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STATE OF CALIFORNIA
Fish and Game Commission

November 8, 2011

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a Notice of Findings regarding The Cedars buckwheat (*Eriogonum cedrorum*) which will be published in the California Regulatory Notice Register on November 11, 2011.

Sincerely,

Sheri Tiemann
Staff Services Analyst

Attachment

CALIFORNIA FISH AND GAME COMMISSION
NOTICE OF FINDINGS

NOTICE IS HEREBY GIVEN that the California Fish and Game Commission (Commission), at its May 4, 2011 meeting in Ontario, California, found pursuant to Fish and Game Code Section 2074.2, that the petition to add The Cedars buckwheat (*Eriogonum cedrorum*) to the list of endangered species under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.) does not provide sufficient information to indicate that the petitioned action may be warranted. On September 15, 2011, the Commission at its meeting in Redding, California, adopted the following findings outlining the reasons for and ratifying its rejection of the petition on May 4, 2011. On October 19, 2011, the Commission, at its meeting in Monterey, California, adopted the following amended findings, more clearly outlining the reasons for and ratifying its rejection of the petition on May 4, 2011.

I.
BACKGROUND AND PROCEDURAL HISTORY

December 28, 2010. The Commission office received a petition from the California Native Plant Society, Milo Baker Chapter, to list The Cedars buckwheat as endangered under CESA (Petition). The Petition as submitted to the Commission is dated December 21, 2010.

January 7, 2011. The Commission office determined the Petition was complete, referred the Petition to the Department of Fish and Game (Department) for review and analysis pursuant to Fish and Game Code Section 2073.5, and notified the petitioner of these facts.

January 21, 2011. The Commission published in the California Regulatory Notice Register notification of receipt of the Petition pursuant to Fish and Game Code Section 2073.3. (Cal. Reg. Notice Register 2011, No. 3-Z, p. 87.)

March 18, 2011. The Department submitted its Petition Evaluation Report (also dated March 18, 2011) (Evaluation Report) to the Commission pursuant to Fish and Game Code Section 2073.5.

April 7, 2011. The Commission accepted and acknowledged receipt of the Department's Evaluation Report at its notice meeting in Folsom, California, indicating it would consider the Petition, the Evaluation Report, other information, and related public comments at the Commission meeting scheduled for May 4-5, 2011.

May 4, 2011. The Commission considered the Petition, the Department's Evaluation Report, and other information at its noticed public meeting in Ontario, California. The Department provided an overview of its Evaluation Report and the Petition generally as part of the related public hearing. No other member of the public provided related testimony to the Commission during the public hearing. After hearing the Department presentation and considering the Petition, the Department's Evaluation Report, and all other information presented to the Commission during the related administrative proceedings, the Commission rejected the Petition, finding it did not contain sufficient information to indicate the petitioned action may be warranted.

II.
STATUTORY AND LEGAL FRAMEWORK

In general, Commission "Listing of Endangered Species" under CESA is governed by Division 3, Chapter 1.5, Article 2, of the Fish and Game Code, commencing with section 2070. A related regulation is found in Title 14, section 670.1, of the California Code of Regulations. The CESA listing process is also described in published appellate California case law, including *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597, 600 (hereafter *CBD*); *California Forestry Association v. California Fish and Game Commission* (2007) 156 Cal.App.4th 1535, 1541-1542; and *Natural Resources Defense Council v. California Fish and Game Commission* (1994) 28 Cal.App.4th 1104, 1111-1116 (hereafter *NRDC*). Case law describes "listing" under CESA as a two-step process:

> "In the first step the Commission determines whether a species is a candidate for listing by determining whether the petition – when considered with the Department's written report and the comments received – provides sufficient information to indicate that the endangered or threatened listing 'may be warranted.' If this hurdle is cleared, the petition is 'accepted for consideration' and the second step begins: the Department conducts a (roughly) year-long scientific based review of the subject species, reports to the Commission, and then the Commission determines whether listing of the candidate as an endangered or threatened species 'is [or] is not warranted.'"
>
> (*NRDC,* 28 Cal.App.4th at pp. 1114-1115.)

