard has the smallest range of any horned lizard found within the United States and has among the smallest distributions of all horned lizards. The species is restricted to appropriate substrates within southeastern California, the extreme southwestern portion of Arizona, and the adjacent portions of northeastern Baja California and northwestern Sonora, Mexico. Approximately one-quarter of the species' range is within California, where it is confined to lower elevations throughout much of the Salton Trough, in sections of eastern San Diego County, central Riverside County, and western and southern Imperial County.

High quality flat-tailed horned lizard habitat is characterized as areas of low relief with finely packed sandy soils that are covered with loose, fine, wind-blown sands. Favorable habitat is typically associated with the creosote bush shrub community, especially a creosote-bursage assemblage. Flat-tailed horned lizards have been recorded in a broad range of habitats in California, including sandy flats and hills, badlands, salt flats, and gravelly soils. They have also been found on rocky slopes at lower elevations, along the vegetated edges of active sand dunes, on stabilized sand fields, and, less frequently, within active dunes themselves. The species has also been observed in low densities using fallowed agricultural fields dominated by non-native weedy species.

Flat-tailed horned lizards have lost a substantial amount of habitat within their historical range in California due primarily to flooding of the Salton Sea in the early 1900s and urban and agricultural development in the Imperial, Coachella, and Borrego Valleys. The exact amount of habitat loss is difficult to determine as the species' current and historic range boundaries are not well-understood, a common problem for cryptic species. However, habitat loss has been estimated at approximately 60% in Imperial County, greater than 90% in Riverside County, and 10% in San Diego County.

Historically flat-tailed horned lizards were considered rare and uncommon in many places, while simultaneously being considered the most common reptile in others, the former potentially owing to the species' cryptic coloration and low detectability. Loss of habitat and accounts of localized declines led to concern for the status of flat-tailed horned lizards in the 1970s. Rangewide surveys in California were conducted in the late 1970s to determine the species' distribution and abundance, and population monitoring has occurred regularly since then. These surveys have revealed that flat-tailed horned lizard abundance can fluctuate significantly over short periods of time, most often in response to precipitation and commensurate availability of resources. The species' low detectability and variable annual abundance makes identifying population declines challenging; however, the data available suggest the species is still relatively widespread, and significant, ongoing declines in abundance have not been reported over much of the species' range. The exception is the Coachella Valley, where the species has been extirpated from many of the locations it once inhabited as recently as the 1980s, and the remaining populations are small and isolated.

C. Current Regulatory Status

The flat-tailed horned lizard is designated as a Priority 2 Species of Special Concern by the Department and as Sensitive Species by the Bureau of Land Management (BLM). The species was previously petitioned for listing as endangered under the California Endangered Species Act (CESA) in 1988. In 1989, the Department recommended the Commission list the flat-tailed horned lizard as a threatened species under CESA, but the Commission voted against listing, citing insufficient scientific information on population densities. In 1993, the United States Fish and Wildlife Service (USFWS) published a proposed rule to list the flat-tailed horned lizard as threatened under the federal Endangered Species Act (ESA). In 1997, multiple State and federal agencies entered into an Interagency Conservation Agreement to implement a Rangewide Management Strategy (RMS) aimed at maintaining self-sustaining populations of flat-tailed horned lizards in perpetuity. That year, the USFWS withdrew its proposed listing rule. Subsequently, multiple court decisions led to the USFWS re-instating the proposed rule and re-evaluating the available data. After each reconsideration of the best science available, the agency determined that listing under the ESA was not warranted in 2003,

2006, and most recently in 2011. The flat-tailed horned lizard is a covered species under the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP).

Approximately 77% of the flat-tailed horned lizard's range in California is managed by public entities, and approximately 99% of those public lands are managed by agencies that implement the flat-tailed horned lizard RMS. Approximately 60% of the species' range in California is managed by the BLM. Four flat-tailed horned lizard Management Areas, comprising approximately 21% of the species' range in California, and one Research Area (5%) have been designated in California under the RMS. There are several conservation measures in the RMS, including population monitoring and research conducted in these areas. Additionally, within the Management Areas, there is a 1% cap on permanent habitat disturbance and a requirement for mitigation in the form of financial compensation for lost habitat. These funds are primarily used to acquire private inholdings within the Management Areas to ensure there are large areas of relatively intact habitat available for the species.

II. STATUTORY AND LEGAL FRAMEWORK

The Commission has prepared these findings as part of its final action under CESA regarding the Petition to designate the flat-tailed horned lizard as a threatened or endangered species under CESA. As set forth above, the Commission's determination that listing flat-tailed horned lizard is not warranted marks the end of formal administrative proceedings under CESA. (See generally Fish & G. Code, § 2070 et seq.; Cal. Code Regs., tit. 14, § 670.1.) The Commission, as established by the California Constitution, has exclusive statutory authority under California law to designate endangered, threatened, and candidate species under CESA. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, § 2070.)

The CESA listing process for flat-tailed horned lizard began in the present case with Petitioners' submittal of their Petition to the Commission in June 10, 2014 (Cal. Reg. Notice Register 2014, No. 28-Z, p. 1238). The regulatory process that ensued is described above in some detail, along with related references to the Fish and Game Code and controlling regulation. The CESA listing process generally is also described in some detail in published appellate case law in California, including:

- *Mountain Lion Foundation v. California Fish and Game Commission* (1997) 16 Cal.4th 105, 114-116;
- *California Forestry Association v. California Fish and Game Commission* (2007) 156 Cal.App.4th 1535, 1541-1542;
- *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597, 600; and
- *Natural Resources Defense Council v. California Fish and Game Commission* (1994) 28 Cal.App.4th 1104, 1111-1116.

