

STAFF SUMMARY FOR AUGUST 24-25, 2016

34. DFW LANDS PASS**Today's Item****Information** **Action**

Certify Addendum to the Final Environmental Document, and adopt proposed changes to amend DFW lands pass regulations.

Summary of Previous/Future Actions

- Notice hearing Apr 13-14, 2016; Santa Rosa
- Discussion hearing Jun 22-23, 2016; Bakersfield
- **Today's Adoption hearing Aug 24-25, 2016; Folsom**

Background

Currently, most funds used to manage lands under the jurisdiction of DFW are derived from a combination of revenue sources generated by the sale of licenses, stamps, passes, and taxes on equipment for hunting, fishing and trapping. Visitors who engage in wildlife or wildflower viewing, recreational hiking, photography, or similar pursuits are required to contribute through the purchase of a Lands Pass for entry on seven DFW properties that participate in the Lands Pass Program. The existing program requires each visitor who is 16 years of age or older, and who does not possess a valid hunting, fishing or trapping license, to purchase a day or annual pass to enter certain DFW properties. School and organized youth groups are exempt from the pass requirement.

In 2012, Section 1745 of the Fish and Game Code was added, which requires DFW to offer purchase of an entry permit for non-consumptive uses of DFW-managed lands if the DFW finds that it is "practical and would be cost effective" to do so. DFW finds that it would be practical and cost effective to add certain wildlife areas and ecological reserves to the properties which require a Lands Pass for visitor entry. This assumes that the benchmark for being "cost effective" is that, at the very least, the program does not cost more to implement than the revenue that it generates.

DFW proposes the following changes to the Lands Pass program:

1. Expansion of the Lands Pass Program;
2. Implementation of recent changes to the Fish and Game Code regarding nonlead ammunition, the age for possessing a junior hunting license, and trail access at Magnesia Springs Ecological Reserve;
3. Improved consistency with federal regulations for the National Wildlife Refuges that are also designated as state wildlife areas;
4. Improved enforceability by rewording the charging sections; and
5. Minor changes to improve clarity and consistency of the regulations for DFW lands.

Since publication of the Notice on May 6, 2016, a small but substantive change was identified as necessary for capture in the Final Statement of Reasons (exhibits 1 and 2). The proposed regulation added Napa-Sonoma Marshes Wildlife Area to the list of properties where a lands pass would be required; however, DFW intended only to include one unit of the property, the Green Island Unit, in the program. This Unit is proposed to open to public use now that

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restoration of the site has been completed, and a public access trail has opened. Staff will prepare the required 15-day notice contingent on adoption. An Addendum to the 2012 Final Environmental Document to comply with CEQA is provided for certification today (Exhibit 3).

Significant Public Comments

1. Comment by Newport Bay Conservancy opposing the fee for entry into the Upper Newport Bay Ecological Reserve (UNBER) because the reserve is surrounded by multiple entry points with no marked boundaries, there are shared contributions from the community which provide upkeep and management, and lack of staffing at visitor center.
2. Comment by City of Newport Beach opposing the access fee for UNBER because the location is not conducive for collecting a fee, and the partnership among the Department, City, and County does not warrant such action.

Recommendation

FGC staff: First, adopt the addendum. Second, adopt the regulatory text with the modification to the reference to Napa-Sonoma Marshes Wildlife Area, which will require an additional 15-day notice.

Exhibits

1. [DFW Memo, received Aug 15, 2016](#)
2. [PSOR, received Aug 15, 2016](#)
3. [Addendum to the Final Environmental Document, dated Aug 5, 2016](#)
4. [Email from Newport Bay Conservancy, received Jun 20, 2016](#)
5. [Email from City of Newport Beach, received Jun 29, 2016](#)

Motion/Direction

Moved by _____ and seconded by _____ that based on the record and the findings articulated in the Exhibit 3, the Commission certifies the Addendum to the 2012 Final Environmental Document as indicating the Commission's independent judgment and analysis,

and

Moved by _____ and seconded by _____ that the Commission adopts proposed changes to Section 550 et al., related to Department Lands Pass Program and Land Uses, as recommended by staff.

2016 AUG 15 PM 12:16

Memorandum

Date: August 11, 2016

To: Valerie Termini
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: **Agenda Item for the August 2016 Fish and Game Commission Meeting**

Please find attached the Pre-Adoption Statement of Reasons and Addendum to the Final Environmental Document to amend Sections 550, 550.5, 551, 552, 630 and 702 and repeal subsections 703(a)(2) and 703(c), Title 14, California Code of Regulations. These regulations pertain to public uses of land under the jurisdiction of the Department of Fish and Wildlife. The following change to the originally proposed regulatory text is recommended:

- The proposed text of subsection 551(w)(23) consists of "Napa-Sonoma Marshes Wildlife Area". It should be amended to "Napa Sonoma Marshes Wildlife Area (Green Island Unit)". The effect of this change is to add only the Green Island Unit of the wildlife area to the Lands Pass Program rather than adding the entire wildlife area. This was the Department's original intent; however, the name of the unit was inadvertently omitted from the proposed text.

If you have any questions or need additional information, please contact Kari Lewis, Lands Program Manager, at (916) 445-3789 or at Kari.lewis@wildlife.ca.gov.

Attachment

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STATE OF CALIFORNIA
FISH AND GAME COMMISSION
STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-adoption Statement of Reasons)

2016 AUG 15 PM 12:10

Amend Sections 550, 550.5, 551, 552, 630 and 702, and
Repeal Subsections 703(a)(2) and 703(c)
Title 14, California Code of Regulations

Re: Department of Fish and Wildlife Lands Pass Program and Lands Public Uses

- I. Date of Initial Statement of Reasons: March 15, 2016
- II. Date of Pre-adoption Statement of Reasons: August 1, 2016
- III. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: April 14, 2016
Location: Santa Rosa
 - (b) Discussion Hearing: Date: June 23, 2016
Location: Bakersfield
 - (c) Adoption Hearing: Date: August 25, 2016
Location: Folsom
- IV. Description of Modification of Originally Proposed Language of Initial Statement of Reasons:

In accordance with Government Code Section 11346.8, the full text of a regulation change will be made available for at least 15 days prior to the adoption hearing of the resulting regulation unless the change is non-substantial, solely grammatical in nature, or sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.

