

CASE NO.:  
**COURT OF APPEAL FOR THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT**

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**PUBLIC.RESOURCE.ORG, INC.**

*Petitioner,*

**-vs-**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY  
OF SACRAMENTO,**

*Respondent.*

**CALIFORNIA OFFICE OF ADMINISTRATIVE LAW,  
*Real Party in Interest***

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From an Order of the Superior Court of Sacramento County Denying a  
Petition for Writ of Mandate under the California Public Records Act, Gov.

Code § 6250, seq,

Case No. 34-2021-80003612

The Honorable Steven M. Gevercer

Department 27, Telephone: (916) 874-6697

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**EXHIBITS TO PETITION FOR EXTRAORDINARY WRIT  
(CODE CIV. PROC., § 437c, SUBD. (m)(1))  
VOLUME 1 (EXS. 1-17; PAGES 1 – 365)**

MATHEW D. CAPLAN (260388)

(mcaplan@cooley.com)

DAVID LOUK (304654)

(dlouk@cooley.com)

JOSEPH D. MORNIN (307766)

(jmornin@cooley.com)

RYAN O'HOLLAREN (316478)

(rohollaren@cooley.com)

GIA JUNG (340160)

(gjung@cooley.com)

**COOLEY LLP**

3 Embarcadero Center, 20th Floor  
San Francisco, California 94111-4004

Telephone: +1 415 693 2000

Facsimile: +1 415 693 2222

*Attorneys for Petitioner*

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By: T. Crowther  
Deputy Clerk

1 COOLEY LLP  
2 MATTHEW D. CAPLAN (260388)  
3 (mcaplan@cooley.com)  
4 JOSEPH D. MORNIN (307766)  
5 (jmornin@cooley.com)  
6 RYAN O'HOLLAREN (316478)  
7 (rohollaren@cooley.com)  
8 101 California Street, 5th Floor  
9 San Francisco, California 94111-5800  
10 Telephone: +1 415 693 2000  
11 Facsimile: +1 415 693 2222

12 Attorneys for Plaintiff  
13 PUBLIC.RESOURCE.ORG, INC.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF SACRAMENTO

16 PUBLIC.RESOURCE.ORG, INC.,  
17 Petitioners,  
18 v.  
19 CALIFORNIA OFFICE OF  
20 ADMINISTRATIVE LAW, and the  
21 CALIFORNIA BUILDING STANDARDS  
22 COMMISSION  
23 Respondents.

Case No. 34-2021-80003612  
VERIFIED PETITION FOR PEREMPTORY  
WRIT OF MANDATE ORDERING  
COMPLIANCE WITH THE CALIFORNIA  
PUBLIC RECORDS ACT  
[Gov't. Code §§ 6250, *et seq.*; Civ. Proc.  
Code §§ 1085, *et seq.*]

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1 **INTRODUCTION**

2 1. The California Public Records Act (“CPRA”), Government Code §§ 6250 *et seq.*,  
3 establishes a “fundamental and necessary right” to access “information concerning the conduct of  
4 the public’s business,” including the laws of the State. This principle is enshrined in the California  
5 Constitution. Cal. Const. Art. I § 3. These provisions require disclosure of governmental records to  
6 the public upon request, unless exempted by law. If an agency does not honor a valid CPRA request,  
7 the person making the request may seek a writ of mandate to enforce the CPRA.

8 2. Here, from December 2020 through February 2021, petitioner Public.Resource.Org,  
9 Inc. (“Public Resource”) submitted CPRA requests to Respondents California Office of  
10 Administrative Law (“OAL”) and California Building Standards Commission (“BSC”) seeking  
11 electronic copies of the titles of the California Code of Regulations (“CCR”) each agency is  
12 responsible for maintaining. Respondents refused, and their responses did not comply with the  
13 CPRA.

14 3. Public Resource asked these agencies for electronic copies of the CCR so that a  
15 complete, unified, and electronic version of the CCR can be assembled for public access, without  
16 the strictures of private paywalls, terms of use, or the need for citizens to drive to a library to consult  
17 a paper copy. Such a resource does not currently exist, even though Californians have a  
18 constitutional right to freely access these materials because they are the very rules that govern the  
19 “conduct of the public’s business.” Respondents’ justifications for denying Public Resource’s  
20 requests ignore the mandates of the CPRA: the CCR is unambiguously a public record;  
21 Respondents possess electronic copies of the CCR; they can point to no statutory basis for  
22 nondisclosure; and the third-party interests they seek to protect do not (and should not) come before  
23 Californians’ right to access the laws of the State.

24 4. Accordingly, Public Resource asks this Court for a writ of mandate pursuant to  
25 California Code of Civil Procedure §§ 1085 *et seq.* and the CPRA commanding OAL and BSC to  
26 comply with the CPRA by producing electronic copies of the CCR to Public Resource.

1 **PARTIES**

2 5. Petitioner Public Resource is a 501(c)(3) nonprofit organization, incorporated and  
3 based in California, with the mission of improving public access to government records and primary  
4 legal materials. Public Resource is the national leader in providing public access to legislative,  
5 regulatory, and judicial edicts across a wide range of areas from both federal and state institutions.  
6 Public Resource has worked extensively with the Cornell Legal Information Institute to make  
7 substantial improvements to the Code of Federal Regulations (“CFR”), including campaigns to  
8 make the CFR accessible to the visually impaired and viewable on mobile devices. Public Resource  
9 also advised the Obama Administration’s efforts to reform the Federal Register into a far more  
10 usable format, an achievement which earned the Office of the Federal Register an award in 2011  
11 for “Most Innovative Federal Agency.” Public Resource is committed to making the regulations of  
12 all fifty states available in a common and usable format, including updates, to allow the public to  
13 see how regulatory regimes change over time.

14 6. Respondent OAL was established in 1980 to ensure that state agency regulations are  
15 clear, necessary, legally valid, and available to the public. OAL is responsible for reviewing  
16 administrative regulations from over 200 state agencies and transmitting those regulations to the  
17 Secretary of State. OAL also oversees the publication and distribution of Titles 1–5, 7–23, and 25–  
18 28 of the CCR (all Titles except Title 24, which is managed and published by BSC, and Title 6,  
19 which has been revoked).

20 7. Respondent BSC was established in 1953 by the California Building Standards Law  
21 (Health and Safety Code §§ 18901 *et seq.*), and is situated within the California Department of  
22 General Services, under the Government Operations Agency. BSC members are appointed by the  
23 Governor and confirmed by the State Senate. BSC administers California’s building code adoption  
24 process; coordinates and manages the model code adoption process for various state agencies;  
25 reviews and approves building standards proposed by other agencies; and codifies and publishes  
26 the California Building Standards Code as Title 24 of the CCR.