The “is not warranted” determination at issue here for the flat-tailed horned lizard stems from Commission obligations established by Fish and Game Code section 2075.5(e). Under this provision, the Commission is required to make one of two findings for a candidate species at the end of the CESA listing process: whether the petitioned action is warranted or is not warranted. Here with respect to the flat-tailed horned lizard, the Commission made the finding under Section 2075.5(e) that the petitioned action is not warranted.

The Commission was guided in making this determination by various statutory provisions and other controlling law. The Fish and Game Code, for example, defines an endangered species under CESA as a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease (Fish & G. Code, § 2062.). Similarly, the Fish and Game Code defines a threatened species under CESA as a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by this chapter. (*Id.*, § 2067.)

As established by published appellate case law in California, the term “range” for purposes of CESA means the range of the species within California (*California Forestry Association v. California Fish and Game Commission*, *supra*, 156 Cal. App.4th at p. 1540, 1549-1551.).

The Commission was also guided in making its determination regarding the flat-tailed horned lizard by Title 14, Section 670.1, subdivision (i)(1)(A), of the California Code of Regulations. This provision provides, in pertinent part, that a species shall be listed as endangered or threatened under CESA if the Commission determines that the continued existence of the species is in serious danger or is threatened by any one or any combination of the following factors:

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

Fish and Game Code Section 2070 provides similar guidance. This section provides that the Commission shall add or remove species from the list of endangered and threatened species under CESA only upon receipt of sufficient scientific information that the action is warranted. Similarly, CESA provides that all state agencies, boards, and

commissions shall seek to conserve endangered and threatened species and shall utilize their authority in furtherance of the purposes of CESA (Fish & G. Code, § 2055.). This policy direction does not compel a particular determination by the Commission in the CESA listing context. Yet, the Commission made its determination regarding flat-tailed horned lizard mindful of this policy direction, acknowledging that “[l]aws providing for the conservation of natural resources’ such as the CESA ‘are of great remedial and public importance and thus should be construed liberally” (*California Forestry Association v. California Fish and Game Commission*, *supra*, 156 Cal. App.4th at pp. 1545-1546, citing *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 601; Fish & G. Code, §§ 2051, 2052.).

Finally in considering these factors, CESA and controlling regulations require the Commission to actively seek and consider related input from the public and any interested party (See, e.g., *Id.*, §§ 2071, 2074.4, 2078; Cal. Code Regs., tit. 14, § 670.1, subd. (h).). The related notice obligations and public hearing opportunities before the Commission are also considerable (Fish & G. Code, §§ 2073.3, 2074, 2074.2, 2075, 2075.5, 2078; Cal. Code Regs., tit. 14, § 670.1, subds. (c), (e), (g), (i); see also Gov. Code, § 11120 et seq.). All of these obligations are in addition to the requirements prescribed for the Department in the CESA listing process, including an initial evaluation of the petition and a related recommendation regarding candidacy, and a 12-month status review of the candidate species culminating with a report and recommendation to the Commission as to whether listing is warranted based on the best available science (Fish & G. Code, §§ 2073.4, 2073.5, 2074.4, 2074.6; Cal. Code Regs., tit. 14, § 670.1, subds. (d), (f), (h).).

III. FACTUAL AND SCIENTIFIC BASIS FOR THE COMMISSION’S FINDINGS

The factual and scientific bases for the Commission’s finding that designating the flat-tailed horned lizard as a threatened or endangered species under CESA is not warranted are set forth in detail in the Commission’s administrative record of proceedings. The evidence in the administrative record in support of the Commission’s determination includes, but is not limited to, the Department’s 2014 Petition Evaluation and 2016 Status Review, and other information specifically presented to the Commission and otherwise included in the Commission’s administrative record as it exists up to and including the Commission meeting in San Diego, California on December 8, 2016. The administrative record also includes these findings.

The Commission finds the substantial evidence highlighted in the preceding paragraph, along with other evidence in the administrative record, supports the Commission’s determination that the continued existence of the flat-tailed horned lizard in the State of California is not in serious danger of becoming extinct or threatened by on or a combination of the following factors:

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

The Commission also finds that the same evidence constitutes sufficient scientific information to establish that designating the flat-tailed horned lizard as a threatened or endangered species under CESA is not warranted. The Commission finds in this respect that the flat-tailed horned lizard is not in serious danger of becoming extinct throughout all, or a significant portion, of its range in California. Similarly, the Commission finds that the flat-tailed horned lizard is not presently threatened and it is unlikely to become an endangered species in the foreseeable future in the absence of special protection and management efforts required by CESA.

The following Commission findings highlight in more detail some of the scientific and factual information and other evidence in the administrative record of proceedings that support the Commission's determination that designating the flat-tailed horned lizard as a threatened or endangered species under CESA is not warranted:

1. Flat-tailed lizards are sometimes difficult to detect due to the species' cryptic coloration and low detectability. Accounts of localized declines led to initial concerns on the status of the species in the 1970s, and range wide surveys in California were conducted to determine the species' distribution and abundance. Population monitoring since then has shown that flat-tailed horned lizard abundance can fluctuate significantly over short periods of time, but data suggests the species is still relatively widespread and significant, ongoing declines in abundance have not been reported over the majority of the species' range.
2. Although expansion of urban and renewable energy development is expected to continue within the flat-tailed horned lizard's range, the Desert Renewable Energy Conservation Plan (the BLM Land Use Plan Amendment) is expected to reduce impacts to the species by focusing most development on or near existing disturbed areas and existing transmission lines as opposed to relatively undisturbed open desert. Approximately 60% of the species' range in California is managed by the BLM. Existing conservation measures under the RMS put a 1% cap on permanent habitat disturbance and include a requirement for mitigation in the form of financial compensation for lost habitat.
3. The areas available for mineral extraction in Imperial County is largely depleted, and oil, gas, and hold exploration have proved unprofitable.