Lands Passes have been required to enter certain Department lands since 1988 pursuant to Fish and Game Code (FGC) Sections 1764 and 1765 and as implemented in current subsections 550.5(c)(6), 551(w), 630(c), Title 14, California Code of Regulations (CCR). Section 551(w) lists the designated wildlife areas where lands passes are required for entry. Originally proposed subsection 551(w)(23) would add the entire Napa-Sonoma Marshes Wildlife Area (NSMWA) to the Lands Pass Program. The current modification to this proposal would limit the Lands Pass requirement to the Green Island Unit of the NSMWA.

V. Reasons for Modification of Originally Proposed Language of Initial Statement of Reasons:

When the Department recently analyzed which properties would be practical and cost-efficient to include in the Lands Pass Program, the Green Island Unit of the NSMWA was specifically identified for inclusion, as opposed to including the entire wildlife area. The inclusion of the entire NSMWA in the proposed verbatim for subsection 551(w)(23) was an error. Unlike the Green Island Unit, the other units of this wildlife area do not have a dedicated parking area, do not include a trail that is concurrent with a regional trail system, and they are used primarily by hunters and anglers, who are not required to obtain a Lands Pass. The Green Island Unit is clearly separate from the other units of the wildlife area. According to FGC Section 1745, Lands Passes may only be required where signage about the Lands Passes is posted. The parking lot at the Green Island Unit provides a logical place for signage about the Lands Pass Program. Specifying that the Lands Pass is only required at the Green Island Unit of the NSMWA is a minor change because including this wildlife area in the program is already addressed in the initial regulation change proposal.

VI. Summary of Primary Considerations Raised in Opposition and in Support:

A total of three comments have been received to date in response to the publication of the notice on May 6, 2016.

- An email from The Newport Bay Conservancy (Conservancy) was received on June 20, 2016, outlining reasons for opposing the inclusion of the Upper Newport Bay Ecological Reserve (UNBER).
- The Conservancy also provided oral testimony and two maps at the Commission's discussion hearing on June 23, 2016, which echo the comments provided in their 2016 and 2013 letters.
- The City of Newport Beach (the City) on June 21, 2016. The comments were generally questions about the Lands Pass Program or reasons for opposing the continued inclusion of the Upper Newport Bay Ecological Reserve (UNBER), Orange County, in the program.

Reasons that the City and the Conservancy have in common for opposing the continued inclusion of UNBER in the Lands Pass program include:

1. The Conservancy, the City and County Parks already contribute to the management of the reserve through periodic projects that benefit the habitat or educational goals of UNBER. This support on behalf of the community should make it unnecessary to require a fee from adult visitors

who do not possess a hunting or fishing license.

Response: Many public lands benefit from a variety of funding sources, partnerships, management efforts of adjacent landowners, and the work provided by volunteers, while at the same time requiring an entrance fee. The Lands Pass Program ensures that all visitors participate in supporting the land that they utilize.

2. Visitors often spend more time on adjacent City or County property than they spend on the property under the Department's jurisdiction.

Response:

- a) *Providing for habitat protection and management on UNBER benefits wildlife and plant species that people enjoy observing on adjacent City and County land as well as on UNBER.*
- b) *UNBER consists of five discontinuous units. According to Fish and Game Code Section 1745(g)(1), the Lands Pass shall only be required where "a sign providing notice of the requirement has been posted at the department-managed land." The Department will work with its local partners at UNBER to post the requirement on the UNBER unit(s) where it is practical to implement the Lands Pass Program.*

3. Implementation of the Lands Pass is impractical at UNBER because there are so many points of access to the property.

Response: Regardless of the Department's efforts to inform the public, it is possible that some visitors may not comply with the requirement to carry a Lands Pass, particularly during the first year of implementation. Nevertheless, based on the Department's experience in land management, law enforcement, and public outreach, the Department's position is that it is worthwhile to implement the Lands Pass Program at UNBER. Also, please see Response 2b.

4. Because of the configuration of the City, County and Department properties, the public will be confused as to where a Lands Pass is required. Will it be needed by kayakers entering UNBER from the south on the water, by a cyclist transiting along Back Bay Drive who stops on the side of the road to fix a flat, or by the volunteers who donate hours to restoration or education efforts?

Response: The Department will post signs and conduct additional outreach to inform the public about the Lands Pass requirement with the

understanding that comprehensive, widespread knowledge of this requirement will take time to develop and will require ongoing public education. As currently indicated by signs posted and visible from the water, launching and landing boats, and boating within "side channels" are prohibited within the Reserve to avoid impacts to the marsh habitat and sensitive species that nest at the site. Current law provides that rights of way, such as Back Bay Drive, are not subject to the Lands Pass requirement. Consequently, a cyclist who has stopped at the side of the road to safely fix a flat tire would not be subject to citation for not possessing a Lands Pass. A volunteer engaged in work at UNBER is considered to be conducting official business and is not considered a "visitor". (i.e., volunteers do not require a Lands Pass while engaged in volunteer work). When not engaged in an official capacity, volunteers (and CDFW staff) who visit Lands Pass properties for personal recreation are expected to carry a Lands Pass if they do not possess a hunting or fishing license.