27 **JURISDICTION AND VENUE**

28 8. This Court has jurisdiction under Government Code §§ 6258 and 6259; Code of

1 Civil Procedure §§ 1060 and 1085; and Article VI, Section 10 of the California Constitution.

2 9. Venue is proper in this Court because the records in question are in Sacramento  
3 County. Cal. Gov't Code § 6259; Cal. Civ. Proc. Code § 401(1). Venue is also proper because  
4 Respondents reside in Sacramento County and the events in this case occurred there. Cal. Civ. Proc.  
5 Code §§ 393, 394(a).

6 **FACTS**

7 OAL

8 10. OAL's purpose is to "ensure that agency regulations are clear, necessary, legally  
9 valid, and available to the public."<sup>1</sup> OAL reviews regulations from over 200 state agencies,  
10 transmits them to the Secretary of State, and manages the publication of the CCR (except for Title  
11 24). But OAL does not, itself, publish the CCR. Instead, OAL contracts with a private entity, West  
12 Publishing Corporation ("West"), which maintains a complete copy of the CCR called the "Master  
13 Database," from which West publishes print copies and an online version. Although the current  
14 version of the agreement is not yet public, the prior version (for January 1, 2016—December 31,  
15 2020) is available, and OAL's October 1, 2020 and October 29, 2020 Notices show that the contract  
16 was renewed, and that none of the provisions listed below were substantively changed. (Exhibit A)  
17 (Notice Regarding Changes to the Agreement, and OAL's Notice of Intent to Award Contract to  
18 West). The changes stated in those notices are not material to this dispute, and the agreement's  
19 primary thrust remains intact. Thus, on information and belief, the current contract between OAL  
20 and West continues to state that:

21 The contractor shall maintain the Official California Code of Regulations (CCR) in an  
22 electronic database, which for purposes of this contract shall be referred to as the "Master  
23 Database." To ensure that all CCR products accurately reflect the Official CCR content,  
24 the Master Database must be the source for all hard copy text and electronic products as  
25 well as the source for the contents of the Internet CCR.

26 (2016-2020 OAL-West Contract, Exhibit B at 9.)

27 11. Under the contract, when OAL receives approval from the Secretary of State for

28 <sup>1</sup> <https://oal.ca.gov/about-the-office-of-administrative-law/>.

1 new regulations, updates, or revisions to any part of the CCR, it continues to transmit those changes  
 2 to West to keep the Master Database current:

3 Prompt and accurate updating of the CCR Master Database is a key component of the  
 4 CCR publication contract. The contractor shall update the Master Database as soon as  
 5 feasible after OAL provides the contractor with regulations that have been endorsed by the  
 6 Secretary of State, preferably within 15 days but in no event longer than 30 days after  
 7 OAL delivers the regulation text. The text of regulations and all other items in the Master  
 8 Database shall be subject to inspection, revision, and correction by OAL. The contractor  
 9 shall take immediate action to make any corrections specified by OAL

10 (2016-2020 OAL-West Contract, Exhibit B at 9.) Thus, although West hosts and manages the  
 11 Master Database, OAL has full control over the contents of the Master Database. OAL also  
 12 maintains ownership over the CCR, since the OAL-West Contract expressly reserves all rights in  
 13 the CCR Master Database to OAL. (*Id.* at 21, 22)

14 12. West sells unrestricted access to the CCR as part of a bundle package of California  
 15 law for \$95 per month for one year, and provides an online version to the public, which is subject  
 16 to West’s terms of service. (available at: <https://www.thomsonreuters.com/en/terms-of-use.html>).

17 Public Resource’s Request to OAL

18 13. On December 29, 2020, Public Resource sent a CPRA request to OAL, seeking an  
 19 electronic copy of Titles 1–5, 7–23, and 25–28 of the CCR. (Exhibit C.) Public Resource’s letter  
 20 explained that the CCR is a “Public Record” under the CPRA, and that OAL was therefore obliged  
 21 to disclose it to Public Resource in “all formats in [OAL’s] possession, including (but not limited  
 22 to) structured, machine-readable digital formats, such as XML or PDF files.” Public Resource cited  
 23 the CPRA provision commanding agencies to provide records in “any electronic format in which  
 24 it holds the information” and any requested format “used by the agency to create copies for its own  
 25 use or for provision to other agencies.” Cal. Gov’t Code § 6253(a)(1)–(2).

26 14. On January 8, 2021, Steven Escobar, Senior Attorney for OAL, responded to Public  
 27 Resource’s request, and invoked the statutory 14-day extension to respond to the request. (Exhibit  
 28 D at 36-37) On January 22, 2022, OAL provided a substantive response, stating that the CCR was

1 available from West online at <https://govt.westlaw.com/calregs/Index>, and that OAL was willing  
2 to scan paper copies of the CCR and send those photocopies to Public Resource. (Exhibit D at 35.)  
3 OAL did not cite any statutory exemptions which would apply to the records in question.

4 15. On February 3, 2021, Public Resource sent a reply letter seeking reconsideration  
5 based on two problems with OAL’s denial.

6 16. First, Public Resource explained that the online version published by West provided  
7 in OAL’s response was irrelevant to OAL’s duties under the CPRA, which requires that agencies  
8 provide public records in the electronic formats that they hold, use, or provide to other agencies.  
9 Cal. Gov’t Code § 6250(a)(1)-(2). Additionally, the West URL was not “publicly available” under  
10 CPRA law because visitors to the private website were “subject to end-user restrictions” which “are  
11 incompatible with the purposes and operation of the CPRA.” *Cty. of Santa Clara v. Super. Ct.*, 170  
12 Cal. App. 4th 1301, 1334 (2009). (Exhibit E.)

13 17. Second, Public Resource explained that OAL’s offer to provide paper copies or  
14 scanned PDFs did not comply with the CPRA’s mandates that agencies produce electronic copies  
15 in the electronic format (1) in which they hold the information or (2) that they use to create copies  
16 for their own use or to provide to other agencies. Cal. Gov’t Code § 6253.9(a)(1)–(2).

17 18. On February 17, 2021, Mr. Escobar responded to Public Resource’s second letter to  
18 OAL. He stated that OAL does not have a structured, machine-readable copy of the CCR. (Exhibit  
19 D at 34.) He stated that OAL maintains a repository of out-of-date versions of the CCR on CD-  
20 ROMs, but “that the contents of the CD-ROM cannot be copied in whole and transferred to another  
21 storage device” and that each section would need to be individually extracted and copied from the  
22 CD-ROM. (*Id.*) Again, OAL did not cite any statutory exemptions that would prevent disclosure.