4. Although off-highway vehicle (OHV) activity can degrade habitat quality and directly kill flat-tailed horned lizards, there is little evidence of significant population declines as a result of OHV activity.
5. Illegal activities along the California-Mexico border and the operations of U.S. Customs and Border Protection may degrade flat-tailed horned lizard habitat near the border and may fragment populations. However, increased border security can also benefit the species by reducing the amount of illegal border crossings and associated trash and cross-country pursuits.
6. While roads may pose a localized threat to flat-tailed horned lizards through habitat fragmentation and edge effects associated with road mortality, the severity of the threat depends on the vulnerability of the flat-tailed horned lizard population and the surrounding land use. Areas where this is likely a problem are relatively concentrated within the Coachella and Imperial Valleys, and this area comprises only a small fraction of the flat-tailed horned lizard's range.
7. Invasive species like Sahara mustard may be playing a role in flat-tailed horned lizard declines in certain portions of the species' range; however the degree to which invasive plants are having widespread population-level impacts is unknown.
8. Because flat-tailed horned lizards live in a highly arid environment and have evolved with drought, large and healthy populations are expected to rebound.

IV. ADDITIONAL CONSIDERATIONS INFORMING THE COMMISSION'S FINAL DETERMINATION

The Commission's determination that designating flat-tailed horned lizard as a threatened or endangered species under CESA is not warranted; it is informed by various additional considerations. In general, the Fish and Game Code contemplates a roughly twelve-month long CESA listing process before the Commission, including multiple opportunities for public and Department review and input and peer review (See generally Fish & G. Code, § 2070 et seq.; Cal. Code Regs., tit. 14, § 670.1.). From the initial receipt of the Petition in June 2014 through the Commission's decision on December 8, 2016, that listing is not warranted, the Department and the Commission received numerous comments and other significant public input regarding the status of flat-tailed horned lizard from a biological and scientific standpoint and with respect to the petitioned action under CESA. The Commission, as highlighted below, was informed by and considered all of these issues, among others, in making its final determination that designating flat-tailed horned lizard as a threatened or endangered species under CESA is not warranted (Fish & G. Code, § 2075.5, subd. (e)(1); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(2).).

V. SCIENTIFIC DETERMINATIONS REGARDING THE STATUS OF THE FLAT-TAILED HORNED LIZARD

CESA defines an endangered species as one “which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease” (Fish & G. Code, § 2062.). CESA defines a threatened species as one “that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of special protection and management efforts required by [CESA]” (Id., § 2067).

Pursuant to CESA’s implementing regulations, a “species shall be listed as endangered or threatened ... if the Commission determines that its continued existence is in serious danger or is threatened by anyone or any combination of the following factors: (1) present or threatened modification or destruction of its habitat; (2) overexploitation; (3) predation; (4) competition; (5) disease; or (6) other natural occurrences or human-related activities” (Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A).).

A. Present or Threatened Modification or Destruction of Habitat

- Impacts from agricultural development are fairly concentrated and are not expected to increase significantly in the future. Threats from urban development impact a relatively small area compared to the species’ range. Agricultural and urban development are not considered a significant threat to the flat-tailed horned lizard at this time.
- Renewable energy development is expected to continue within the flat-tailed horned lizard’s range, but current development plans are expected to focus impacts on or near existing disturbed areas and existing transmission lines as opposed to relatively undisturbed open desert. Renewable energy development does not appear to pose a threat to flat-tailed horned lizard at this time.
- While there is potential for mining activities with the flat-tailed horned lizard’s range, the area available for mineral extraction are largely depleted or have proven unprofitable. Therefore, the threat to flat-tailed horned lizard posed by mining is considered relatively small.
- It is reasonable to expect that where off-road vehicle use substantially reduces native shrubs or prey, it could pose a threat to flat-tailed horned lizard. However, few focused studies have found a demonstrable connection between OHV and population –level adverse impacts on flat-tailed horned lizards. OHV activated does not seem to pose a threat to flat-tailed horned lizards at this time.
- Although activities on the United States-Mexican border likely cause adverse effects from road mortality and potentially increased avian predation, as well as

mortality and habitat degradation associated with cross-country travel by Border Patrol agents, there are also benefits to increased security such as reduced habitat damage from illegal border crossings. Overall, border activities do not pose a serious threat to flat-tailed horned lizards at this time.

- Flat-tailed horned lizard habitat on military land is protected through the Sikes Act and managed in a way to conserve the species, so military activities do not appear to pose a significant threat to the species at present.
- Based on the best scientific information available, the Commission finds that the continued existence of the flat-tailed horned lizard is not in serious danger or threatened by present or threatened modification or destruction of habitat.

B. Overexploitation

- Collecting for the pet trade does not appear to be a current threat, and horned lizards are notably difficult to keep alive in captivity due to their specialized diet.
- Research activities take place over a very small portion of the species' range.
- Based on the best scientific information available, the Commission finds that the continued existence of the flat-tailed horned lizard is not in serious danger or threatened by overexploitation.

C. Predation

- To the extent increases in predation exist, they are likely concentrated to development within the Imperial, Coachella, and Borrego Valleys, an area which comprises a small fraction of the flat-tailed horned lizard's range.
- Based on the best scientific information available, the Commission finds that the continued existence of the flat-tailed horned lizard is not in serious danger or threatened by predation.