The Commission, in the present case, is at the first step of the CESA listing process for the Petition. Specifically, determining whether the Petition, when considered with the Evaluation Report and other related information before the Commission, provides sufficient information to indicate the petitioned action may be warranted. (See generally Fish & G. Code, §2074.2; Cal. Code Regs., tit. 14, §670.1, subd. (e).) This first step is sometimes referred to as the "for consideration" stage in the Commission listing process and the standard governing the Commission's related determination at this first stage is sometimes referred to as the candidacy evaluation test. (See, e.g., *CBD*, *supra*, 166 Cal.App.4th at p. 610.)

The candidacy evaluation test governing the Commission's determination at this first step in the CESA listing process is discussed in both the *NRDC* and *CBD* decisions from California's Third District Court of Appeal. In *NRDC*, the Court of Appeal interpreted the statutory language regarding Commission determinations as to whether a petition contains "sufficient information to indicate that the petitioned action may be warranted." (Fish & G. Code, § 2074.2, subd. (a); see also Cal. Code Regs., tit. 14, § 670.1, subd. (e).) In so doing, the court interpreted the standard to mean "that amount of information – when considered in light of the [Department's] written report and comments received – that would lead a reasonable person to conclude there is a 'substantial possibility' the requested listing 'could' occur[.]" (*NRDC*, *supra*, 28 Cal.App.4th at pp. 1108-1109 (internal citations omitted).) In other words, the court concluded that, if a reasonable person reviewing the petition would conclude that listing could occur, the Commission must accept the petition and designate the species as a candidate for listing under CESA. Based on other "guideposts" offered by the court, while the Commission must find more than a reasonable possibility of listing to designate a species as a candidate, it need not find a reasonable probability of such a future listing at this first step in the CESA listing process. (See *Id.* at pp. 1119-1125.)

The *CBD* decision adds important detail regarding the candidacy evaluation test governing the Commission's first step in the CESA listing process. The Court of Appeal affirmed its earlier, related decision in *NRDC*, emphasizing the term "sufficient information" in Fish and Game Code section 2074.2 means that amount of information that would lead a reasonable person to conclude the petitioned action may be warranted; that the phrase "may be warranted" is appropriately characterized as a "substantial possibility that listing could occur"; and that "substantial possibility" means something more than a reasonable possibility, but that it does not require that listing is more likely than not. (*CBD*, *supra*, 166 Cal.App.4th at pp. 609-610.) In so doing, the court also acknowledged that the "Commission is the finder of fact in the first instance in evaluating the information in the record." (*Id.* at p. 611, citing *NRDC*, *supra*, 28 Cal.App.4th at p.1125.) The court also clarified:

> "[T]he standard, at this threshold in the listing process, requires only that a substantial possibility of listing could be found by an objective, reasonable person. The Commission is not free to choose between conflicting inferences on subordinate issues and thereafter rely upon those choices in assessing how a reasonable person would view the listing decision. Its decision turns not on rationally based doubt about listing, but on the absence of any substantial possibility that the species could be listed after the requisite review of the status of the species by the Department under [Fish and Game Code] section 2074.6." (*Ibid.*)

Another component to the standard discussed by the Court of Appeal in *CBD* is whether the information in the petition or as otherwise presented to the Commission clearly does, or does not, lead to a certain conclusion. According to the decision, if information clearly would lead a reasonable person to conclude there is a substantial possibility that listing could occur, unless counter information is sufficient to compellingly undercut the petition's showing (e.g. persuasively, wholly undercuts some important component of a prima facie showing that there is a substantial possibility that listing could occur), the Commission must accept the petition. (*CBD*, *supra*, 166 Cal.App.4th at pp. 610-612.) In contrast, the Court of Appeal indicated, if all the information before the Commission clearly indicates the absence of a substantial possibility that listing could occur, a Commission decision to reject a petition should be upheld. (*Ibid.*) Finally, the court indicated, if the information on balance is unclear, ultimate discretion rests with the Commission to either reject or accept the petition. (*Ibid.*)

The definitions of endangered and threatened species under CESA also inform the Commission's decision at the *first step* of the CESA listing process. The Fish and Game Code defines "endangered species," in pertinent part, to mean:

> "[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; see also *California Forestry Association*, *supra*, 156 Cal.App 4th at p. 1540, 1549-1551 ("range" for purposes of CESA means the range of the species in California).) Likewise in pertinent part, the Fish and Game Code defines "threatened species" to mean:
>
> "[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 [CESA]." (Fish & G. Code, § 2067.)

