

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

The Legislature created the California Farmland Conservancy Program (CFCP) in 1995 as a statewide grant program to preserve important agricultural land resources and enhance sustainable agricultural uses. (Pub. Resources Code, §§ 10200-10277.) The Department of Conservation awards CFCP grants to local governments and nonprofit (501(c)(3)) organizations that have the conservation of agricultural lands among their defined purposes. Agricultural conservation easements – whereby private landowners agree to restrict the allowable uses of their property to agricultural and conservation purposes in exchange for money and certain tax benefits – are at the heart of the CFCP. Eligible grantees apply for grants that enable them to purchase agricultural conservation easements from landowners, and to hold, monitor, and enforce (if necessary) such easements. Since its inception, CFCP has funded more than 184 agricultural conservation easements on 59,498 acres of strategically important farmland.

Under section 10260 of the Public Resources Code, the amount of CFCP funding to be provided for the acquisition of an interest in real property, including an agricultural conservation easement, must be based on a real estate appraisal to ensure the purchase price of the interest in land does not exceed its fair market value. The statute explicitly allows the Department to “conditionally approve grant applications prior to completion of final appraisals” so long as an acceptable appraisal is complete “before any disbursement of grant funds.” (Pub. Resources Code, § 10260, subd. (b).) Direct costs incidental to real estate acquisition, such as appraisals, are eligible for reimbursement. (Pub. Resources Code, § 10231.)

Shortly after the CFCP was enacted, the Department promulgated section 3010 of Title 14 of the California Code of Regulations (Regulation 3010), which is more restrictive on the timing of appraisals than the statute. Specifically, Regulation 3010 states that a real estate appraisal must be completed prior to the Department “acting upon any grant application” under the CFCP involving the acquisition of interests in real property. While the regulation states that the cost of the appraisal is to be borne by the applicant, it purports to allow reimbursement of appraisal costs for applicants who are successful in obtaining a grant.

In the more than 20 years since Regulation 3010 was promulgated, the community of eligible grantees have cited the need to provide an appraisal with the grant application as a significant disincentive to applying for CFCP grants. Appraisals are expensive, typically ranging from \$5,000 to \$25,000 for the transactions proposed for funding under the CFCP. Requiring grant applicants to bear the risk that their appraisal costs will not be reimbursed if their proposal is not selected for a grant can be a significant and prohibitive burden for eligible grantees (local governments and nonprofit organizations).

The requirement that appraisals be completed at the grant application stage has also proven practically inefficient and wasteful of state grant funds. Most appraisals are only valid for six months to a year due to the pace of changes in property values. Conservation easement and fee title acquisitions funded under the CFCP are rarely completed before the original appraisal expires, requiring a second appraisal at the state's expense. The statute itself does not require appraisals be complete at the grant application stage, and the Department sees no ongoing value to this rule established in Regulation 3010. The Department therefore proposes to align Regulation 3010 with the statute to make appraisals a prerequisite for disbursement of grant funds rather than a prerequisite for considering an application for funding.

Finally, Regulation 3010 is inconsistent with California's cost reimbursement system, Fi\$Cal. Introduced in 2016, Fi\$Cal is the statewide accounting system that controls the payments of grant funds. Fi\$Cal does not allow state agencies to pay for costs incurred prior to the date a grant agreement is signed. Because Regulation 3010 prohibits the Department from acting on a grant application prior to the completion of an appraisal, the cost of the appraisal must necessarily be incurred before the execution of a grant agreement. This dichotomy between Fi\$Cal and Regulation 3010 therefore prevents the Department from reimbursing expensive appraisal costs despite the statutory intent to make such costs reimbursable. (See Pub. Resources Code, § 10231).

Although the Department administers two other significant grant programs that fund agricultural easements – the Sustainable Agricultural Lands Conservation Program, and the Agricultural Land Mitigation Program – CFCP is the only grant program that requires, by regulation, appraisals to be completed prior to the Department's award of a grant.

BENEFITS

The proposed amendment to Regulation 3010 will make the appraisal requirement more consistent with Public Resources Code section 10260, which requires appraisals to be completed prior to the disbursement of grant funds rather than prior to the Department acting upon a grant application. There are several benefits to the proposed amendment. First, it will eliminate a current disincentive to applying for CFCP grants – namely, the risk that expensive appraisal costs must be incurred by applicants with no guarantee of reimbursement, either due to the relatively recent adoption of Fi\$Cal or because the applicant is not selected for an award. By eliminating this barrier to entry, the Department anticipates greater diversity of grant applicants and projects, increasing the competition for grants and secondarily the merits of funded projects.