Updated Informative Digest/Policy Statement Overview

The Current Lands Pass Program

The majority of lands managed by the Department of Fish and Wildlife (Department) are designated as wildlife areas or ecological reserves. Current regulations for the public use of Department lands include an entry pass program ("the Lands Pass Program") for visitors to certain wildlife areas and ecological reserves who do not possess a hunting, fishing or trapping license. This program was established by the Native Species Conservation and Enhancement Act of 1988 (Fish and Game Code (FGC) Sections 1750-1772).

The current Title 14, California Code of Regulations (CCR) regulations that address this program include:

- 550(c): This section discusses passes and entry permits for department lands in general. It does not distinguish between passes for hunting and Lands Passes. It explains that for properties that require a fee for entry, each visitor must purchase a pass and exchange that pass for an entry permit.
- 550.5(c): This section provides more detailed information about obtaining passes and entry permits and:
 - 550.5(c)(6) specifically explains that a daily or annual "wildlife viewing" pass (referred to as a Lands Pass in other Department publications) and an entry permit are required to enter properties listed in subsections 551(w) and 630(c). It also explains how the price of these passes is adjusted each year, and that visitors who present a valid hunting, fishing or trapping license are exempt from purchasing a daily or annual pass.
 - 550.5(c)(6) does not include the requirement in FGC section 1764 and 1765 that all visitors under the age of 16 are exempt from the pass requirement and that organized school and youth groups are exempt from the pass requirement.

For 2016, a daily Lands Pass costs \$4.00 and an annual Lands Pass costs \$22.50. The passes may be purchased online, from department license offices or authorized license agents through the Automated License Data System (ALDS). Like other permits or licenses sold by the Department, the price is adjusted annually according to Section 699, Title 14, CCR. Generally speaking, the price of Lands Passes increases by roughly two percent each year.

Five wildlife areas and two ecological reserves currently participate in the Lands Pass Program. They are:

- Gray Lodge Wildlife Area

- Grizzly Island Wildlife Area
- Los Banos Wildlife Area
- Imperial Wildlife Area
- San Jacinto Wildlife Area
- Elkhorn Slough Ecological Reserve
- Upper Newport Bay Ecological Reserve

Purpose of Amendments to Regulations Regarding the Lands Pass Program:

The Legislature has recognized that the Department does not receive adequate revenue to manage the fish and wildlife resources of the State (FGC Section 710). Voluntary programs, such as a Native Species Stamp, were initiated with a concerted campaign in the late 1980's and early 1990's in compliance with FGC sections 1763, 1766 and 1769. These programs were unsuccessful in generating sufficient revenue to cover their costs. The Legislature also directed that the segment of the public that uses Department lands, but does not support them through the purchase of hunting, fishing or trapping licenses, should provide support through purchase of Lands Passes for the use of designated properties (FGC sections 1745, 1764 and 1765).

By expanding the number of wildlife areas and ecological reserves that participate in the Lands Pass Program, the Department may receive additional funds to manage wildlife areas and ecological reserves. One aspect of the Lands Pass Program that has been impractical to implement, particularly since the adoption of the ALDS as the means for selling passes, is the requirement that Lands Passes be exchanged for an entry permit. This is due to the lack of staff available to exchange Lands Passes for entry permits.

If the proposed regulations are adopted, the following changes will be made to the Lands Pass Program through amendments to Sections 550, 550.5, 551,630 and 702, Title 14, CCR:

1. The Lands Pass Program will no longer require visitors to exchange their Lands Pass for an entry permit. This requires amendments to sections 550 and 550.5 to more clearly distinguish between passes issued for hunting, which are exchanged for entry permits, and Lands Passes which are not exchanged for entry permits.
2. In Section 551, the following 28 wildlife areas will be added to the Lands Pass Program:

Ash Creek Wildlife Area
 Bass Hill Wildlife Area
 Battle Creek Wildlife Area
 Butte Valley Wildlife Area

Cache Creek Wildlife Area
 Crescent City Marsh Wildlife Area
 Eel River Wildlife Area
 Elk Creek Wetlands Wildlife Area

Elk River Wildlife Area
Fay Slough Wildlife Area
Hollenbeck Canyon Wildlife Area
Honey Lake Wildlife Area
Hope Valley Wildlife Area
Horseshoe Ranch Wildlife Area
Lake Earl Wildlife Area
Mad River Slough Wildlife Area
Mendota Wildlife Area
Mouth of Cottonwood Creek
Wildlife Area

Napa-Sonoma Marshes Wildlife Area
North Grasslands Wildlife Area
San Felipe Valley Wildlife Area
Shasta Valley Wildlife Area
South Spit Wildlife Area
Tehama Wildlife Area
Upper Butte Basin Wildlife Area
Volta Wildlife Area
Willow Creek Wildlife Area
Yolo Bypass Wildlife Area

3. In Section 630, the following eight areas will be added to the Lands Pass Program:

Batiquitos Lagoon Ecological Reserve
Boden Canyon Ecological Reserve
Bolsa Chica Ecological Reserve
Buena Vista Lagoon Ecological Reserve

Canebrake Ecological Reserve
North Table Mountain Ecological Reserve
San Elijo Lagoon Ecological Reserve
Woodbridge Ecological Reserve

Purpose of Amendments to Other Wildlife Area and Ecological Reserve Title 14, CCR, Regulations:

1. Three site-specific regulations that were inadvertently omitted when the land regulations were reorganized in 2014 will be re-entered into Section 551. The restrictions have been kept in place on a temporary basis under the authority of the Regional Manager for the subject areas. These regulations prohibit horses on the Battle Creek and Mouth of Cottonwood Creek Wildlife Areas, and prohibit non-hunting visitors from entering Shasta Valley Wildlife Area on shoot days during the waterfowl season.
2. Various changes are proposed in Section 552 for the National Wildlife Refuges that are also designated as state wildlife areas. These changes are proposed in order to improve the consistency of the state regulations with federal regulations for these refuges and were requested by the U.S. Fish and Wildlife Service.
3. Pursuant to FGC Section 3031, the age limit for people participating as junior hunters on Department lands increased from 15 years old, to persons who are under 18 years of age as of July 1 of the licensing year. This necessitated changes to wording to subsections of Section 550.5 that formerly did not include 16, 17 and 18 year olds as junior hunters. The end result in terms of the numbers of adults and younger people who can be included in a hunting party or

assigned to designated hunting zone, blind or pond is the same as with the existing regulations. The change in the age limit for junior hunters also necessitated adding language that 16 and 17 year olds who hunt without adult supervision may not be accompanied by visitors under 16 years of age.