In short, both *NRDC* and *CBD* cast the Commission's "may be warranted" determination under Fish and Game Code section 2074.2 in terms of whether a reasonable person would conclude that there is a substantial possibility listing could occur. (*NRDC*, *supra*, 28 Cal.App.4th at p. 1125; *CBD*, *supra*, 166 Cal.App.4th at pp. 609-610.) That standard, as emphasized by the Court of Appeal, is an objective standard that does not allow the Commission as the decision making body to substitute its own subjective view for the objective, reasonable person. (*Id.* at p. 610, fn. 13.) The Commission applied this standard, along with related legal principles, in determining in the present case that the Petition does not provide sufficient information to indicate that the petitioned action may be warranted. (Fish & G. Code, § 2074.2, subd. (a)(1).)

III.
FACTUAL AND SCIENTIFIC BASES FOR THE COMMISSION'S FINDING

The factual and scientific bases for the Commission's finding to reject the Petition to list The Cedars buckwheat as endangered are set forth in detail in the Commission's administrative record of proceedings. Substantial evidence in the administrative record in support of the Commission's determination includes, but is not limited to, the Evaluation Report, 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 Ontario, California, on May 4, 2011.

The Commission finds that the evidence highlighted in the preceding paragraph, along with other evidence in its administrative record of proceedings generally, supports the Commission's determination that the Petition does not contain sufficient information in relation to the following factors to indicate that the petitioned action may be warranted:

1. Population trend;
2. Range;
3. Distribution;
4. Abundance;
5. Life history;
6. Kind of habitat necessary for survival;
7. Factors affecting the ability to survive and reproduce;
8. Degree and immediacy of threat;
9. Impact of existing management efforts;
10. Suggestions for future management;
11. Availability and sources of information; and
12. A detailed distribution map.

The following discussion highlights 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 the petition does not provide sufficient information to indicate that listing The Cedars buckwheat as endangered may be warranted. Part A below describes each factor individually; and Part B below describes the information considered as a whole in determining if the Petition meets the standard for being accepted by the Commission.

A. Factors considered individually.

1. Population trend:

The Petition states that populations of The Cedars buckwheat have been stable for over 30

years. The 2009 type description of The Cedars buckwheat states, "A recent survey of the Central Canyon sites shows the population to be extremely stable. While there were few young plants, not a single dead mat was noted. A few plants had their crowns elevated >1.5 dm above the current rock surface, showing they had undergone that much erosion and survived. The lack of any significant disturbance at any site, the lack of senescence or death, and the persistence of plants in extremely harsh sites suggests this taxon is capable of great age." A population that is currently and has been stable over 30 years, without senescent or dead plants, some of which have survived > 6 inches (1.5 dm) of erosion in extremely harsh sites, demonstrates a stable, long-term population trend. This information clearly indicates that the population trend is not declining. As a result, there is insufficient evidence regarding this factor for an objective, reasonable person to conclude that there is a substantial possibility that listing could occur.

2. Range

The Cedars buckwheat is restricted to an area called The Cedars in Sonoma County, California. The Petition states that The Cedars buckwheat occurs on "less than 500 acres." The actual area of land that The Cedars buckwheat occupies is not clear from the information provided in the Petition and from other information available to the Department. Regardless of the acreage of habitat occupied by The Cedars buckwheat, this species is rare and is endemic to The Cedars. An endemic species is a species that is native to a specific place and occurs nowhere else.