Another benefit of the proposed amendment will be to reduce the likelihood of appraisals expiring before real estate transactions are completed, thus reducing the need for multiple appraisals to support the same transaction. The Department finds little to no benefit in having an appraisal at the application stage, only to need another appraisal prior to the transaction closing. This often results in the state paying for two appraisals for no real reason other than the timing rule set forth in Regulation 3010. By allowing appraisals at a later stage in the process, the proposed amendment will

reduce inefficient use of the Department's grant funds, leaving more funds available for more meaningful grant expenditures.

Finally, by making the timing of appraisals under the CFCP consistent with that of other Department grant programs, the proposed amendment will add consistency and clarity among Department grant programs, thereby increasing administrative efficiency and making it easier for the grantee community to track and comply with administrative rules.

PURPOSE

Amendment to Section 3010 of Title 14 of the California Code of Regulations: To change the current requirement that real estate appraisals be completed prior to the Department's action upon a CFCP grant application to that of being completed prior to the disbursement of funding under a CFCP grant.

NECESSITY

Regulation 3010 implements Public Resources Code section 10260, which is intended to ensure that CFCP grants for real estate acquisitions are based on the fair market value of the property being acquired. The statute allows the Department to "conditionally approve grant applications . . . provided an acceptable appraisal" is completed "before any disbursement of grant funds." (Pub. Resources Code, § 10260.) Consistent with the statute, the proposed amendment to Regulation 3010 would allow the Department to review and approve grant applications before appraisals are complete. The amendment would make Regulation 3010 more consistent with the statutory requirement that appraisals be complete prior to disbursement of grant funds (rather than prior to the Department's action on a grant application).

The proposed amendment is necessary for several reasons. The starkest reason for the change is that by requiring appraisals prior to execution of a grant agreement, which is not a statutory requirement, the current version of Regulation 3010 conflicts with the intent of Public Resources Code section 10231 that appraisals be a reimbursable cost. (See Pub. Resources Code, § 10231 ["direct costs incidental to the acquisition" are reimbursable].) The state's cost reimbursement system, Fi\$Cal, does not allow reimbursement of costs incurred prior to the execution of an agreement. This conflict exists between Fi\$Cal and Regulation 3010, not with Public Resources Code section 10231, because it is the regulation not the statute that requires what is otherwise a reimbursable cost to be incurred prior to the execution of a grant agreement. Thus, the amendment to the regulation is necessary to ensure that appraisal costs can be reimbursed, consistent with statutory intent and Fi\$Cal.

The proposed amendment is also necessary to reduce the likelihood that real estate transactions funded by the CFCP can be closed without the need for multiple appraisals. There is simply no need for the Department to receive multiple appraisals for the same transaction unless the first appraisal becomes stale prior to closing. The current requirement under Regulation 3010, however, results in an appraisal at the

application stage that often expires before the transaction is completed and thus creates an inefficient need for appraisals to be updated or replaced.

Finally, the amendment is necessary to eliminate the need for grant applicants to bear the unwarranted risk of paying for appraisals with no guarantee that such costs will be reimbursed – due to the incongruity with Fi\$Cal and/or because the applicant may not be selected for a grant. The statute does not require such timing, and based on anecdotal feedback as well as written responses to Department statements on the CFCP grant program, the Department believes the current requirement dissuades some potential applicants from seeking CFCP funding. (See Public Comments on CFCP, Comment from American Farmland Trust, stating, “Appraisals prior to funding and without funding support are a burden and risk should an organization not receive funding. Most land trusts are likely limited to apply due to this standard and significant cost.”) The Department sees no valid basis for maintaining this barrier to CFCP grants.

While the proposed amendment is necessary to achieve the goals discussed above, the Department believes the current regulatory requirement that appraisals be provided at the application stage serves little to no purpose and is *not necessary*. While the current regulation has clear downsides, the Department does not believe it has any specific benefits. Requiring the appraisal at the application stage is not necessary to ensure CFCP grant amounts are based on the fair market value of the real estate to be acquired because the Department may award a grant and enter a grant agreement that is conditional upon completion of a satisfactory appraisal. Indeed, Public Resources Code section 10260 specifically allows for the Department to make grant awards conditional upon future completion of appraisals.

In sum, the proposed amendment will result in the least burdensome, most efficient way of achieving the statutory purpose of ensuring CFCP grants are based on fair market values.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Department has received anecdotal input from CFCP grant stakeholders in the more than twenty years since Regulation 3010 was adopted. The spreadsheet entitled “CFCP Public Comments_Compiled_2021,” available upon request, is an example of the typical feedback the Department has received on the timing of appraisal completion. The document records feedback from a Department grantee, American Farmland Trust, stating that requiring appraisals prior to funding are “a burden and risk” and that many land trusts are “likely limited to apply due to this standard.”