23 19. Public Resource responded to OAL’s February 17, 2021 email on February 19,  
24 2021, and sent a follow-up email on February 24, 2021. (Exhibit D.) In those emails, Public  
25 Resource asked for more information on the CD-ROM storage system, and whether OAL could  
26 simply provide Public Resource with a copy of the CCR Master Database. On February 26, 2021,  
27 Mr. Escobar responded, providing more information about the CD-ROM system. (*Id.*) On March  
28 2, 2021, Mr. Escobar responded on behalf of OAL, stating: “OAL does not have a copy of a CCR

1 Master Database.” (Exhibit D at 31.)

2 BSC

3 20. BSC codifies and publishes building standards in Title 24 of the CCR, the California  
4 Building Standards Code. BSC incorporates model codes into the California Building Standards  
5 Code, and BSC contracts with various private parties who publish different parts of the standards.  
6 Specifically, information from the International Code Council (“ICC”) is incorporated into Parts 1,  
7 2, 2.5, 6, 8, 9, 10, 11 and 12 of Title 24; the International Association of Plumbing and Mechanical  
8 Officials (“IAPMO”) provides information included in Parts 4 and 5; and the National Fire  
9 Protection Association (“NFPA”) does so for Part 3. These three entities sell these separate parts  
10 of Title 24 to the public.<sup>2</sup>

11 Public Resource’s Request to BSC

12 21. On December 29, 2020, Public Resource sent a CPRA request to BSC, seeking an  
13 electronic copy of Title 24 of the CCR. (Exhibit F.) Public Resource’s letter explained that Title 24  
14 of the CCR is a “Public Record” under the CPRA, and that BSC was obliged to disclose it to Public  
15 Resource in “all formats in [BSC’s] possession, including (but not limited to) structured, machine-  
16 readable digital formats, such as XML or PDF files.” *Id.* In support, Public Resource cited the text  
17 of CPRA, which states that an agency must provide records in “any electronic format in which it  
18 holds the information” and any requested format “used by the agency to create copies for its own  
19 use or for provision to other agencies.” Cal. Gov’t Code § 6253.9(a)(1)–(2); (*Id.*)

20 22. On January 7, 2020, Michael Nearman, Deputy Executive Director of BSC,  
21 responded to Public Resource’s request. (Exhibit G.) BSC did not cite any statutory exemptions  
22 which would excuse BSC’s obligation to comply with Public Resource’s request. Instead, BSC

23 \_\_\_\_\_  
24 <sup>2</sup> Title 24 is distributed for purchase through various private entities, each with their own unique  
25 set of restrictions, options, access levels, and pricing regimes. For example, the California  
26 Electrical Code, Title 24 Part 3, is sold by NFPA for \$215.50 ([https://catalog.nfpa.org/NFPA-70-  
National-Electrical-Code-with-California-Amendments-P17223.aspx](https://catalog.nfpa.org/NFPA-70-National-Electrical-Code-with-California-Amendments-P17223.aspx)); The California Plumbing  
27 Code, Title 24 Part 5, is sold by IAPMO for \$179.00 ([https://iapmomembership.org/index.  
php?page=shop.product\\_details&flypage=flypage\\_iapmo.tpl&product\\_id=1320&category\\_id=8  
&option=com\\_virtuemart&Itemid=3&redirected=1&Itemid=3&vmcchk=1&Itemid=3](https://iapmomembership.org/index.php?page=shop.product_details&flypage=flypage_iapmo.tpl&product_id=1320&category_id=8&option=com_virtuemart&Itemid=3&redirected=1&Itemid=3&vmcchk=1&Itemid=3)); Title 24,  
28 Parts 1, 2, 2.5, 6, 8, 9, 10, 11 and 12 are available from the ICC, which sells online access to the  
codes through a multi-tiered subscription service (Basic, Basic Plus, Premium Lite, and Premium)  
(<https://codes.iccsafe.org/content/CRC2019P3>).

1 provided three reasons for refusing to produce the requested records.

2 23. First, BSC stated that print editions of Title 24 are available for inspection at certain  
3 public libraries across the state, and can be purchased (in whole or in part) from certain private  
4 entities. (*Id.*)

5 24. Second, BSC stated that Title 24 can be viewed online at  
6 <https://www.dgs.ca.gov/BSC/Codes>, which links to various private websites that host different  
7 parts of Title 24 with varying levels of access and restrictions on their use. (*Id.*)

8 25. Third, BSC stated that it “does not have the publishing rights to Title 24 and  
9 therefore cannot provide free copies to the public” because “Title 24 is based on and includes model  
10 codes produced by the publishing entities, and they then publish California’s codes, retaining  
11 copyright protections.” (*Id.*)

12 26. On January 29, 2021, Public Resource sent a reply letter, explaining that BSC’s  
13 reasons for its denial lacked merit, and seeking reconsideration of the issue under the CPRA’s  
14 mandates. (Exhibit H.)

15 27. First, Public Resource explained that the availability of hard copy versions of public  
16 records at select libraries is irrelevant to BSC’s duties under the CPRA. Nowhere in the CPRA does  
17 it say that an agency can avoid complying with a CPRA request because it has deposited hard copies  
18 of the requested record at various state buildings. (*Id.*)

19 28. Second, Public Resource explained that the website version of Title 24, cited in  
20 BSC’s letter, did not comply with the CPRA, which requires that agencies provide public records  
21 in the electronic formats that they hold, use, or provide to other agencies. Cal. Gov’t Code §  
22 6250(a)(1)–(2). Public Resource also explained that the code sections available via BSC’s website  
23 were “subject to end-user restrictions” which “are incompatible with the purposes and operation of  
24 the CPRA.” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1335; (*Id.*)

25 29. Finally, Public Resource addressed BSC’s argument that it could not provide a  
26 compliant copy of Title 24 because the private publishing entities “retain copyright protections.”  
27 (Exhibit H.) Public Resource explained that, under California law, any refusal to provide public  
28 records on the basis of copyright protection must be supported by express statutory authority. BSC

1 provided no support for its position that any part of Title 24 is copyrighted, or that copyright could  
2 support its denial.

3 30. Having received no response, Public Resource followed up on February 24, 2021 to  
4 ask whether BSC would provide an additional response. (Exhibit I.) On March 2, 2021, Mia  
5 Marvelli, Executive Director of BSC, responded: “BSC stands by its original response letter and  
6 there will be no additional response.” (*Id.*)

### 7 THE CALIFORNIA PUBLIC RECORDS ACT

8 31. The CPRA was a landmark piece of legislation passed in 1968. The preamble states:  
9 “In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and  
10 declares that access to information concerning the conduct of the people’s business is a fundamental  
11 and necessary right of every person in this state.” Cal. Gov’t Code § 6250. As the result of a 2004  
12 initiative, Proposition 59, voters enshrined the CPRA’s right of access to information in the state  
13 Constitution: “The people have the right of access to information concerning the conduct of the  
14 people's business, and, therefore, . . . the writings of public officials and agencies shall be open to  
15 public scrutiny.” Cal. Const. art. I § 3(b)(1). As amended by the initiative, the Constitution also  
16 directs that the statute “shall be broadly construed if it furthers the people’s right of access, and  
17 narrowly construed if it limits the right of access.” Cal. Const. art. I § 3(b)(2); *L.A. Cty. Bd. of*  
18 *Supervisors v. Super. Ct.*, 2 Cal. 5th 282, 290–91 (2016).