D. Competition

- There is no evidence to suggest that competition threatens Flat-tailed Horned Lizards.
- Based on the best scientific information available, the Commission finds that the continued existence of the flat-tailed horned lizard is not in serious danger or threatened by competition.

E. Disease

- There is no evidence to suggest that disease threatens Flat-tailed Horned Lizards.

- Based on the best scientific information available, the Commission finds that the continued existence of the flat-tailed horned lizard is not in serious danger or threatened by disease.

F. Other Natural Occurrences or Human-Related Activities

- While habitat fragmentation, edge effects, and small population sizes may pose threats to flat-tailed horned lizards in some portions of their California range, the degree to which this adversely impacts the species as a whole is uncertain. Outside of the Coachella Valley, there are large expanses of relatively intact habitat. As long as the RMS is implemented, a substantial portion of the species' range in California will remain relatively undisturbed in that area.
- Major roads, canals, and railroads may cause habitat fragmentation and/or edge effects. Additionally, major roads causing mortality could lead to a population sink, while minor lightly traveled roads and OHV trails likely contribute to a lesser degree. However, the degree to which flat-tailed horned lizards are affected by these features is largely unknown throughout most of the species' range.
- There is no evidence to suggest that herbicides, pesticides, or other contaminants pose a significant threat to flat-tailed horned lizard.
- Although invasive species like Sahara mustard appear to be playing a role in localized declines of flat-tailed horned lizard, the degree to which invasive plants are having widespread population-level impacts is unknown. Additionally, populations in management areas appear stable over time. Non-native ants do not appear to pose a threat to flat-tailed horned lizards.
- While small, isolated populations of flat-tailed horned lizards may be threatened by drought, on the whole the species evolved with drought and should rebound.
- The potential threat from climate change is uncertain and the degree to which it will threaten the continued survival of the species is unknown.
- Based on the best scientific information available, the Commission finds that the continued existence of the flat-tailed horned lizard is not in serious danger or threatened by other natural occurrences or human-related activities.

G. Summary of Key Findings

Based on the criteria described above, the best scientific information available to the Commission indicates that the flat-tailed horned lizard is not currently in serious danger of becoming extinct in California within the next few decades, nor in the foreseeable future in the absence of special protection and management under CESA.

The current size of the population is uncertain, and any recent trends showing a decline in population size may be a normal fluctuation in response to drought or other

environmental conditions. Studies underway may provide additional insights into the status of the flat-tailed horned lizard in California. However, at this time the Department does not feel the population levels are such that would require listing.

The Department evaluated other factors, such as habitat loss, degradation, and fragmentation associated with urban and renewable energy development; mining; off-highway vehicle use and border activities; habitat fragmentation and mortality associated with heavily traveled roads; human subsidized predation; invasive species; and climate change. Based on the Department's analysis, none of these factors is considered to be a serious threat to the continued existence of the flat-tailed horned lizard. Additionally, overexploitation, competition, and disease are not considered threats to the species at this time.

Based on the best scientific information available, the Department concluded the continued existence of the flat-tailed horned lizard is not in serious danger or threatened. Further, the Department generated the following recommendations to prioritize conservation, research, regulation and monitoring activities.

- Revisit flat-tailed horned lizard status in three to five years. Several efforts are underway that should provide additional insights into the status of flat-tailed horned lizard in California. Additionally, the next three to five years will likely reveal whether the species can rebound from prolonged drought in light of the current stresses it is facing. If the data indicate a change in status is warranted, the Department should prepare appropriate document to address the newly acquired data.
- Increase Department participation in the RMS implementation through identifying outside funding opportunities and providing staff to assist with population monitoring, habitat restoration, education and outreach, and international coordination and collaboration.
- Work on multiple fronts to improve population and habitat monitoring
 - Encourage agencies to dedicate funding sufficient to fully implement the occupancy and demography survey protocols on all RMS lands.
 - Expand monitoring to sites outside RMS lands to obtain a more complete range-wide status assessment.
 - Collect and analyze data on environmental covariates, such as habitat quality, predators and prey, and anthropogenic threats so that an informed adaptive management strategy can be developed if population declines cannot be attributed primarily to weather
- Actions to increase habitat quality and quantity:
 - Restore areas degraded by OHVs, mining, or agriculture. Additionally, increased patrols of areas and cite illegal cross-country OHV or other

public trespass in closed or limited use areas to minimize habitat degradation and mortality.

- Decommission unnecessary powerlines or other anthropogenic structures that provide perches for avian predators, and remove or trim hedgerows along roads that attract avian predators and investigate perch deterrents
- Clean up illegally dumped material as quickly as possible
- Remove or reduce the abundance and extent of non-native grasses, Sahara mustard, and other invasive species, particularly highly imperiled areas like the Coachella Valley
- In order to reduce habitat fragmentation and its effects, investigate how barriers may be limiting gene flow across the species' range. This information can be used to protect important habitat linkages and movement corridors such as Yuha Basin to West Mesa and East Mesa to Dos Palmas. Broken linkages can be improved by creating effective road and canal crossings
- Continue to purchase private inholdings within the larger public land matrix.
- Encourage the siting of renewable energy development outside of the desert completely, or, if within the flat-tailed horned lizard's range, ensure it is located on compatible lands. Bury transmission whenever possible.
- Further investigate the impacts and potential uses of translocation, which is currently not well understood to develop more well informed translocation plans. Results of translocations should be monitored to determine if the reintroduction were successful.