4. Pursuant to FGC Section 3004.5, Section 550 was amended to require hunters to use ammunition consistent with Section 250.1, Title 14, CCR, (i.e., nonlead ammunition) when hunting on Department lands.
5. In Section 551, archery will be added as a method of take for the special wild pig hunt at the Joice Island Unit of the Grizzly Island Wildlife Area and all legal methods of take for big game will be allowed for the special tule elk hunt on that wildlife area. Visitors will also be allowed to resume off-highway vehicles on roads open to motor vehicles on the Tehama Wildlife Area.
6. Also in Section 551, the Green Island Unit of the Napa-Sonoma Marsh Wildlife Area will be opened for public use. This property was closed because it was the site of extensive, multi-phased habitat restoration projects, which are now complete. Opening the unit to public use is consistent with the management plan for the Wildlife Area.
7. FGC Section 1587 will be implemented by adding language to Section 630, Title 14, CCR, stating that the Mirage Trail on the Magnesia Springs Ecological Reserve is open for hiking from May 1 through January 31.
8. Subsection 703(a)(2) will be deleted. The fees for Special Use Permits will be relocated to Section 702, and the title of Section 702 will be amended to reflect that it includes fees for a variety of public uses on Department lands.
9. Subsections 702(d) and 703(c), which repeat the language in existing Section 699, are proposed for deletion to reduce duplicative regulations.
10. Additional minor editorial changes are also proposed to improve the clarity and consistency of the regulations, improve enforceability, correct typographical errors, and align regulatory language.

Benefits of the Regulations:

The addition of 36 properties to the Lands Pass Program may result in additional funds available for the management of wildlife areas and ecological reserves under the jurisdiction of the Department. The Lands Pass Program will be more practical to implement by discontinuing the requirement to obtain an entry permit in exchange for a daily Lands Pass or the presentation of an annual Lands Pass. The state regulations for public use of National Wildlife Refuges that are also designated as state wildlife areas will be consistent with federal regulations. Environmental quality is expected to benefit as a result of compliance with Section 250.1, Title 14, CCR, which prohibits the use of lead ammunition for hunting on Department lands.

Consistency with State Regulations

The Commission has conducted a search of the California Code of Regulations and has concluded that the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

Update

Subsection 551(w), Title 14, CCR includes a list of the wildlife areas that participate in the Lands Pass Program. The Department inadvertently listed "Napa-Sonoma Marshes Wildlife Area" (NSMWA) as proposed subsection 551(w)(23). This would add the entire wildlife area to the Lands Pass Program. The intention was to add only the Green Island Unit of the wildlife area. The only recommended modification to the proposed regulatory text is to amend subsection 551(w)(23) to "Napa-Sonoma Marshes Wildlife Area (Green Island Unit)".

Updated Regulatory Language

Section 550, Title 14, CCR, is amended to read:

§ 550. General Regulations for Public Use on All Department of Fish and Wildlife Lands.

... [No additional changes to this section]

Section 550.5, Title 14, CCR, is amended to read:

§ 550.5. Reservations, Entry Permits, Fees, Passes, and Special Use Permits.

... [No additional changes to this section]

Section 551, Title 14, CCR, is amended to read:

§ 551. Additional Visitor Use Regulations on Department Lands Designated as Wildlife Areas.

... [No additional changes to subsections (a) to (v)]

~~(w) Wildlife Areas That Require Entry Permits and Fees for Wildlife Viewing or Other Visitor Uses (pursuant to sections 550.5(c) (5) and 699 of these regulations and Fish and Game Code sections 713 and 1765):~~ a Daily or Annual Lands Pass for Authorized Uses Other than Hunting (Lands Pass): Pursuant to subsection 550(c) and 550.5(c) of these regulations. It shall be unlawful for a visitor to enter any wildlife area, or portion thereof listed in this section without carrying a valid Lands Pass or a valid hunting, fishing or trapping license on their person. A Lands Pass must be purchased in advance. Information on how to purchase a Lands Pass and exceptions to this requirement are provided in subsection 550.5(c).

- (1) Ash Creek Wildlife Area
- (2) Bass Hill Wildlife Area
- (3) Battle Creek Wildlife Area
- (4) Butte Valley Wildlife Area
- (5) Cache Creek Wildlife Area
- (6) Crescent City Marsh Wildlife Area
- (7) Eel River Wildlife Area
- (8) Elk Creek Wetlands Wildlife Area
- (9) Elk River Wildlife Area
- (10) Fay Slough Wildlife Area
- ~~(4)~~(11) Gray Lodge Wildlife Area
- ~~(2)~~(12) Grizzly Island Wildlife Area
- (13) Hollenbeck Canyon Wildlife Area
- (14) Honey Lake Wildlife Area
- (15) Hope Valley Wildlife Area

- (16) Horseshoe Ranch Wildlife Area
- ~~(3)~~(17) Imperial Wildlife Area (Wister and Finney-Ramer units)
- (18) Lake Earl Wildlife Area
- ~~(4)~~(19) Los Banos Wildlife Area
- (20) Mad River Slough Wildlife Area
- (21) Mendota Wildlife Area
- (22) Mouth of Cottonwood Creek Wildlife Area
- (23) Napa-Sonoma Marshes Wildlife Area **(Green Island Unit)**
- (24) North Grasslands Wildlife Area
- (25) San Felipe Valley Wildlife Area
- ~~(5)~~(26) San Jacinto Wildlife Area
- (27) Shasta Valley Wildlife Area
- (28) South Spit Wildlife Area
- (29) Tehama Wildlife Area
- (30) Upper Butte Basin Wildlife Area
- (31) Volta Wildlife Area
- (32) Willow Creek Wildlife Area
- (33) Yolo Bypass Wildlife Area

... *[No additional changes to subsections (x) to (z)]*

Section 552, Title 14, CCR, is amended to read:

§ 552. Public Use Regulations for National Wildlife Refuges That Are Also Designated as Wildlife Areas by the Commission.