19 32. The CPRA requires that all records that are prepared, owned, used or retained by  
20 any public agency, and that are not subject to statutory exemptions, must be made publicly available  
21 upon request, in the electronic formats possessed by the agency. Cal. Gov’t Code § 6253.9(a)(1)–  
22 (2).

23 33. To establish that an agency has a duty to disclose under § 6253(c), a petitioner must  
24 show that the record (1) “qualif[ies] as [a] ‘public record[.]’” within the meaning of § 6252(e) and  
25 (2) is “in the possession of the agency.” *Anderson-Barker v. Super. Ct.*, 31 Cal. App. 5th 528, 538  
26 (2019).

27 34. The agency “opposing disclosure bears the burden of proving that an exemption  
28 applies.” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1321 (citing *Bd. of Trs. of Cal. State Univ. v.*



1 *Super. Ct.*, 132 Cal. App. 4th 889, 896 (2005); see also *L.A. Unified Sch. Dist. v. Super. Ct.*, 228  
2 Cal. App. 4th 222, 239 (2014). Here, in opposing Public Resource’s request for the disclosure of  
3 the CCR, Respondents BSC and OAL bear the burden of proving that an exemption applies. They  
4 have not done so, nor can they.

5 **THE CALIFORNIA CODE OF REGULATIONS IS A PUBLIC RECORD.**

6 35. Respondents have not disputed that the CCR is a public record under the CPRA.  
7 The CPRA defines “public record” as “any writing containing information relating to the conduct  
8 of the public’s business prepared, owned, used, or retained by any state or local agency regardless  
9 of physical form or characteristics.” Cal. Gov’t Code § 6252(e). The CCR contains regulations for  
10 a broad range of private conduct and business operations in California, including the building code,  
11 the electrical code, the plumbing code, the environmental protection code, the business regulation  
12 code, the motor vehicle code, the governing regulations of the California Attorney General, the  
13 firearm code, regulations regarding state-wide and regional water commissions, port authority  
14 codes, crime prevention and corrections codes, military and veterans affairs codes, the toxic  
15 substances code—and hundreds more.

16 36. Creation and maintenance of the CCR is required by state statute. Cal. Gov’t Code  
17 § 11342.4 (“[OAL] shall adopt, amend, or repeal regulations for the purpose of carrying out the  
18 provisions of this chapter.”). Cal Health & Safety Code § 18930(a) (“Any building standard adopted  
19 or proposed by state agencies shall be submitted to, and approved or adopted by, the California  
20 Building Standards Commission prior to codification.”)

21 37. This alone makes the CCR a public record. *League of Cal. Cities v. Super. Ct.*, 241  
22 Cal. App. 4th 976, 987 (2015) (“Any record required by law to be kept by an officer, or which he  
23 keeps as necessary or convenient to the discharge of his official duty, is a public record.”); *Cnty.*  
24 *Youth Athletic Ctr. v. City of Nat’l City*, 220 Cal. App. 4th 1385, 1418 (2013) (the definition of  
25 “public record” is “broad” and “intended to cover every conceivable kind of record that is involved  
26 in the governmental process” (quoting *Coronado Police Officers Ass’n v. Carroll*, 106 Cal. App.  
27 4th 1001, 1006 (2003))).

28 38. As the body of law, mandated by statute, which governs a vast swath of business

1 and private life in California under threat of penalty, the CCR is—and should be—a public record.<sup>3</sup>  
2 *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498, 1507 (2020) (“Every citizen is presumed to  
3 know the law, and it needs no argument to show . . . that all should have free access to its contents.”  
4 (internal quotations omitted)). In the parlance of the CPRA, the CCR unambiguously relates to “the  
5 conduct of the public’s business.” Neither Respondent has argued otherwise in their  
6 correspondence with Public Resource.

7 *Respondents Possess the Requested Records.*

8 39. Both Respondents possess the public records requested by Public Resource. BSC  
9 has not denied that it possesses Title 24. (Exhibit G.) And although OAL stated that it “does not  
10 have a copy of a CCR Master Database” (Exhibit D at 31), that characterization ignores the fact  
11 that OAL has constructive possession of the CCR, which means that the OAL possesses the CCR  
12 Master Database for purposes of the CPRA.

13 40. In the context of the CPRA, courts define the term “possession” to “mean both actual  
14 and constructive possession.” *Bd. of Pilot Comm’rs v. Super. Ct.*, 218 Cal. App. 4th 577, 598  
15 (2013). Specifically, “an agency has constructive possession of records if it has the right to control  
16 the records, either directly or through another person.” *Consol. Irrigation Dist. v. Super. Ct.*, 205  
17 Cal. App. 4th 697, 710 (2012).

18 41. Here, there is no dispute that OAL has the right to control the contents of the CCR  
19 Master Database maintained by West. OAL’s contract with West expressly provides that West must  
20 “update the Master Database as soon as feasible after OAL provides the contractor with regulations  
21 that have been endorsed by the Secretary of State, preferably within 15 days but in no event longer  
22 than 30 days after OAL delivers the regulation text.” (Exhibit B at 9.) The contract further states

23 \_\_\_\_\_  
24 <sup>3</sup> Indeed, records *far less* related to the conduct of the public’s business than the CCR are public  
25 records under California law. *See, e.g., Am. Civil Liberties Union Found. v. Super. Ct.*, 3 Cal. 5th  
26 1032, 1036 n.2 (2017) (“There is no dispute that [automatic license plate reader] data are public  
27 records.”); *City of San Jose v. Super. Ct.*, 2 Cal. 5th 608, 614 (2017) (city employee  
28 communications on private email accounts and cell phones concerning a redevelopment project  
were public records subject to disclosure under the CPRA); *State Dep’t of Pub. Health v. Super.  
Ct.*, 60 Cal. 4th 940, 945 (2015) (anonymized citations issued by the State Department of Public  
Health to various long-term health care facilities were public records subject to disclosure under  
the CPRA); *Sierra Club v. Super. Ct.*, 57 Cal. 4th 157, 175 (2013) (GIS-formatted database was a  
non-exempt public record subject to disclosure under the CPRA).

1 that the “text of regulations and all other items in the Master Database shall be subject to inspection,  
2 revision, and correction by OAL. The contractor [i.e., West] shall take immediate action to make  
3 any corrections specified by OAL.” (*Id.*) Further, OAL retains all intellectual property rights in the  
4 CCR. (Exhibit B at 3, 15.) Thus, OAL has full control over the contents of the Master Database.  
5 Under California law, OAL therefore has constructive possession of the Master Database and must  
6 produce it under the CPRA.<sup>4</sup>

7 42. Additionally, the Legislature, in drafting the CPRA, contemplated the exact  
8 argument that OAL makes now, and forbade it. Section 6270(a) states: Notwithstanding any other  
9 provision of law, no state or local agency shall sell, exchange, furnish, or otherwise provide a public  
10 record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a  
11 state or local agency from providing the record directly pursuant to this chapter.