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department has considered whether the proposed amendment to Regulation 3010 will have economic impacts, and the Department has concluded that it will not. The proposed amendment does not impose any new requirement. The only effect of the proposed amendment is to change the point in time during the CFCP grant process when a real estate appraisal is required (changing from before the Department's

action on a grant application to before the Department's disbursement of grant funds). Real estate appraisals are required by statute, and the minor change to the timing of when the appraisal is required is a process change that will not have any meaningful economic or fiscal impacts.

Any effects on the number of real estate appraisals conducted in relation to CFCP grants, and thus effects on real estate appraisers, is likely to be negligible. The proposed amendment is likely to result in an increase in the number of grant applications submitted to the Department each year – for example, 5-10 additional applications that would not otherwise be submitted due to the burden of existing Regulation 3010, and therefore some 5-10 additional real estate appraisals each year. This marginal increase in appraisals will be offset, however, by a similar reduction in the number of second appraisals done for the same real estate transactions because by changing the timing of the appraisal requirement, the proposed amendment will prevent appraisals from expiring prior to transaction closing. As a result, the proposed amendment will have little to no effect on the demand for real estate appraisals.

There is no indication this amendment will result in grantee stakeholders (e.g., local governments and nonprofit land trusts) hiring more employees or letting any go. Although the Regulation 3010 has been identified as a disincentive to seeking grants under the CFCP, the timing of appraisals in the CFCP grant process is not so significant that it affects the existence or staffing levels of eligible grantees.

For all the above reasons, the Department concludes that the proposed amendment:

- Will not be responsible for creating or eliminating jobs in California;
- Will not result in the creation of new businesses or the elimination of existing businesses within California; and
- Will not result in the expansion of businesses currently doing business within California.

Additionally, the Department finds the proposed amendment may have marginal benefits to California's environment to the extent the change results in increased competition for grant funds (and thus, more impactful projects) due to elimination of a current disincentive to applying for CFCP grants.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

As explained above, the proposed amendment will not have any significant adverse economic impact on business. This conclusion is based largely on a common sense understanding that real estate appraisals for CFCP grants are an existing statutory requirement, and the only impact of the proposed amendment is to change the time during the grant process when appraisals are required. To the extent there are any economic impacts on businesses, they will be positive, not negative, because the

amendment would allow the Department to reimburse appraisal costs – something the Department cannot do under the current regulatory requirement and Fi\$Cal. Based on the Department's many years of experience administering grant programs and anecdotal feedback from the community of eligible grantees (e.g., public comments on the CFCP), the Department believes the proposed amendment will make Regulation 3010 more efficient and effective in implementing the statutes (Public Resources Code sections 10231 and 10260) in the least burdensome manner.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE DEPARTMENT'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Department finds there are no reasonable alternatives to the proposed amendment that would be less burdensome and equally as effective in achieving the purpose of the statute being implemented. The statute already requires that appraisals be completed prior to the disbursement of grant funds. The alternative of maintaining the status quo is rejected for all the reasons discussed above in this statement of reasons. The alternative of allowing the Department to award grants so long as an appraisal is completed prior to execution of a grant agreement would not eliminate the Department's inability to reimburse the cost of the appraisal because such cost would still be incurred prior to the execution of an agreement, and thus remain incompatible with Fi\$Cal. The proposed amendment closely tracks the statutory language and is the least burdensome approach.

The Department has considered an alternative in federal regulation for valuing conservation easements: geographic area rate caps. By regulation, the federal Natural Resources Conservation Service (NRCS) establishes rates the federal government will pay for conservation easements, based on region and type of land, including irrigated cropland, irrigated pasture, and dryland range. (See 7 C.F.R. Part 1468.) This bulk approach to valuing property is not considered feasible at this time however, mostly because the Department is confined by the statutory requirement that fair market value be based on individual appraisals of subject property. (Pub. Resources Code, § 10260.)

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

The proposed amendment does not duplicate or conflict with federal regulations addressing the same issue. The regulation addresses the Department's internal administration of a state grant program. Even in situations where the federal government provides match funding for a CFCP grant, there is no federal requirement that appraisals be conducted prior to submission of a grant application, and even if such a rule were to exist, it would still be possible to comply with such rule and the proposed amendment to Regulation 3010. The NRCS option of allowing geographic area rate caps, discussed above, does not conflict with the proposed amendment, and the CFCP statute requires appraisals. In sum, there is no duplication or conflict with federal regulation that weighs against the proposed amendment to Regulation 3010.