An endangered species is defined 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). A threatened species is defined 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." (Fish and G. Code § 2067). A species, although rare and endemic, may not necessarily be in serious danger of becoming extinct, especially if there are no threats to the species; or loss of habitat, change in habitat, over exploitation, predation, competition, or disease. There is no information indicating any change to The Cedars buckwheat's range. As a result, there is insufficient evidence regarding this factor for an objective, reasonable person to conclude that there is a substantial possibility that listing could occur.

3. Abundance

The Petition states that there are about 3000 – 4000 plants in existence restricted to three limited areas in The Cedars, Sonoma County while the attached reference to the Petition states that "there are ± 1500 to 2000 plants in existence." Although there is a discrepancy in the numbers provided in the Petition, the Petition states that populations of The Cedars buckwheat are stable and have been for over 30 years. This statement is supported by the references attached to the Petition as appendices. As a result, there is insufficient evidence regarding this factor for an objective, reasonable person to conclude that there is a substantial possibility that listing could occur.

4. Life History

Little is known about The Cedars buckwheat life history. Populations of The Cedars buckwheat were previously misidentified as a different buckwheat species, Snow Mountain buckwheat (*Eriogonum nervulosum*), which is another rare species that occurs on serpentine soils in Colusa, Lake, and Glenn Counties. The Cedars buckwheat was differentiated from Snow Mountain buckwheat during field work in 2009, and was formally described as a separate species later that year. A lack of information on life history of The Cedars buckwheat is expected since the species was only recently formally described. Therefore, there is insufficient evidence regarding this factor for an objective, reasonable person to conclude that there is a substantial possibility that listing could occur.

5. Kind of habitat necessary for survival

The Petition accurately states that The Cedars buckwheat is endemic to The Cedars, which is a unique and rare geological feature and contains a distinctive associated botanical community. The Cedars buckwheat grows on steep serpentine canyon slopes that consist of mostly open rock and talus (small, loose rock fragments) and that form extensive serpentine barrens. The habitat that this species grows in is remote and difficult to access, and the species is therefore less likely to be impacted by human disturbance. The Petition does not provide any information regarding any loss or change to buckwheat habitat. As a result, there is insufficient evidence regarding this factor for an objective, reasonable person to conclude that there is a substantial possibility that listing could occur.

6. Factors affecting the ability to survive and reproduce

The Petition states that there are no known factors affecting the ability of the buckwheat to survive and reproduce and that there is little plant competition in its habitat. The Petition lacks any information regarding overexploitation, predation, competition, or disease of the species. In contrast, the Petition contains information indicating The Cedars buckwheat has a long-term stable population, is reproducing, persists in extremely harsh sites, can survive substantial erosion, and is capable of great age. Thus, the Petition does not provide any information that The Cedars buckwheat's ability to survive and reproduce is being adversely affected. As a result, there is insufficient evidence regarding this factor for an objective, reasonable person to conclude that there is a substantial possibility that listing could occur.

7. Degree and immediacy of threat

The Petition lists several hypothetical threats to The Cedars buckwheat populations, but does not present information to substantiate the threats. As a result, there is insufficient evidence regarding this factor for an objective, reasonable person to conclude that there is a substantial possibility that listing could occur. As discussed more fully below, the Petition lists the following factors as potential threats to The Cedars buckwheat: a) mining; b) lack of federal listing under the Federal Endangered Species Act; c) grading; d) feral pigs; e) illegal marijuana growing; and f) wind turbine or solar energy projects.

a. Mining

The Petition does not present information to substantiate a realistic, non-speculative threat of

mining at The Cedars. Mining has not occurred within The Cedars for over 50 years and there are no current applications to mine within or near The Cedars. The Petition states that about 75% of The Cedars buckwheat occurrences are on Bureau of Land Management (BLM) property, and that BLM permits mining. The Petition ignores that BLM is aware of the ecological significance of The Cedars and, since 2006, has designated The Cedars an Area of Critical Environmental Concern (ACEC) in order to provide protection for this area and its unique resources. ACEC designation provides the strongest protection that BLM can provide on its lands.