12 43. Thus, Respondents cannot dodge their obligations to comply with the CPRA by  
13 asserting that the CCR is in the possession of third parties. The plain text of the statute forbids it,  
14 as the California Supreme Court has confirmed. *City of San Jose*, 2 Cal. 5th at 623–24 (“The  
15 statute’s clear purpose is to prevent an agency from evading its disclosure duty by transferring  
16 custody of a record to a private holder and then arguing the record falls outside CPRA because it is  
17 no longer in the agency’s possession. . . . It simply prohibits agencies from attempting to evade  
18 CPRA by transferring public records to an intermediary not bound by the Act’s disclosure  
19 requirements.”).

20 *Copyright Does Not Provide a Justification for Nondisclosure*

21 44. BSC argues that it cannot disclose Title 24 because it is copyrighted. (Exhibit G.)  
22 BSC’s position is incorrect as a matter of law. There is no basis for BSC to assert copyright as a

23 <sup>4</sup> In *Anderson-Barker v. Super. Ct.*, 31 Cal. App. 5th 528, 539 (2019), the petitioner sought access  
24 to microfiche records to which the respondent city had access but did not control. The petitioner  
25 argued that such access meant that the city had “possession” of the records in question. The Court  
26 of Appeal disagreed, stating that “[f]or purposes of the CPRA, the term ‘constructive possession’  
27 means ‘the right to control the records.’” The term “control” is generally defined as “the power or  
28 authority to manage, direct, or oversee.” Citing *City of San Jose*, 2 Cal. 5th at 623; Black’s Law  
Dict. (9th ed. 2009), p. 378.). Since the City had no right or ability to control the contents of the  
records in question, it did not have constructive possession. Here, in sharp contrast, OAL has the  
*exclusive* contractual right to control the CCR Master Database. It manages, directs, owns, and  
oversees the exact contents of the CCR Master Database, and is therefore in constructive  
possession of it for purposes of the CPRA.

1 basis for nondisclosure. Whether the California government or any of its agencies can claim  
2 copyright protection in official creations is a matter of California law. *Cty. of Santa Clara*, 170 Cal.  
3 App. 4th at 1331 (“State law determines whether [a public official] may claim a copyright in his  
4 office’s creations.”) (internal quotations omitted); *City of Inglewood v. Teixeira*, No. CV-15-01815-  
5 MWF (MRWx), 2015 U.S. Dist. LEXIS 114539, at \*7–8 (C.D. Cal. Aug. 20, 2015) (“[W]hether  
6 state and local governments can claim copyright protection is governed by state law.”).

7 45. Thus, when addressing copyright as a proffered basis for an agency’s nondisclosure,  
8 courts look to California law for a specific authorization. *Cty. of Santa Clara*, 170 Cal. App. 4th at  
9 1333 (because no “express authorization to secure copyrights” existed for GIS data, the county  
10 could not assert copyright protection as a basis for nondisclosure); *City of Inglewood*, 2015 U.S.  
11 Dist. LEXIS 114539, at \*8–9 (because the city could identify “no affirmative grant of authority that  
12 permits it to obtain and assert a copyright for the City Council Videos,” the court held that the city  
13 could not withhold the videos on copyright grounds); *Cty. of Santa Clara*, 170 Cal. App. 4th at  
14 1335 (holding that the CPRA’s mandate to provide public records “overrides a government  
15 agency’s ability to claim a copyright in its work unless the legislature has expressly authorized a  
16 public records exemption”).

17 46. Here, the legislature has not granted anyone the right to retain copyright in the CCR.  
18 *Cty. of Santa Clara*, 170 Cal. App. 4th at 1333 (“The Legislature knows how to explicitly authorize  
19 public bodies to secure copyrights when it means to do so. For example, the Education Code  
20 includes a number of provisions authorizing copyrights, including this one: ‘Any county board of  
21 education may secure copyrights, in the name of the board, to all copyrightable works developed  
22 by the board, and royalties or revenue from such copyrights are to be for the benefit of the board  
23 securing such copyrights.’” (citing Cal. Ed. Code § 1044)); *see also* Cal. Ed. Code, §§ 32360,  
24 35170, 72207, 81459; Health & Safety Code, §§ 25201.11(a), 13159.8(c) (code provisions  
25 authorizing state agencies to secure copyright in official works).

26 47. As such, neither BSC nor OAL can assert copyright as a justification for withholding  
27 records in response to Public Resource’s CPRA requests.

28 48. Furthermore, the notion that the CCR is even *eligible* for copyright protection under

1 federal law is highly dubious. The CCR is the law, which is created by agencies at the behest of the  
2 legislature. The United States Supreme Court has said that such works cannot be copyrighted.  
3 *Georgia*, 140 S. Ct. at 1508 (holding that even though a state commission hired private publishers  
4 to draft annotations, the finished work was not copyrightable because it fell under the government  
5 edicts doctrine, and explaining that “copyright does not vest in works that are (1) created by judges  
6 and legislators (2) in the course of their judicial and legislative duties”). The fact that the CCR  
7 includes certain model codes authored by private entities does not change this conclusion in any  
8 way. *Int’l Code Council, Inc. v. UpCodes, Inc.*, No. 17-cv-6261 (VM), 2020 U.S. Dist. LEXIS  
9 92324, at \*46–47 (S.D.N.Y. May 26, 2020) (holding that a privately authored work may “become  
10 the law” and lose copyrightability based on five considerations: “(1) whether the private author  
11 intended or encouraged the work’s adoption into law; (2) whether the work comprehensively  
12 governs public conduct, such that it resembles a ‘law of general applicability’; (3) whether the work  
13 expressly regulates a broad area of private endeavor; (4) whether the work provides penalties or  
14 sanctions for violation of its contents; and (5) whether the alleged infringer has published and  
15 identified the work as part of the law, rather than the copyrighted material underlying the law.”);  
16 *Veeck v. Southern Building Code Congress, Inc.*, 293 F.3d 791 (5th Cir. 2002) (en banc) (a model  
17 code enters the public domain when legislatively adopted as the law of a jurisdiction).

18  
19 **THE VARIOUS “FREE” VERSIONS OF THE CCR DO NOT SATISFY RESPONDENTS’**  
20 **LEGAL DUTIES UNDER THE CPRA.**

21 49. Respondents have stated that the CCR is currently available, in various forms, in  
22 various places, and at various levels of access, both in hard copy and online. (Exhibits D at 35, G.)  
23 But all of these versions carry restrictions that are inconsistent with the CPRA.