... *[No additional changes to this section]*

Section 630, Title 14, CCR, is amended to read:

§ 630. Additional Visitor Use Regulations on Department Lands Designated as Ecological Reserves.

... *[No additional changes to this section]*

Section 702, Title 14, CCR, is amended to read:

§ 702. Hunting Applications, Tags, Seals, Permits, Reservations, and Fees; Department Lands Applications, Passes, Special Use Permits, and Fees.

... *[No additional changes to this section]*

Section 703, Title 14, CCR, is amended to read:

§ 703. Miscellaneous Applications, Tags, Seals, Licenses, Permits, and Fees.

(a) Applications, Forms and Fees for January 1 through December 31 (Calendar Year).

... [No additional changes to this section]

ADDENDUM

to the

FINAL ENVIRONMENTAL DOCUMENT FOR

PROPOSED REGULATIONS GOVERNING

PUBLIC USE OF CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE LANDS

prepared by the

STATE OF CALIFORNIA

THE NATURAL RESOURCES AGENCY

CALIFORNIA FISH AND GAME COMMISSION

as the

LEAD AGENCY UNDER THE CALIFORNIA

ENVIRONMENTAL QUALITY ACT for the

REGULATORY ACTION TO

AMEND SECTIONS 550, 550.5, 551, 552, 630 AND 702

REPEAL SECTIONS 703(a)(2) and 703(c)

OF TITLE 14, CALIFORNIA CODE OF REGULATIONS

August 5, 2016

I.

INTRODUCTION

The California Fish and Game Commission ("Commission") has prepared this Addendum to comply with the California Environmental Quality Act ("CEQA") (Public Resources Code section 21000 *et seq.*). The Commission is the lead agency under CEQA with respect to the proposed project that involves changes to existing regulations that govern the public use of lands under the jurisdiction of the California Department of Fish and Wildlife ("CDFW").

Generally, these lands are either ecological reserves (Fish and Game Code section 1580 *et seq.*) or wildlife areas (Fish and Game Code section 1525 *et seq.*) Ecological reserves are generally acquired to protect rare and/or endangered native plant and animal species and specialized habitat types. Wildlife areas are acquired for wildlife conservation and compatible recreational uses. For both of these categories of land, the Commission may adopt regulations that govern their use, operation, and protection. The existing regulations are found in sections 550, 551, 552, 553, 630 and 703 of Title 14 of the California Code of Regulations (CCR).

On June 20, 2012, the Commission approved amendments to these sections, with one addition (Section 550.5) and one repeal (Section 553). As part of this approval, the Commission prepared and certified a document that was the functional equivalent of an Environmental Impact Report ("EIR") as it is legally entitled to do under its Certified Regulatory Program ("CRP"). (Title 14, California Code of Regulations, section 781.5, 15251) A Notice of Determination was filed for this document on June 22, 2012.

This Addendum addresses various issues under CEQA associated with the proposed amendments to these sections, as well as amendments to Section 702. It is also prepared because the Commission has determined that some changes or additions are necessary to the previously certified functional equivalent document, but these changes do not call for the preparation of a subsequent environmental document. (Title 14, California Code of Regulations, section 15164) This Addendum is appropriate because the changes involve only minor technical changes or additions.

II.

BACKGROUND AND OVERVIEW OF THE COMMISSION'S OBLIGATIONS AS THE LEAD AGENCY UNDER CEQA FOR MODIFICATIONS TO THE PREVIOUSLY APPROVED REGULATIONS

In 2012, the Commission changed existing regulations governing the use of publicly-owned lands under the jurisdiction of, or managed by, the CDFW. The existing regulations were found in sections 550, 551, 552, 553, 630 and 703 of Title 14. Most of these sections were originally adopted in the late 1980s, early 1990s and have been amended numerous times since then. The purposes of the changes that were approved by the Commission in June 2012 were to consolidate and clarify the existing regulations, standardize the process used to issue special use permits, designate seven recently acquired properties as wildlife areas or ecological reserves, and make changes to or add regulations that would improve public safety and/or recreational opportunities without causing a significant effect on wildlife or habitat resources. As part of the effort to consolidate and clarify the regulations, the existing general and site specific regulations that governed the Department's then 111 wildlife areas and 136 ecological reserves were completely reorganized. The environmental document prepared in support of this reorganization was contained in the Initial Statement of Reasons ("ISOR") for the project and was approved at the same time as the regulations themselves. The Commission concluded that the adoption and implementation of those amendments would not result in any potentially significant adverse impacts under CEQA.

The amendments approved by the Commission in June, 2012, were ultimately disapproved by the Office of Administrative Law ("OAL") for reasons related to the Administrative Procedures Act ("APA") (Government Code section 11340 *et seq.*). As a result, the Commission revised the regulations themselves, as well as related APA documents to meet applicable legal requirements. An Addendum to the 2012 environmental document was prepared, the revised regulation package was approved by the Commission on April 16, 2014, and approval from OAL was granted on August 11, 2014.