As discussed in the Evaluation Report, The Cedars is not currently zoned as a mineral resource in the Sonoma County General Plan which creates an additional hurdle to mining on private property within The Cedars. Moreover, access to the BLM property is potentially still limited because it may still be landlocked – it may still be surrounded by private land. The Evaluation Report indicated that BLM expected to acquire private property within The Cedars by March 2011, thereby acquiring access to other BLM property. However, the Commission is not aware if BLM's purchase occurred. Regardless of BLM having purchased the land or not, motorized access is not allowed in the ACEC, so development of infrastructure required for mining remains unlikely.

In light of the aforementioned facts regarding mining, the Petition does not present any information to indicate that mining is a credible threat to The Cedars buckwheat.

b. Lack of listing under the Federal Endangered Species Act

The Petition inaccurately states that, because The Cedars buckwheat is not listed under the Federal Endangered Species Act, it receives little protection on BLM land. In fact, The Cedars buckwheat is considered a BLM Special Status Plant and, accordingly, is given the same level of protection by BLM as if it were state-listed. (See Evaluation Report p. 8.) The Petition also states that a State-listing may bring the species to the attention of BLM and improve management of the species by BLM, but, as noted, BLM has already recognized the species and has provided it the sort of protection the species would receive if state-listed. Listing The Cedars buckwheat under CESA would not provide any additional protection for the species on BLM land.

c. Grading

The Petition states that 25% of The Cedars buckwheat occurrences are on private property. Of the four relevant property owners, one landowner conducted grading during 2010. As noted in the Evaluation Report, the Petition lacks any information regarding the location and extent (acreage) of grading, and does not present any information to indicate whether grading affected or was in proximity to habitat occupied by The Cedars buckwheat.

In addition, the habitat of The Cedars buckwheat is steep serpentine talus slopes, an unstable and challenging landform, that would be expensive to grade and would require regular maintenance. Based on the information provided in the Petition, there is no evidence of a threat to The Cedars buckwheat due to grading.

d. Feral Pigs

The Petition states that feral pigs have become more abundant at The Cedars over the past 10 years, have become residents in canyons, and have caused serious ecological damage.

As discussed in the Evaluation Report, the Petition does not state whether or not pig rooting occurred around buckwheat plants in The Cedars and, if so, if there were any adverse effects. Nor does the Petition indicate whether or not wild pigs consistently use buckwheat habitat. Although wild pigs can inhabit steep slopes in many habitats, the steep, open, barren talus slope habitat of The Cedars buckwheat is a very low productivity habitat type that supports few mammals and should provide very little food and attraction for wild pigs. Wild pigs are most abundant in a black oak woodland grassland mosaic. They are also found in chaparral, riparian, marsh, and grassland habitats. The Cedars buckwheat habitat lacks primary habitat constituents for feral pigs: a water source and cover. Thus, wild pigs would rarely be in buckwheat habitat. In light of the aforementioned facts regarding wild pigs, the Petition does not present any information indicating that feral pigs present a credible threat to The Cedars buckwheat.

e. Illegal Marijuana Growing

The Petition states that there is a previous history of growing and harvesting marijuana in the area, but as discussed in the Evaluation Report, the Petition lacks information regarding where marijuana was grown, if it was grown in proximity to The Cedars, and if growing marijuana had an effect on The Cedars buckwheat. Serpentine habitat in The Cedars is arid and exposed. It is not habitat to which marijuana is adapted to because of its chemical nature and drought conditions within The Cedars. With limited access and sources of water for irrigation, and open exposed, serpentine areas, The Cedars, let alone buckwheat habitat, is not the type of area conducive to growing marijuana. Therefore, the Petition does not present any information indicating that marijuana growing is a credible threat to the Cedars buckwheat.