24 50. First, electronic copies of public records are not “publicly available” under the  
25 CPRA when they are restricted by private terms of use. Respondents identify various electronic  
26 versions of portions of the CCR. (Exhibit G (“Title 24 may also be viewed online free of charge  
27 via the CBSC website [<https://www.dgs.ca.gov/BSC/Codes>]”); Exhibit D at 35 (“The most up-to-  
28 date version of the CCR Titles you request are available online at <https://govt.westlaw.com/>

1 calregs/Index.”)) But these versions are published by private entities that impose contractual  
2 restrictions on the public’s ability to access, use, and modify their contents:

- 3 • **ICC** (Title 24, Parts 1, 2, 2.5, 6, 8, 9, 10, 11 and 12):  
4 <https://codes.iccsafe.org/codes/california> (read-only versions of the Administrative Code,  
5 Building Code, Residential Code, Energy Code, Historical Building Code, Fire Code,  
6 Existing Building Code, Green Building Code, and Referenced Standards Code).
- 7 • **IAPMO** (Title 24, Parts 4 and 5): (read-only version of the Mechanical Code,  
8 <http://epubs.iapmo.org/2019/CMC/index.html#p=3>, and Plumbing Code:  
9 <http://epubs.iapmo.org/2019/CPC/index.html>).
- 10 • **NFPA** (Title 24, Part 3): (read-only version of California Electrical Code  
11 [https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-](https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view)  
12 [standards/free-access?mode=view](https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view) )
- 13 • **West** (Titles 1-5, 7-23, and 25-28): (available at  
14 <https://govt.westlaw.com/calregs/Index?transitionType=Default&contextData=%28sc.Default%29>, but users are subject to Thompson Reuter’s Terms of Use agreement  
15 (https://legal.thomsonreuters.com/en/legal-notices/terms-of-use), its privacy policy  
16 governing the use of personal information (https://www.thomsonreuters.com/en/privacy-  
17 statement.html), and its cookie policy requiring users to enable first-party and third-party  
18 cookies to access the CCR (https://www.thomsonreuters.com/en/privacystatement.  
19 html#cookies).<sup>5</sup>

21 These private versions of public laws are not “publicly available” because the private entities  
22 impose “end user restrictions” that “are incompatible with the purposes and operation of the  
23 CPRA.” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1335 (holding that the defendant county could  
24 not demand licensing agreements or impose restrictions on end users of public records). In  
25 *County of Santa Clara*, the Court of Appeal held that California law barred the imposition of end  
26 user restrictions on public records. This policy, the court reasoned, “effectuates the purpose of the

27 <sup>5</sup> To avoid the restrictions, a user must pay these private entities a fee ranging from approximately  
28 \$66 (for a paper copy of the swimming code from IAPMO) to \$865 (for a yearly electronic  
subscription to all of the codes published by the ICC).

1 statute, which is increasing freedom of information by giving members of the public access to  
2 information in the possession of public agencies.” *Id.* The court explained that the same policy “is  
3 enshrined in the Constitution” and “would be undercut by permitting the County to place extra-  
4 statutory restrictions on the records that it must produce, through the use of end user agreements.”  
5 *Id.* (citations and quotations omitted). So too here. Current electronic versions of the CCR are  
6 subject to a litany of contractual and technological restrictions. *See, e.g.*, West TOS Copyright  
7 Policy, <https://legal.thomsonreuters.com/en/legal-notices/contacts> (requiring express permission  
8 to copy and distribute cases and statutes electronically) (last visited on Mar. 11, 2021); ICC Title  
9 24, Part I <https://codes.iccsafe.org/content/CAAC2019> (read-only version, technologically  
10 incapable of copying/pasting on browser) (last visited on Mar. 11, 2021); IAPMO Title 24, Part 4  
11 (mechanical code) <http://epubs.iapmo.org/2019/CMC/index.html#p=1> (read-only version,  
12 technologically incapable of copying/pasting on browser) (last visited on Mar. 11, 2021). These  
13 private versions are inadequate under the CPRA because of these end user restrictions.

14 51. Second, the availability of paper copies at certain libraries does not free agencies  
15 from their responsibility to produce electronic copies in response to CPRA requests. (Exhibit G.)  
16 The CPRA is clear that “any agency that has information that constitutes an identifiable public  
17 record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make  
18 that information available in an *electronic format* when requested by any person.” Cal. Gov’t Code  
19 § 6253.9(a) (emphasis added). Paper copies do not satisfy this requirement.

20 52. Finally, OAL’s offer to scan paper copies of the CCR similarly misses the mark.  
21 (Exhibit D at 35.) OAL must provide the records in an electronic format. Cal. Gov’t Code §  
22 6250(a)(1)–(2) (agencies must provide records in electronic formats that they hold, use, or provide  
23 to other agencies).

24 *No Exemption Applies.*

25 53. The CPRA carries a “presumption in favor of access.” *Am. Civil Liberties Union*  
26 *Found. v. Super. Ct.*, 3 Cal. 5th at 1040. Agencies can overcome that presumption only by showing  
27 that one of the *over 100* statutory exemptions applies. *Long Beach Police Officers Ass’n v. City of*  
28 *Long Beach*, 59 Cal. 4th 59, 67 (2014) (“The act has certain specific exemptions (Cal. Gov’t Code

1 §§ 6254–6254.30), but a public entity claiming an exemption must show that the requested  
2 information falls within the exemption.”); *City of San Jose*, 2 Cal. 5th at 616 (“Every such record  
3 must be disclosed unless a statutory exception is shown.”); Cal. Gov’t Code § 6255 (a) (“The  
4 agency shall justify withholding any record by demonstrating that the record in question is exempt  
5 under express provisions of this chapter or that on the facts of the particular case the public interest  
6 served by not disclosing the record clearly outweighs the public interest served by disclosure of the  
7 record.”).

8 54. In their letters to Public Resource, neither Respondent invoked *a single one* of the  
9 exemptions listed in the CPRA. (Exhibits D, G & I.) By failing to do so, they have waived the  
10 ability to claim any exemption under the CPRA. *Haynie v. Super. Ct.*, 80 Cal. App. 4th 603, 611  
11 (2000) (“The public agency has the burden of establishing an exemption before records are  
12 provided, and exemptions not then asserted are waived.”).

#### 13 CPRA PROCEDURE FOR WRIT OF MANDATE

14 55. When a verified petition to the superior court of the county where the records or  
15 some part thereof are situated establishes that certain public records are being improperly withheld  
16 from a member of the public, the court shall order the public official to disclose the public record,  
17 or show cause as to why he or she should not do so. Cal. Gov’t Code § 6259(a). The court shall  
18 decide the case after examining the record in camera (if permitted by the Evidence Code), papers  
19 filed by the parties, and any oral argument and additional evidence as the court may allow. *Id.*

20 56. If the Court finds that failure to disclose is not justified, it shall order the public  
21 official to disclose the record. *Id.* § 6259(b).

22 57. To ensure that access to public records is not delayed or obstructed, the CPRA  
23 requires that “[t]he times for responsive pleadings and for hearings in this proceedings shall be set  
24 by the judge of the court with the object of securing a decision as to these matters at the earliest  
25 possible time.” Cal. Gov’t Code § 6258.