During this period, statutes were approved by the legislature that necessitated additional changes to the land regulations:

1. FGC Section 1745 which addresses, among other topics, the implementation of the Lands Pass Program.
2. FGC Section 1587 regarding public use of the Mirage Trail at the Magnesia Springs Ecological Reserve

3. FGC Section 3004.5 regarding requirements for nonlead ammunition; and
4. FGC Section 3031 regarding the age limit for possessing a junior hunting license.

Changes were made to federal statutes for nine National Wildlife Refuges that are also designated as State Wildlife Areas. This necessitated changes to Section 552, Title 14, CCR in order to maintain consistency between state and federal regulations. The Department administers hunting programs on the federal refuges as part of a cooperative agreement with the U.S. Fish and Wildlife Service.

Additionally, some errors were discovered in the major reorganization of the land regulations from 2014 (e.g., some subsections were not properly relocated or inadvertently omitted during the reorganization), possible changes to the verbatim that would strengthen the enforceability of certain sections were identified, and it became apparent that there were a few remaining contradictions between regulations that had not been addressed during the 2012-2014 update.

It was decided to consolidate fees for Department lands in Section 702, which necessitated amendments to that section and the deletion of two subsections within Section 703.

The developments described above give rise to the current obligation of the Commission to comply with CEQA with respect to the currently-proposed technical changes.

According to CEQA, where a lead agency prepares an EIR or an environmental document pursuant to a CRP for a proposed project, no subsequent or supplemental analysis is required under CEQA unless one or more of the following occur:

- Substantial changes are proposed in the project which will require major revisions to the previous EIR or environmental document.
- Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions to the previous EIR or environmental document.
- New information, which was not known and could not have been known at the time the previous EIR or environmental document was certified as complete, becomes available.

(Pub. Resources Code, § 21166; Cal. Code Regs., tit. 14, § 15162, subd. (a).)

In general, new information and required revisions to a prior EIR or environmental document trigger the need to prepare subsequent or supplemental analysis under CEQA, only where changes to the project, changes in circumstances, or new information

reveal:

- A new potentially significant environmental impact not previously disclosed in the prior analysis; or
- A substantial increase in severity of a previously-identified potentially significant impact.
- (*Id.*, § 15162, subd. (a)(1)-(3).)

Stated another way, a subsequent EIR or environmental document or a supplement to such prior analysis, is not required under CEQA where substantial evidence in light of the whole record supports the Commission's determination that none of the conditions highlighted above are present. The Commission, as explained below, determines that no such conditions are present with respect to the proposed modifications to the existing regulations governing the use and operation of state-owned land that is held or managed by CDFW. The Commission, as a result, may properly prepare and rely on this Addendum to fulfill its obligations under CEQA with respect to the proposed project. (*Id.*, § 15164.)

III.

CONSIDERATION OF PROJECT CHANGES, CHANGED CIRCUMSTANCES AND POTENTIALLY SIGNIFICANT NEW INFORMATION

As noted above, in 2012, the Commission concluded that the adoption and implementation of that set of regulations would not result in any potentially significant environmental impacts. A major focus of the current regulation package is administrative changes to the Department's Lands Pass Program which will have no on-the-ground effect.

It should be noted that the new statutory language regarding the public use of the Mirage Trail on the Magnesia Springs Ecological Reserve and the age limit for possessing a junior hunting license does not give the Commission discretion over the specific requirements in these regulations but the Commission is including them in regulation in order to increase public awareness and compliance. Members of the public tend to refer to the regulations rather than the statutes when visiting Department land. A similar situation exists for adding a land regulation regarding the use of nonlead ammunition. That requirement already exists in Section 250.1, Title 14, CCR, a section that addresses ammunition, but adding it to the land regulations should increase public awareness and compliance on Department lands.

Subsection 551(k)(3) proposes to allow off-highway vehicles (OHV's) to be used only on

roads that are open to vehicle traffic on the Tehama Wildlife Area in Tehama County. OHV's have been used on the roads of the wildlife area since its establishment in 1968. Based on the experience of managing both the natural resources and public use of this property since 1968, the Department does not expect that the proposed regulation will have a significant environmental impact because:

- The system of dirt roads is so extensive and the off-road terrain is so rough that visitors (primarily hunters) were not prone to riding off-road during the many years that OHV's were allowed on the wildlife area. The area did not incur visible off-road damage. Hunters focused on reaching hunting areas or campsites as efficiently as possible, with their equipment and supplies intact.
- When OHVs are banned, the number of four-wheel-drive jeeps, SUV's and trucks on the roads increases considerably. These vehicles are much heavier than the OHV's and are causing more wear-related damage to the roads.

A proposed amendment to subsection 551(o)(39) would open the Green Island Unit of the Napa-Sonoma Marshes Wildlife Area to compatible uses other than hunting. Under the current version of this subsection, this unit has been closed to public use during a lengthy habitat restoration project. Because the habitat restoration project is complete, the Department proposes to open this relatively small unit to compatible uses other than hunting. This is consistent with the management plan for the Wildlife Area which underwent CEQA review and was finalized in 2011.

Proposed amendments to subsections 551(s)(8) and (s)(10) would allow any legal method-of-take for big game, pursuant to Sections 353 and 354, Title 14, CCR, for elk and wild pig special hunts on the Grizzly Island Wildlife Area (GIWA). Normally hunting with firearms on Type A and Type B wildlife areas is limited to shotguns, and is focused primarily on waterfowl and small upland game species. These hunts are a limited opportunity, with a relatively small number of tags made available. Based on experience and expertise in managing these species, the Department thinks this change is compatible with managing elk and wild pig populations at the GIWA and would allow these hunts to conform with statewide regulations for hunting big game.

