



September 11, 2015

Attention: California Environmental Quality Act Lead Agency

REGULATION FOR RARE PLANTS

The Fish and Game Commission (Commission) recently adopted a regulation that governs the take, possession, propagation, transportation, exportation, importation or sale of plants that are designated as rare pursuant to the Native Plant Protection Act (NPPA). The regulation is found in Section 786.9 of Title 14, the California Code of Regulations (14 CCR) (text enclosed). The regulation addresses a long-standing gap in California Department of Fish and Wildlife (CDFW) permitting authority, and will result in more consistency in how CDFW regulates State-listed plants. The purpose of this letter is to inform you of the new regulation, which is now in effect.

The NPPA was enacted in 1977 and allows the Commission to designate plants as rare or endangered. There are currently 64 species, subspecies, and varieties of plants that are designated as rare under the NPPA¹. The new regulation only applies to these 64 plants.

The NPPA prohibits the take of rare plants, but includes exceptions for some activities; such as certain agricultural and nursery operations, timber harvest operations, and emergencies. The recently adopted regulation allows CDFW to authorize the take of rare plants as if they were listed as endangered, threatened or candidate species under the California Endangered Species Act. With the regulation, CDFW may now permit the take, possession, propagation, transportation, exportation, importation or sale of rare plants using the same procedures and conditions as:

- Incidental take permits issued pursuant to Fish and Game Code (F&GC) Section 2081 (b) and 14 CCR Section 783 *et seq.* ;
- Voluntary local programs approved pursuant to F&GC Section 2086 and 14 CCR, Section 786 *et seq.* ;
- Natural community conservation plans approved pursuant to F&GC Section 2800 *et seq.*;
- Safe harbor agreements issued pursuant to F&GC Section 2089.2 *et seq.* or
- Scientific, educational or management permits issued pursuant to F&GC Section 2081(a) or Section 1002 *et seq.*

¹ See Title 14, Section 670.2(c) of the California Code of Regulations.

With the regulation in effect, CDFW may now authorize rare plant impacts as defined under 14 CCR Section 786.9 (a)(2). Please contact the appropriate CDFW regional office if you have questions regarding how the regulation will affect a proposed project, or if rare plants have the potential to occur in a proposed project's vicinity.

Sincerely,



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Enclosure: Regulations for Rare Plants

cc: California Department of Fish and Wildlife

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Enclosure: Regulations for the Take of Rare Plants

14 CCR § 786.9

§ 786.9. Take of Rare Plants.

(a) Definitions:

(1) The term “rare plants” shall mean those plants listed as rare by the commission in Section 670.2(c) of these regulations.

(2) The term “rare plant impacts” shall mean the take, possession, propagation, transportation, exportation, importation or sale of rare plants.

(b) The department may issue permits, agreements, plans or programs that authorize rare plant impacts using the same procedures and under the same conditions as take authorizations issued pursuant to Section 783 *et seq.* of these regulations relating to incidental take permits, Section 786 *et seq.* of these regulations relating to voluntary local programs, Fish and Game Code Section 2800 *et seq.* relating to natural community conservation plans, or Fish and Game Code Section 2089.2 *et seq.* relating to safe harbor agreements as if rare plants were listed as endangered, threatened, or candidate species. The choice among the four sets of conditions and procedures listed in this subdivision to be applied to the permit for authorization of rare plant impacts shall be made by the person or entity seeking the permit, agreement, plan or program.

(c)(1) Except as provided in (2) below, the department may issue permits or memorandums of understanding that authorize rare plant impacts for scientific, educational or management purposes pursuant to either Fish and Game Code Sections 1002, 1002.5 and 1003 and Section 650(a) of these regulations, or Fish and Game Code subdivision (a) of Section 2081. The choice between using Fish and Game Code Sections 1002, 1002.5 and 1003 and Section 650(a) of these regulations, or Fish and Game Code subdivision (a) of Section 2081 shall be made by the department.

(2) Where propagation is being conducted for scientific, educational or management purposes, a permit will be issued as described in this subdivision (c). All other rare plant propagation shall be permitted under (b) above.

(d) Nothing in this section requires a permit or other authorization for rare plant impacts where the rare plant impacts are otherwise allowed pursuant to Fish and Game Code Section 1900 *et seq.* (Native Plant Protection Act) including, but not limited to, those activities covered by Fish and Game Code Section 1913.

(e) Nothing in this section affects the validity of any authorization for rare plant impacts if the rare plant impacts were authorized by the department in a permit, plan, agreement or program approved by the department prior to the effective date of these regulations. The authorization contained in such permit, plan, agreement or program is deemed to be in effect as of the date it was approved.