26 58. The CPRA and the California Constitution embody and protect the “fundamental  
27 and necessary right of every person in this state” to access the information concerning the conduct  
28 of the people’s business. The Constitution animates this right even further by guiding courts’



1 interpretations: “A statute, court rule, or other authority . . . shall be broadly construed if it furthers  
2 the people’s right of access, and narrowly construed if it limits the right of access.” Cal. Const. Art.  
3 I § 3(b)(2). Respondents cite no exemption or public interest that justifies their withholding here.  
4 And indeed, it is difficult to fathom a more classic and fitting invocation of the CPRA than Public  
5 Resource’s request to access core public records—the very laws which govern virtually every  
6 aspect of private and business life in this state. As the United States Supreme Court said last year:  
7 “Every citizen is presumed to know the law, and it needs no argument to show . . . that all should  
8 have free access to its contents.” *Georgia*, 140 S. Ct. at 1507 (internal quotations omitted). In  
9 California, citizens do not have “free access” to the contents of the CCR. This writ seeks to remedy  
10 that.

11 **FIRST CAUSE OF ACTION**  
12 **For Violation of the California Public Records Act &**  
13 **Article I § 3 of the California Constitution**  
(Against Respondent OAL)

14 59. Petitioner Public Resource incorporates herein by reference the allegations of  
15 paragraphs 1-59 above, as if set forth in full.

16 60. Respondent OAL’s refusal to release public records and its insufficient responses to  
17 lawful requests violate the CPRA and Article I § 3 of the California Constitution.

18 **SECOND CAUSE OF ACTION**  
19 **For Violation of the California Public Records Act &**  
20 **Article I, §3 of the California Constitution**  
(Against Respondent BSC)

21 61. Petitioner Public Resource incorporates herein by reference the allegations of  
22 paragraphs 1-59 above, as if set forth in full.

23 62. Respondent BSC’s refusal to release public records and its insufficient responses to  
24 lawful requests violate the CPRA and Article I § 3 of the California Constitution.

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**PRAYER FOR RELIEF**

**WHEREFORE**, Petitioner prays as follows:

63. That the Court issue a peremptory writ of mandate directing Respondents to provide  
Petitioner with the requested records;

64. That Petitioners be awarded attorney’s fees and costs pursuant to Cal. Gov’t Code §  
6259(d); and

65. For such other and further relief as the Court deems proper and just.

Dated: March 17, 2021

COOLEY LLP

By:   
Matthew D. Caplan

*Attorneys for Plaintiff*  
Public.Resource.Org, Inc.

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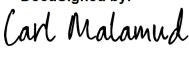
**VERIFICATION**

I, Carl Malamud, hereby state as follows:

1. I have read the foregoing Petition for Writ of Mandate and know its contents.
2. I certify that the factual allegations contained in the Petition related to Petitioner

Public.Resource.Org, Inc. are true, based on my own personal knowledge.

I declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct and that this Verification was executed on this 17<sup>th</sup> day of March, 2021 in Healdsburg, California.

DocuSigned by:  
  
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 \_\_\_\_\_  
 Carl Malamud

Document received by the CA 3rd District Court of Appeal.

## INDEX TO EXHIBITS

<b>Exhibit</b>	<b>Pages</b>	<b>Description</b>
A	1	2010 California Code of Regulations and California Notice of Register Publication Contract
B	2 - 29	2016-2020 OAL West CCR Agreement
C	30	Letter from Public.Resource.Org to Office of Administrative Law requesting a copy of Titles 1-5, 7-23 and 25-28 of the California Code of Regulations, dated December 29, 2020
D	31 - 38	Email thread between Public.Resource.Org to Office of Administrative regarding copies of Titles 1-5, 7-23 and 25-28 of the California Code of Regulations
E	39 - 40	Response Letter from Public.Resource.Org to Office of Administrative Law requesting a copy of Titles 1-5, 7-23 and 25-28 of the California Code of Regulations, dated February 3, 2021
F	41	Letter from Public.Resource.Org to Building Standards Commission requesting a copy of Title 24 the California Code of Regulations, dated December 29, 2020
G	42	Letter from California Building Standards Commission to Carl Malamud regarding Public Records Act request, dated January 7, 2021.
H	43 - 44	Response Letter from Public.Resource.Org to California Building Standards Commission responding to January 7, 2021 letter, dated January 29, 2021.
I	45 -46	Email from Mia Marvelli to Carl Malamud re PRA response, dated March 2, 2021.

# Exhibit A

Document received by the CA 3rd District Court of Appeal.

## 2020 California Code of Regulations and California Regulatory Notice Register Publication Contract

The Office of Administrative Law (OAL) is responsible for compiling and publishing the Official California Code of Regulations (CCR) and the California Regulatory Notice Register (Notice Register), both in hard copy and online. The current contract for publication of the CCR and Notice Register ends on December 31, 2020. OAL is in the process of soliciting proposals for the publication of the CCR and Notice Register. Information, documents, and status updates on this process can be found below. For inquiries or to request information about process, including being added to the notification list regarding this process, please email [CCRcontract@OAL.ca.gov](mailto:CCRcontract@OAL.ca.gov).

**October 29, 2020**

### NOTICE OF INTENT TO AWARD CONTRACT

RFP – CCR – 2020

for the

Publication of the Official California Code of Regulations and the California Regulatory Notice Register

To Whom it may Concern:

Pursuant to the process established by the Request for Proposals issued July 17, 2020 and the Addendum No. 1 issued October 1, 2020 by the Office of Administrative Law (OAL), notice is hereby given that on November 9, 2020, OAL intends to award the publication contract for the Official California Code of Regulations and California Regulatory Notice Register to the contractor named below:

West Publishing Corporation d/b/a West, a Thomson Reuters business

A proposer, prior to the award of the contract, may protest the Notice of Intent to Award on the grounds that OAL failed to follow the procedures specified in California Public Contracting Code, sections 10344 and/or 10345(b). After filing a protest, the protestant has five (5) calendar days to file a detailed written statement of the protest grounds if the original protest did not contain the complete grounds for the protest. (PCC §§ 10345(a)3, 10345(b)(2).) These documents must be submitted to the following addresses by the appropriate deadlines:

Office of Administrative Law, Attn: Kevin D. Hull, Senior Attorney; 300 Capitol Mall, Suite 1250; Sacramento, CA 95814; Fax (916) 323-3826; Email [CCRContract@oal.ca.gov](mailto:CCRContract@oal.ca.gov).

Department of General Services, Office of Legal Services, Attn: Protest Coordinator; 707 Third Street, 7th Floor, Suite 7-330; West Sacramento, CA 95605; Fax (916) 376-5088; Email: [OLSProtests@dgs.ca.gov](mailto:OLSProtests@dgs.ca.gov).

Any questions or comments regarding this matter should be directed to Kevin D. Hull at (916) 323-8916 or [CCRContract@oal.ca.gov](mailto:CCRContract@oal.ca.gov).