VI. FINAL DETERMINATION BY THE COMMISSION

The Commission has weighed and evaluated all information and inferences for and against designating flat-tailed horned lizard as a threatened or endangered species under CESA. This information includes scientific and other general evidence in the Petition, the Department's 2014 Petition Evaluation, the Department's 2016 peer-reviewed Status Review, and the Department's related recommendations based on the best available science, written and oral comments received from the public and the scientific community, and other evidence included in the Commission's administrative record of proceedings. Based on the evidence in the administrative record, the Commission has determined that the best scientific information available indicates that the continued existence of flat-tailed horned lizard in California is not in serious danger or threatened in the foreseeable future by present or threatened modifications or destruction of flat-tailed horned lizard habitat, overexploitation, predation, competition, disease, or other natural occurrences or human-related activities (See generally Fish & G. Code, §§ 2062, 2067; Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A).). The Commission finds, for the same reason, that there is not sufficient scientific information at this time to indicate that the petitioned action is warranted (Fish & G. Code, §§ 2070,

2075.5.). The Commission finds that designating flat-tailed horned lizard as a threatened or endangered species under CESA is not warranted and that, with adoption of these findings, for purposes of its legal status under CESA shall revert to its status prior to the filing of the Petition (Fish & G. Code, § 2075.5, subd. (e)(1); Cal. Code Regs., tit. 14, § 670.1, subd., (i)(2).)

Valerie Termini
Executive Director
Fish and Game Commission
Dated: February 14, 2017

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 Eric Sklar, President
 Saint Helena
 Jacque Hostler-Carmesin, Vice President
 McKinleyville
 Anthony C. Williams, Member
 Huntington Beach
 Russell Burns, Member
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 Peter Silva, Member
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Fish and Game Commission



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Clerk/Board of Supervisors

February 14, 2017

CORRECTED February 23, 2017

TO ALL AFFECTED AND INTERESTED PARTIES:

Re: Use of Dogs for Pursuit/Take of Mammals, Section 265, Title 14, California Code of Regulations; published in California Notice Register, November 18, 2016, Notice File No. Z2016-1108-06, Register 2016, No. 47-Z.

Notice was given that any person interested may present statements, orally or in writing, relevant to this rulemaking at an adoption hearing which was originally scheduled on February 8, 2017, at 8:00 a.m. At this meeting the Commission voted to agendaize two additional public meetings.

NOTICE IS NOW GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be teleconference originating in the Fish and Game Commission conference room, 1416 Ninth Street, Suite 1320, Sacramento, California, on Wednesday, March 15, 2017, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Airtel Plaza Hotel, 7277 Valjean Ave., Van Nuys, California, on Wednesday, April 26, 2017, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on April 12, 2017 at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on April 21, 2017. All comments must be received no later than April 26, 2017, at the hearing in Van Nuys, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

Additional information and all associated documents may be found on the Fish and Game Commission website at <http://www.fgc.ca.gov/regulations/2016/index.aspx#265> 2.

Sincerely,


 Jon D. Snellstrom
 Associate Governmental Program Analyst

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NOTICE OF PROPOSED EMERGENCY ACTION

Incidental Take of Tricolored Blackbird (*Agelaius tricolor*) During Candidacy Period

Pursuant to the requirements of Government Code Section 11346.1(a)(1), the Fish and Game Commission (Commission) is providing notice of proposed emergency action with regards to the above-entitled emergency regulation.

SUBMISSION OF COMMENTS

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 (OAL), 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 OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6.

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail or e-mail, relevant to the proposed emergency regulatory action. Written comments submitted via U.S. mail or e-mail must be received at OAL within five days after the Commission submits the emergency regulations to OAL for review.

Please reference submitted comments as regarding "Tricolored Blackbird" addressed to:

Mailing Address: Reference Attorney
 Office of Administrative Law
 300 Capitol Mall, Suite 1250
 Sacramento, CA 95814

California Fish and Game Commission
 Attn: Sheri Tiemann
 1416 Ninth Street, Room 1320
 Sacramento, CA 95814

E-mail Address: staff@oal.ca.gov

fgc@fgc.ca.gov

Fax No.: 916-323-6826

For the status of the Commission's submittal to OAL for review, and the end of the five-day written submittal period, please consult OAL's website at <http://www.oal.ca.gov> under the heading "Emergency Regulations."

**FISH AND GAME COMMISSION
STATEMENT OF EMERGENCY ACTION**

Emergency Action to Add Section 749.9, Title 14, CCR,
Re: Special Order Relating to Incidental Take of Tricolored Blackbird (*Agelaius tricolor*)
During Candidacy Period

I. Introduction

The Fish and Game Commission (Commission) is the decision-making body that implements the California Endangered Species Act (CESA) (Section 2050 et seq. of the Fish and Game Code (FGC)). 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, 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 Wildlife (Department) and Commission evaluate whether the species should be listed as threatened or endangered under CESA.

On December 10, 2015, the Commission considered the adoption of findings designating tricolored blackbird as a candidate species under CESA. The Commission has prepared this Statement of Emergency Action under the Administrative Procedure Act (APA) (Gov. Code Section 11340 et seq.) in connection with its subsequent adoption of Section 749.9 of Title 14 of the California Code of Regulations (CCR). The Commission's adoption of Section 749.9 as an emergency action under APA is based, in part, on authority provided by FGC sections 399 and 2084. Pursuant to FGC Section 2084, Section 749.9, Title 14, CCR, will authorize incidental "take" of tricolored blackbird during candidacy, subject to certain terms and conditions prescribed by the Commission. (See generally FGC, sections 2080, 2084, 2085 and 86.)