In light of the preceding analysis and other substantial evidence in the administrative record of proceedings, the Commission does not believe that the proposed changes dated August 2016 governing the use and operation of CDFW-owned land will result in previously undisclosed, new significant environmental impacts or a substantial increase in the severity of previously disclosed impacts.



June 20, 2016

Mr. C H Bonham
Director, Department of Fish and Wildlife
1416 9th Street, 12th Floor
Sacramento
CA 95814

Dear Mr. Bonham:

Board of Directors

Peter Bryant, President

Tim Brown

Frances Cork

Elizabeth Flint

Donna Flower

Peter Fuhrer

Nancy Gardner

Molly Stallcup

Ian Swift

Jean Whitaker

Danielle Zacherl

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Advisory Board

Buck Johns

Colleen Johns

Bob Shelton

Jean Watt

Ron Yeo

I am writing on behalf of the Newport Bay Conservancy to reiterate our strong concerns about the declared intent of your Department to implement a Lands Pass fee for entry into the Upper Newport Bay Ecological Reserve. We wrote in June 2013 when this idea was last put forward (copy attached) and our views on the subject have not changed.

Apart from the question of the justification for charging an entry fee to the Reserve, there are many practical difficulties as detailed in our previous letter. There is only one permitted trail within the Reserve, comprising a short (c. 800 yd) loop trail into Big Canyon, and the only other places the public can enter CDFW land are from a parking lot which is accessed from Back Bay Drive (a public street maintained by the City of Newport Beach) and on a small viewpoint known as Vista Point, which gives views over the Upper Bay. Water access by kayak and paddleboard is from either the Newport Aquatic Center or the Dunes resort, both of which lie outside the boundaries of the Reserve. It seems to us totally impractical to attempt to levy a charge on kayak or paddleboard customers from either of those bases when they may or may not choose to enter the Reserve waters.

UNB open space comprises lands owned by the State of California, the County of Orange and the City of Newport Beach. By far the largest numbers of visitors are either using trails on the Orange County Parks Nature Preserve which overlooks the Bay, or are hiking, biking or jogging on Back Bay Drive, which runs alongside the eastern boundary of the Reserve. In 2013, The City made it clear they would not allow any charge to be levied on users of this street, which is on City land and is a public highway.

Newport Bay Conservancy runs public kayak tours led by a trained naturalist every weekend, and leads environmental education tours for High School students into the Reserve by outrigger canoe on a regular basis. In total these are attended by around 2000 participants annually. We also lead free walking tours on Back Bay Drive which have been run continuously since 1968 when they were a focal point of the citizen's campaign to save the Bay from development.

Participant numbers for all these programs are provided to CDFW every year. Most of the schools who participate in the programs are in economically deprived areas within Orange County, and the students can participate only because we are able to obtain grants to defray the costs involved (for transportation, substitute teachers, and outrigger rental).

Our mission is to protect and preserve Upper Newport Bay

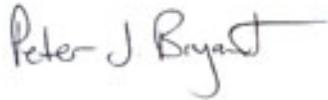
To: Mr C H Bonham
Director, Department of Fish & Wildlife

Lands Pass requirement at Upper Newport Bay Ecological Reserve /cont.

If members of the Commission are unfamiliar with the Upper Newport Bay Ecological Reserve we would be delighted to host a visit to demonstrate these programs and the challenges that a Lands Pass fee would present. I am sure members of the City Council would be happy to participate.

I am sending this letter by email because we were notified today that comments are due today to the Fish and Game Commission.

Sincerely

A handwritten signature in black ink that reads "Peter J. Bryant". The signature is written in a cursive style with a long horizontal stroke at the end.

Peter J. Bryant, Ph.D.,
President, Newport Bay Conservancy
949 933 9654

cc. David Kiff, City Manager, City of Newport Beach
Carla Navarro, Reserve Manager, UNB Ecological Reserve
Richard Burg, Senior Environmental Scientist/ Supervisor, Lands Program, South Coast Region



June 21, 2013

Mr C H Bonham
Director, Department of Fish & Wildlife
1416 9th Street, 12th Floor
Sacramento
CA 95814

Board of Directors

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Cathey Bertot

Peter Bryant

Rob Ellis

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Advisory Board

Buck Johns

Colleen Johns

Bob Shelton

Jean Watt

Ron Yeo

Dear Mr Bonham

Lands Pass requirement at Upper Newport Bay Ecological Reserve

As two nonprofit organizations closely associated with Upper Newport Bay (UNB) we wish to register our deep concern with the declared intent to charge entry fees to members of the public entering the Upper Newport Bay Ecological Reserve.

From discussions with Carla Navarro, (Reserve Manager) we understand that there has been provision for an entry charge in the State Regulations for many years, albeit never enforced. Our organizations have been operating since the 1970's and yet were not aware of this provision.

Our concerns are:

1. Practicality

UNB is surrounded by urban development and has multiple entry points. Unlike other reserves, including Elkhorn Slough, it is an open reserve with no boundary fencing. There is also a Nature Preserve managed by Orange County Parks that is contiguous with the CDFW reserve but without any marked boundary between the two. Further, there is a City-maintained street (Back Bay Drive) that was in existence as a public highway for many years before the Reserve was established which runs for several miles just inside the eastern margin of the Reserve. This street is a popular route for recreational cyclists, with numbers running into several hundred daily on weekends. It is also popular with walkers and bird watchers, and those individuals with disabilities whose only means to view and enjoy the Reserve is by a drive along this road.

We do not understand how a charge can be fairly and effectively applied to all such users.

Other than this street, the only permitted public access to the Reserve on land comprises a half- mile loop trail, a parking lot adjacent to the City-maintained street, and a viewpoint (Vista Point) on the NE boundary of the Reserve. The latter relates to our second reason for objecting to the concept of a daily entry fee.

To: Mr C H Bonham
Director, Department of Fish & Wildlife

Lands Pass requirement at Upper Newport Bay Ecological Reserve /cont.