Of note, large scale marijuana growing has been and continues to be illegal in Sonoma County. Given that illegal activities operate outside governmental regulation, listing The Cedars buckwheat is unlikely to bring the plant any additional protection from possible future illegal marijuana growing or harvesting.

f. Wind Turbine or Solar Energy Projects

The Petition lacks any specific information regarding the actual or potential threat to The Cedars buckwheat from implementation of wind turbine and solar projects on BLM lands in Sonoma County. The Petition also lacks any information explaining how such projects would adversely affect The Cedars buckwheat.

As discussed in the Evaluation Report, there are no pending or authorized wind or solar energy projects in proximity to The Cedars or in Sonoma County. In addition, The Cedars is well outside BLM's Identified Areas of Wind Power Potential. According to the U.S. Department of Energy (DOE) and Bureau of Land Management Draft Programmatic Environmental Impact Statement (PEIS) for Solar Energy Development in Six Southwestern States, all lands within the jurisdiction of the BLM's Ukiah Field Office, which includes The Cedars, are proposed for exclusion from solar development at this time. (See Evaluation Report, p. 12.)

Furthermore, development of wind or solar energy projects at The Cedars would encounter obstacles similar to those for mining. As noted in part III.A.7.a. above, the BLM property at The Cedars is possibly still landlocked such that BLM does not have access to its property at The Cedars. Also, BLM does not allow motorized vehicle use in The Cedars ACEC.

Therefore, development of the infrastructure required for wind turbine or solar projects is unlikely. Also, the steep serpentine talus slopes inhabited by buckwheat, as compared to other types of landforms, make siting solar or wind energy production facilities especially challenging. In light of the aforementioned facts regarding wind or solar energy projects, the Petition does not present any information indicating such projects are a credible threat to The Cedars buckwheat populations.

8. Impact of existing management efforts

The Petition states that BLM is not managing The Cedars buckwheat and that listing under CESA would inform BLM that California has intent to conserve the species. The Petition refers to a nationwide BLM policy that classifies plants listed under CESA as "Special Status Plants." The Petition misstates that buckwheat is not designated as a "Special Status Plant" by BLM because it is not listed under CESA, and therefore it receives no special management consideration. The Cedars buckwheat is a California Rare Plant Rank List 1B.3 species. Due to this designation, The Cedars buckwheat is, contrary to the Petition's statement, automatically designated as a BLM Special Status Plant Species in California and has the same level of protection on BLM land as a state-listed species. (See Evaluation Report, p. 13.)

Also, BLM is aware of the ecological significance of The Cedars and designated The Cedars ACEC in 2006 in order to provide protection to this area. (Evaluation Report, p. 7.) Management of ACECs is focused on the resource values for which the ACEC is designated. In the case of The Cedars, management is required to protect important natural systems or processes, which includes endangered, sensitive, or threatened plant species.

9. Suggestions for future management

The Petition suggests that future management of The Cedars buckwheat should include conducting genetic studies, autoecological studies, and surveys for more plant populations. Future studies and surveys could prove useful in gaining a better understanding of this species. However, conducting future studies and surveys for The Cedars buckwheat is not contingent on listing and the Petition does not indicate how a state listing would increase the potential for these studies.

The Petition also states that listing The Cedars buckwheat as endangered under CESA should bring attention to putting The Cedars and its associated rare plant community into some land conservation effort. As noted in the Evaluation Report, the Petition does not explain how listing The Cedars buckwheat would facilitate a land conservation effort for The Cedars. Nor does the Petition explain what is meant by a land conservation effort. In fact, it is unclear how listing The Cedars buckwheat would bring additional focus to the geological features of The Cedars or to the suite of plants endemic to the area. The California Coastal Conservancy and the Sonoma Land Trust have already expressed interest in studying The Cedars. (Evaluation Report, p. 13.) And although a state listing could alert BLM to the fact that The Cedars buckwheat is considered an Endangered or Threatened species under CESA, a state listing would not change how BLM manages The Cedars buckwheat because this species is already considered a BLM Special Status Plant.

The Petition further states that BLM and the Department should coordinate activities to assess and implement wild pig depredation at The Cedars. As an overall resource management goal, successful management of wild pigs could provide a benefit to sensitive

species at The Cedars or in proximity to it. However, the Petition lacks any information as to how listing the Cedars buckwheat would increase coordination between the Department and BLM.