As set forth below, the Commission designated tricolored blackbird as a candidate species under CESA and finds that adopting Section 749.9 pursuant to FGC sections 399 and 2084 constitutes a necessary emergency action by the Commission under APA. In the absence of this emergency regulation, individuals engaging in activities authorized pursuant to Section 749.9 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. Issuing 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 tricolored blackbird.

Historically, tricolored blackbirds nested in native flora in or adjacent to wetlands in the Central Valley and elsewhere across the State of California. Concomitant with the loss

of wetlands during the 19th and 20th centuries, tricolored blackbirds have adapted to nest in varied substrates. For example, grain fields planted for winter silage on dairy farms provide attractive nesting sites for the species; unfortunately, nesting occurs at about the same time the crops are scheduled for harvest.

For the past decade, a patchwork of funding sources has been used to pay farmers for a lost crop when they agree to delay harvest until after tricolored blackbird nesting is complete. In some cases, particularly where funding was unavailable or farmers were not aware of the potential for funding to offset losses, harvest has occurred before the young fledged. Recently, the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) committed to provide multiple years of funding to support a program to delay harvest of fields in which tricolored blackbird colonies have nested. At the same time, Dairy Cares, an organization composed of dairy businesses across California, in coordination with other farming interests has initiated an active campaign to educate dairy farmers about tricolored blackbird and the NRCS-funded program. In 2015, through a coordinated effort including NRCS, farming interests, the Department, and Audubon California, dairy farmers enrolled in the NRCS program delayed harvest on fields where an estimated 67,000 tricolored blackbirds nested.

NRCS funds compensate a farmer for about 85 percent of the value of a crop lost by a harvest delay. Under the NRCS program, a colony is identified and the area inhabited by the colony is delineated by a biologist. Once the colony is delineated, a buffer is established and the farmer is allowed to harvest only those fields outside the colony site and buffer area. Delaying harvest protects the vast majority of the colony until the birds fledge, but it does not guarantee that no take will occur. The tricolored blackbird was designated as a candidate for listing, and is therefore subject to the regulatory protections provided by CESA. Promulgating a regulation to authorize incidental take provides farmers assurances that if they agree to follow the requirements imposed by NRCS, delay harvest, and protect the colony nesting in their field, they will not be penalized in the event a small number of birds are taken incidental to their beneficial conservation actions in delaying harvest and otherwise lawful agricultural activities.

The harvest management programs administered by NRCS and the Department can be expected to protect tens of thousands of nesting tricolored blackbirds provided farmers are incentivized to participate. However, the designation of the tricolored blackbird as a candidate for listing under CESA could inhibit participation in the harvest management programs. This regulation, in combination with funding from NRCS, will provide farmers with a strong incentive to participate in the harvest management program.

Tricolored blackbird nesting can begin as early as February. The timing of this nesting relative to the candidacy determination provides inadequate time for the Commission to comply with the normal APA process for adopting a regulation to authorize take. It is only possible to put a regulation in place to conserve nesting tricolored blackbirds and protect farmers that enroll in one of the harvest management programs in 2017 through emergency action. Such action will effectuate the purposes of Fish and Game Code Section 2084 and CESA more broadly.

Absent this regulation, enrollment in the NRCS program may decline. Furthermore, farmers may elect to plant lower value crops that do not provide nesting habitat for tricolored blackbird, thereby decreasing available nesting habitat; farmers may harvest their crop early before onset of the nesting season, which would decrease the value of the crop and also decrease available nesting habitat; or farmers may risk harvesting their crop even if tricolored blackbird are present.

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 tricolored blackbird would be prohibited and could not be implemented pending final action by the Commission on the listing petition, an action whereby tricolored blackbird 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 APA requiring immediate action.

II. Background

On October 8, 2014, the Commission received a petition from the Center for Biological Diversity to take emergency action to list the tricolored blackbird (*Agelaius tricolor*) as endangered under CESA. On December 3, 2014, the Commission listed tricolored blackbird as endangered through emergency regulations that expired on June 30, 2015. In the interim, the Department prepared and submitted to the Commission a petition evaluation as required by CESA. The petition evaluation was received by the Commission at its April 9, 2015, meeting and on June 11, 2015, the Commission made a decision that listing tricolored blackbird as endangered was not warranted. On August 19, 2015, the Center for Biological Diversity submitted a petition that was largely the same as the petition submitted to the Commission on October 8, 2014, to take emergency action to list the tricolored blackbird as an endangered species. The petition included an addendum composed of two new relevant studies on the tricolored blackbird. On December 10, 2015, the Commission adopted findings designating the tricolored blackbird as a candidate species under CESA. On December 8, 2016, the Commission approved the Department's request for a six month extension to complete the status and peer review process for the petition to list tricolored blackbird as an endangered species; this six month extension will further delay final resolution of the tricolored blackbird final listing decision, which cannot occur until after the Commission receives the Department's completed status review pursuant to Fish and Game Code Sections 2074.6 and 2075.

III. Facts Constituting the Need for Emergency Action

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

Section 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 Section 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 APA, as well as pertinent authority in FGC Section 399. Under this latter authority, notwithstanding any other provision of FGC, 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 public general welfare.

The Commission finds that such necessity exists in the present case. Specifically, the Commission finds that:

- A failure to adequately protect the tricolored blackbird would cause serious harm to the general welfare of the citizens of the State of California.
- Action is necessary to ensure the protection and immediate conservation of the tricolored blackbird during the upcoming harvest of grain fields planted for silage.
- This finding is based on the record before the Commission, generally and specifically the past activity under the Natural Resources Conservation Service program and the timing of the candidacy of the tricolored blackbird in relation to the upcoming harvest.