In reality, visitors and local residents tend to see the whole open space of the Bay and the surrounding bluffs as a single entity, and generally do not understand that elements of it are managed by CDFW, others by Orange County Parks, and still others by the City of Newport Beach.

2. Community contributions to upkeep of UNB Reserve

We understand that part of the rationale for implementing a fee is the view among hunting and fishing groups that other users of CDFW reserves are not contributing a fair share of the costs of maintaining them. As you will know, the UNB has a special history, in that it was only saved from development by a vigorous campaign by local citizens in the late 60s/early 70s. The Bay was subsequently established as an ecological reserve.

Since that time, significant funds have been raised by the local community on behalf of the Reserve. We understand the Back Bay Science Center was 80% funded by the City of Newport Beach. The above-mentioned Vista Point was proposed, designed and built with over \$100,000 raised entirely from the local community. The short loop trail was constructed with funding from the City of Newport Beach and volunteer labor provided by the Newport Bay Naturalists and Friends (now the Newport Bay Conservancy). The latter organization has also raised over \$50,000 – including \$17,000 of its own funds - in a habitat restoration project on the western part of the Reserve and provides significant volunteer resources for habitat restoration and trash removal within the Reserve. Hence the reality is that in one way or another the local community has provided the bulk of the funds invested in educational and other public facilities over the years, and continues to provide the major part of “people” support with volunteers leading monthly walking tours, on the water kayak tours, and organizing and participating in ongoing habitat restoration in partnership with CDFW and the California Coastal Commission’s community-based restoration program.

In summary, the Bay is a place near and dear to the communities around it, as is evidenced by these examples of active community involvement.

3. Facilities provided in the Reserve

It states in the CDFW website (Ecological Reserves – A Wild Time For Visitors) that the UNB Reserve has a visitor center “where staff and docents can direct or lead visitors to special points of interest” and that “children get to see marine life of the bay at the Marine Studies Center...”. In fact the Back Bay Science Center is a locked facility 6 ½ days a week, only open for 4 hours on Sundays when City staff open it for members of the public to see the aquaria and marine exhibits.

To: Mr C H Bonham
Director, Department of Fish & Wildlife

Lands Pass requirement at Upper Newport Bay Ecological Reserve /cont.

For the reasons set out above, we cannot therefore understand why the UNB Reserve is one of the 7 CDFW reserves, out of the 716 managed by CDFW across the State, for which a Lands Pass is required. We strongly recommend a meeting with representatives of the City of Newport Beach, Orange County Parks and our own organizations to discuss the concerns raised above before further action is taken. The current approach can only antagonize the local community and those environmental organizations such as our own which provide significant levels of support to protect and preserve the Bay.

Sincerely,

HOWARD CORK
President,
Newport Bay Conservancy

JEAN WATT
President,
Friends of Harbors, Beaches and Parks

cc. Mr David Kiff, City Manager, Newport Beach
Ms Carla Navarro, Reserve Manager, UNB Ecological Reserve



CITY OF NEWPORT BEACH

Office of the City Manager

June 21, 2016

Mr. Charlton H. Bonham
Director, Department of Fish and Wildlife
1416 9th Street, 12th Floor
Sacramento, CA 95814

RE: Lands Pass requirement for Upper Newport Bay Ecological Reserve (2016)

Dear Director Bonham:

The following letter is consistent with the position of the Newport Beach City Council, taken in June 2013 as this issue arose then. This letter is a reiteration of the City of Newport Beach's (City) concern about the proposed "Lands Pass" requirement for the Upper Newport Bay Ecological Reserve (UNBER).

The City has long been a supporter of the California Department of Fish and Wildlife (CDFW) as it has managed UNBER. We think of UNBER and the surrounding County of Orange Nature Preserve as our backyard, and a very special one at that. CDFW has always been a strong partner in protecting the important ecological resources at UNBER.

Knowing the fiscal concerns of CDFW, we can somewhat see the rationale behind CDFW's application of its Lands Pass requirement across CDFW properties. However, we believe that the nature of UNBER is not conducive to collecting fees under the Lands Pass system, nor has the long-term partnership between CDFW, the City, and the County of Orange warranted its application.

We (and our residents) partner with you on restoration efforts, educational programs, the Back Bay Science Center, and even enforcement and rescue in UNBER. Dozens if not hundreds of access points allow our residents as well any Californian to access the resources within UNBER, and often they do so on a very brief basis. Our own Back Bay Drive goes across nearly the entirety of the eastern side of UNBER. This is a roadway that we maintain and operate, at our cost, to allow people to access the Upper Newport Bay as easily and safely as possible.

Respectfully, we think that CDFW's effort to collect the Lands Pass fee at UNBER will be minimally successful at best. At worst, thousands of individuals and groups will be confused as to precise Lands Pass requirements depending upon their use patterns. Will it be needed by kayakers entering the Reserve from the south on the water? A cyclist transiting along Back Bay Drive who stops on the side of the road to fix a flat? The volunteers who donate thousands of hours to restoration or education efforts?

There is a long history of no-fee partnership (including tens of thousands of volunteer hours) between our City, our residents and CDFW, and collecting the fee associated with the Lands Pass changes that long-standing relationship. Therefore, we urge you to reconsider the Lands Pass requirement at UNBER.

We thank you and your local staff for your dedicated service to the Upper Newport Bay and thank you for your consideration of this request. Should you have any questions about the City's position, please do not hesitate to contact me at 949-644-3001.

Sincerely,



Dave Kiff
City Manager
City of Newport Beach

cc: Members of the Newport Beach City Council
State Senator John MW Moorlach (35th Senate District)
Dr. Peter Bryant, President of the Newport Bay Conservancy
Ms. Carla Navarro, Reserve Manager, UNBER