The Petition states that with CESA listing, the Department could coordinate with BLM on wind or solar energy projects to avoid or minimize impacts to The Cedars buckwheat. BLM and the Department currently coordinate on the siting of wind and solar projects in California, such as projects in the California desert. Moreover, the Department routinely reviews projects whether or not listed species are present. BLM would coordinate with the Department if a project could impact a Threatened, Endangered, or sensitive species such as The Cedars buckwheat. As discussed above, a state listing under CESA would not change how BLM manages The Cedars buckwheat.

10. Availability and sources of information

The Petition cites two references which were both attached as appendices to the Petition. The two references serve as the most comprehensive published information to date on The Cedars buckwheat and its habitat. The references are from well-published researchers who are knowledgeable about The Cedars buckwheat, related plants, and The Cedars area in general. The Department consulted other available resources during its evaluation of the Petition. A list of these sources is included in the Department's Evaluation Report.

11. A detailed distribution map

The Petition provides a photocopy of a map which is reproduced in black and white, has poor scale, does not show the BLM property lines, and map details are difficult to see. The map does not provide geographic names for all features shown on the map. The Petition states that approximately 75% of The Cedars buckwheat occurrences are on BLM lands although the map does not delineate The Cedars, BLM land, or private property. Since the Petition focuses on activities, such as marijuana growing and grading, that occur on or in proximity to The Cedars, the map should have provided a level of detail adequate for the Department to identify pertinent features and evaluate potential impacts identified in the Petition.

B. Petition information, Department's evaluation report, and comments received: all considered as a whole.

An analysis of the Petition's information, as well as all other related information, reveals that the totality of information, is insufficient for an objective, reasonable person to conclude that there is a substantial possibility that listing could occur. Foremost, the Petition acknowledges that The Cedars buckwheat population has been stable over the past 30 years. So despite the species being endemic to The Cedars, the buckwheat's population has not declined over the decades. The lack of any information indicating any change or loss to Cedars buckwheat habitat underscores the population's stability. Moreover, there are no known factors affecting the buckwheat's ability to survive or reproduce. There is no indication of over exploitation, predation, competition, or disease related to the buckwheat. Therefore, a reasonable person would conclude that the buckwheat's limited range is a result of the unique habitat present only in The Cedars, not some other factor manmade or otherwise. The mere fact that The Cedars buckwheat is limited in range does not meet CESA's definition of endangered.

Additionally, the Petition lacks sufficient information to indicate that buckwheat habitat within The

Cedars, or The Cedars itself, has been adversely affected or is under threat. The Petition lacks information indicating that mining, grading, feral pigs, marijuana cultivation, or wind/solar energy projects have affected the buckwheat or its habitat. Regarding potential future impacts, there is also no information indicating that mining or wind/solar developments in The Cedars, or specific to buckwheat habitat, are likely to occur. One could speculate as to the potential impact to buckwheat and its habitat by grading, feral pigs, and marijuana cultivation. However, given the fact that there is no evidence of prior effects on buckwheat, and the fact that buckwheat habitat is not conducive to those activities, speculating about such impacts without any corroborating information fails to meet the legal standard. In summary, there is no information from which a reasonable person could infer that The Cedars buckwheat is in serious danger of becoming extinct as contemplated under CESA. Therefore, the Commission found that the information, taken as a whole, was insufficient for an objective, reasonable person to conclude that there is a substantial possibility that listing The Cedars buckwheat as endangered could occur.

IV.
FINAL DETERMINATION BY THE COMMISSION

As explained in Part III. above, having considered the Petition, the Department's evaluation, and comments received, the Commission finds that the totality of information is not sufficient for an objective, reasonable person to conclude that there is a substantial possibility that listing The Cedars buckwheat as an endangered could occur. Therefore, the Commission rejects the Petition.

Fish and Game Commission

Dated: October 19, 2011

Sonke Mastrup
Executive Director