Section 749.9 authorizes incidental take of the tricolored blackbird during candidacy for three categories of activities:

- Actions to protect, restore, conserve or enhance habitat.
- Actions to monitor tricolored blackbird breeding colonies.
- Harvest of grain crops under a harvest management program to protect colonies.

The regulation authorizes take, as defined by FGC Section 86, of tricolored blackbird in the limited circumstances described below subject to certain terms and conditions, during the species' candidacy under CESA.

(a) Take Authorization.

(1) Actions to Protect, Restore, Conserve, or Enhance Habitat.

Subsection 749.9(a)(1), authorizes take of the tricolored blackbird incidental to otherwise lawful activity, where the purpose of the activity is to protect, restore,

conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law.

Without Section 749.9, subsection (a)(1), take of the tricolored blackbird incidental to otherwise lawful activities to protect, restore, conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law 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 habitat 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 the habitat of state or federally threatened or endangered species (including the tricolored blackbird). The Commission finds that impacts to activities to protect, restore, conserve, or enhance habitat of state or federally threatened or endangered species caused by designating the tricolored blackbird as a candidate species, constitute an emergency under the APA requiring immediate action.

(2) Actions to Monitor Tricolored Blackbird Breeding Colonies.

Section 749.9, subsection (a)(2), authorizes take of tricolored blackbird incidental to efforts to monitor active tricolored blackbird breeding colonies, including entering colonies to perform walking transects. Only trained observers who are approved by the Department will be authorized to engage in such monitoring.

Without Section 749.9, subsection (a)(2), there would not be the necessary monitoring to ensure the protection and immediate conservation of tricolored blackbird during the upcoming harvest of grain fields planted for silage. Department guidance suggests that walking survey transects through a portion of the colony could be used to estimate the nesting stage of breeding colonies and inform decisions that must be made to comply with subsection (a)(3).

(3) Harvest of Grain Crops under a Harvest Management Program to Protect Colonies.

Section 749.9, subsection(a)(3), authorizes take of tricolored blackbird incidental to harvest of grain fields and related agricultural activities where an individual participates in a harvest management program administered by the Natural Resources Conservation Service (NRCS), or harvest management program administered or approved by the Department; the harvest management program shall include the

establishment of a buffer zone and harvest date as described under Topics 1 and 2 in the document "California Department of Fish and Wildlife (Department) Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (adopted on March 19, 2015 and available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=99310&inline>). The individual seeking authorization for take incidental to harvest of grain fields and related agricultural activities shall receive written confirmation of participation in the harvest management program and must obtain specific authorization for the timing of harvest and related agricultural activities from NRCS, the Department, or a biologist authorized by the Department or NRCS before proceeding with any harvest activities that take tricolor blackbirds

Without Section 749.9, subsection (a)(3), enrollment in the NRCS program may decline, which is necessary to ensure the protection and immediate conservation of the tricolored blackbird during the upcoming harvest of grain fields planted for silage.

(b) Reporting.

Section 749.9, subsection (a)(2), requires that any person, individual, organization, or public agency, or their agents, for which incidental take of tricolored blackbirds is authorized pursuant to subsections (a)(1) or (a)(3), shall report observations and detections of tricolored blackbird colonies, including take, to the Department's Wildlife Branch by August 1 during the candidacy period.

As discussed in III above, it is vital that during this candidacy period detections and observations of the tricolored blackbird 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.

(c) Additions, Modifications or Revocation.

Incidental take of tricolored blackbird 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.

This subsection is necessary to clarify that subsections (a)(1)-(3) are not the only ways in which incidental take may be allowed and that this emergency language does not preclude the use of other avenues for authorizing the take of tricolored blackbird.

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 tricolored blackbird 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 tricolored blackbird while the Department conducts an 18-month review of the status of the candidate species and the Commission makes its final determination regarding listing under CESA.

IV. Express Finding of Emergency

Pursuant to the authority vested in the Commission by FGC Section 399, 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 public general welfare. The Commission specifically finds that the adoption of this regulation will allow activities that may affect the tricolored blackbird to continue during the candidacy period as long as those activities are conducted in a manner consistent with the protections specified in this regulation.

V. Authority and Reference Citations

Authority: FGC Sections 200, 265, 399 and 2084.

Reference: FGC Sections 200, 265, 399, 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 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. (FGC Section 2074.6.) The Commission may grant an extension of up to six months if the Director determines an extension is necessary to complete independent peer review of the report, and to provide a minimum of 30 days for public review of the peer reviewed report prior to the public hearing specified in FGC Section 2075. (FGC Section 2074.6.) The Commission must schedule the petition for final consideration at its next available meeting after receiving the Department's report. (*Id.*, Section 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.*, Section 2075.5.)

B. Effect of the Emergency Action

Section 749.9 of Title 14 of the California Code of Regulations would authorize take, as defined by FGC Section 86, of the tricolored blackbird during its candidacy subject to the following terms and conditions:

(a) Take Authorization.

The Commission authorizes the take of tricolored blackbird during the candidacy period subject to the terms and conditions herein.

(1) Actions to Protect, Restore, Conserve or Enhance Habitat.

Take of tricolored blackbird incidental to otherwise lawful activity, where the purpose of the activity is to protect, restore, conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law.

(2) Actions to Monitor Tricolored blackbird Breeding Colonies.

Take of tricolored blackbird incidental to efforts to monitor active tricolored blackbird breeding colonies, including entering colonies to perform walking transects. Only trained observers who are approved by the Department will be authorized to engage in such monitoring.

(3) Harvest of Grain Crops Under Harvest Management Program to Protect Colonies.

Take of tricolored blackbird incidental to harvest of grain fields and related agricultural activities is authorized where an individual participates in a harvest management program administered by NRCS, or harvest management program administered or approved by the Department; the harvest management program shall include the establishment of a buffer zone and harvest date as described under Topics 1 and 2 in the document "California Department of Fish and Wildlife (Department) Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (adopted on March 19, 2015 and available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=99310&inline>). The individual seeking authorization for take incidental to harvest of grain fields and related agricultural activities shall receive written confirmation of participation in the harvest management program and must obtain specific authorization for the timing of harvest and related agricultural activities from NRCS, the Department,

or a biologist authorized by the Department or NRCS before proceeding with any harvest activities that take tricolor blackbirds.

(b) Reporting.

Any person, individual, organization, or public agency, or their agents, for which incidental take of tricolored blackbirds is authorized pursuant to subsections (a)(1) or (a)(3), shall report observations and detections of tricolored blackbird colonies, including take, to the Department's Wildlife Branch by August 1 during the candidacy period. Information reported to the Department pursuant to this subsection shall include: a contact name; the date and location (GPS coordinate preferred) of the colony or take; colony size; colony outcome; and details regarding the tricolored blackbirds observed. Colony outcome means whether the colony was abandoned or whether young in a colony fledged. Any person, individual, organization, or public agency, or their agents seeking incidental take authorization pursuant to subsection (a)(3), shall report their participation in an approved harvest management program to the Department prior to grain harvest.

(c) Additions, Modifications or Revocation.

Incidental take of tricolored blackbird from activities not addressed in this section may be authorized during the candidacy period by the Commission pursuant to FGC Section 2084, or by the Department on a case-by-case basis pursuant to FGC Section 2081, or other authority provided by law.

EVALUATION OF INCOMPATIBILITY WITH EXISTING REGULATIONS:

Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to establish regulations for the incidental take of a candidate species (FGC Section 2084). Commission staff has searched CCR and has found that the proposed regulation is neither inconsistent nor incompatible with existing state regulations.

VI. Specific Agency Statutory Requirements

The Commission has complied with the special statutory requirements governing the adoption of emergency regulations pursuant to FGC Section 399. The Commission held a public hearing on this regulation on February 8, 2017, 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 public general welfare meets the requirements of Section 399.

VII. 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 749.9 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 749.9 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 tricolored blackbird on a project-by-project basis, which is both time-consuming and costly to local agencies seeking take 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 749.9 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: None.

(e) Effect on Housing Costs:

The Commission has determined that the adoption of Section 749.9 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 749.9 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 tricolored blackbird 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. (CCR, Title 14, sections 783.3 and 783.5.) The number and timing of permits issued by the Department is also a product of economic conditions, and the resources actually available to the Department to administer the permitting program.

Regulatory Text

Section 749.9, Title 14, CCR, is added to read:

749.9 Incidental Take of Tricolored Blackbird (*Agelaius tricolor*) During Candidacy Period

This regulation authorizes take as defined by Fish and Game Code Section 86, of tricolored blackbird in the limited circumstances described below, subject to certain terms and conditions, during the species' candidacy under the California Endangered Species Act (Fish and Game Code, Section 2050 et seq.).

(a) Take Authorization.

The commission authorizes the take of tricolored blackbird during the candidacy period subject to the terms and conditions herein.

(1) Actions to Protect, Restore, Conserve, or Enhance Habitat.

Take of tricolored blackbird incidental to otherwise lawful activity, where the purpose of the activity is to protect, restore, conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law.

(2) Actions to Monitor Tricolored Blackbird Breeding Colonies.

Take of tricolored blackbird incidental to efforts to monitor active tricolored blackbird breeding colonies, including entering colonies to perform walking transects. Only trained observers who are approved by the department will be authorized to engage in such monitoring.

(3) Harvest of Grain Crops Under Harvest Management Program to Protect Colonies.

Take of tricolored blackbird incidental to harvest of grain fields and related agricultural activities is authorized where an individual participates in a harvest management program administered by the Natural Resources Conservation Service (NRCS), or harvest management program administered or approved by the department; the harvest management program shall include the establishment of a buffer zone and harvest date as described under Topics 1 and 2 in the document "California Department of Fish and Wildlife (Department) Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (adopted on March 19, 2015 and available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=99310&inline>). The individual seeking authorization for take incidental to harvest of grain fields and related agricultural activities shall receive written confirmation of participation in the harvest management program and must obtain specific authorization for the timing of harvest and related agricultural activities from NRCS, the

department, or a biologist authorized by the department or NRCS before proceeding with any harvest activities that take tricolor blackbirds.

(b) Reporting.

Any person, individual, organization, or public agency, or their agents, for which incidental take of tricolored blackbirds is authorized pursuant to subsections (a)(1) or (a)(3), shall report observations and detections of tricolored blackbird colonies, including take, to the department's Wildlife Branch by August 1 during the candidacy period. Information reported to the department pursuant to this subsection shall include: a contact name; the date and location (GPS coordinate preferred) of the colony or take; colony size; colony outcome; and details regarding the tricolored blackbirds observed. Colony outcome means whether the colony was abandoned or whether young in a colony fledged. Any person, individual, organization, or public agency, or their agents seeking incidental take authorization pursuant to subsection (a)(3), shall report their participation in an approved harvest management program to the department prior to grain harvest.

(c) Additions, Modifications or Revocation.

Incidental take of tricolored blackbird 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.

Note: Authority cited: Sections 200, 265, 399 and 2084, Fish and Game Code.
Reference: Sections 200, 265, 399, 2080, 2084 and 2085, Fish and Game Code.