Sincerely,

/s/

Kenneth J. Pogue  
Director

**October 1, 2020:** Please take note that on October 1, 2020, OAL issued Addendum No. 1 to RFP-CCR-2020 which is incorporated into RFP-CCR-2020. This addendum consists of the following items: Notice of Addendum; Exhibit 11, Exhibit 12, RFP-CCR-2020 Addendum No. 1 dated 10-1-2020. Copies of these documents are available upon request from the contact person listed below. The following is a summary of the changes made to the original RFP.

- Adding of Exhibit 11: This is a copy of the current CCR publication contract for 2016 through 2020.
- Adding of Exhibit 12: Exhibit 12 consists of questions submitted by potential bidders and OAL's responses.
- RFP Page 10, Section 2.8.4: The .5 point designated for the Electronic CCR has been deleted and added to the points allotted for Publications for County Clerks and Libraries.
- RFP Section 3.2.9, page 21: Electronic CCR – This section relating to the Electronic CCR has been modified to make publication of the Electronic CCR permissive.
- RFP Section 3.7: has been modified to remove the requirement to provide OAL with "One (1) subscription to the CD-Rom version of the CCR;"
- RFP Section 3.8, page 28: This section has been modified regarding requirements to provide clerks and county libraries copies of the CCR and Notice Register in electronic format.
- RFP Section 3.10, page 29: Exhibits 11 and 12 have been added to the list of exhibits.
- RFP Page 46: Section 5 relating to the Electronic CCR has been modified to make publication of the CCR in electronic format permissive.
- RFP Page 51: Section 11 of the proposed contract has been modified to remove requirement 11(d) to provide OAL with "One (1) subscription to the CD-Rom version of the CCR;"
- RFP Page 51: Section 12 regarding publications for County Clerks and Depository Libraries has been modified regarding providing clerks and county libraries copies of the CCR and Notice Register in electronic format.
- RFP Page 57: The following language in Section 18 in Exhibit D, Special Terms and Conditions of the proposed contract has been removed: "If the contractor declines to obtain a copyright in the editorial enhancements on its own behalf, the contractor shall obtain a copyright in the name of OAL on behalf of the state of California."
- RFP Page 60-61: Section 23 of the proposed contract has been modified relating to substitutions of contractors.

Given that the changes included in this Addendum are primarily informative in nature and because any substantive changes are minor or make the RFP less restrictive, OAL is **not** extending the current submission deadline of October 15, 2020.

- Request for Proposals for Publication of the Official California Code of Regulations and the California Regulatory Notice Register
- Exhibit 1 – Example Reports to Publisher;
- Exhibit 2 – Example Text Showing Underline and Strike through;
- Exhibit 3 – Example CCR Supplement;
- Exhibit 4 – Example History Notes;
- Exhibit 5 – Example Notice Register – Number 9-Z-February 28, 2020;
- Exhibit 6 – Internet CCR Usage Summaries;
- Exhibit 7 – 2016-2019 Licensing and Royalty Payments;
- Exhibit 8 – GTC April 2017
- Exhibit 9 – STD204;
- Exhibit 10 – CCC 042017.

Requests for the above-referenced documents, as well as any questions regarding the Request for Proposal should be directed to the contact person below.

Kevin D. Hull, Senior Attorney  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
PH: (916) 323-8916  
Fax: (916) 323-6826  
E-mail at [CCRcontract@oal.ca.gov](mailto:CCRcontract@oal.ca.gov)

**July 17, 2020:** Please take note that on July 17, 2020, OAL issued the Request for Proposals for Publication of the Official California Code of Regulations and the California Regulatory Notice Register (RFP-CCR-2020). RFP-CCR-2020 is advertised on the California CSCR (Event ID: 0000017004) and consists of the following documents:

- Request for Proposals for Publication of the Official California Code of Regulations and the California Regulatory Notice Register
- Exhibit 1 – Example Reports to Publisher;
- Exhibit 2 – Example Text Showing Underline and Strike through;
- Exhibit 3 – Example CCR Supplement;
- Exhibit 4 – Example History Notes;
- Exhibit 5 – Example Notice Register – Number 9-Z-February 28, 2020;
- Exhibit 6 – Internet CCR Usage Summaries;
- Exhibit 7 – 2016-2019 Licensing and Royalty Payments;
- Exhibit 8 – GTC April 2017
- Exhibit 9 – STD204;
- Exhibit 10 – CCC 042017.

Requests for the above-referenced documents, as well as any questions regarding the Request for Proposal should be directed to the contact person below.

Kevin D. Hull, Senior Attorney  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
PH: (916) 323-8916  
Fax: (916) 323-6826  
E-mail at [CCRcontract@oal.ca.gov](mailto:CCRcontract@oal.ca.gov)

**July 17, 2020:** Notice of OAL's issuance of RFP-CCR-2020 was published in the General Information portion of the California Regulatory Notice Register on July 17, 2020. Please note that this notice erroneously states that the RFP was issued on July 13, 2020. The actual issuance date is July 17, 2020.

**May 8, 2020:** OAL is now issuing a Request for Information, inviting all interested persons to provide information or suggestions that may assist OAL in contracting for the future publication of the CCR and Notice Register. The deadline to respond is June 15, 2020. This Request for Information is available upon request by emailing [CCRcontract@OAL.ca.gov](mailto:CCRcontract@OAL.ca.gov) or can be downloaded at [Request for Information OAL 2020](#).

### Contact OAL

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814-4339

Phone: (916) 323-6225  
CALNET: (916) 473-6225  
Fax: (916) 323-6826  
Email: [staff@oal.ca.gov](mailto:staff@oal.ca.gov)

Reference Attorney  
Voicemail Line: (916) 323-6815  
Email: [staff@oal.ca.gov](mailto:staff@oal.ca.gov)

If you wish to receive notice of proposed rulemakings by OAL, send an email to [staff@oal.ca.gov](mailto:staff@oal.ca.gov) and request to be put on OAL's mailing list.

### Related Links

- CCR Title 24, Building Standards Code
- Legislative Information
- DSS Manual of Policies & Procedures
- California State Agency Index

# Exhibit B

Document received by the CA 3rd District Court of Appeal.

ORIGINAL

COPY

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES  
STANDARD AGREEMENT - AMENDMENT

STD 213A (Rev. 10/2019)

<input type="checkbox"/> CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED	PAGES	AGREEMENT NUMBER	AMENDMENT NUMBER	Purchasing Authority Number
		OAL CCR CONTRACT 2015	2	OAL-7910

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY NAME  
Office of Administrative Law

CONTRACTOR NAME  
West Publishing Corporation

2. The term of this Agreement is:

START DATE  
January 1, 2016

THROUGH END DATE  
December 31, 2020

3. The maximum amount of this Agreement after this Amendment is:  
Revenue contract - \$350,000 annual license fee plus 8.1% royalty payment.

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:  
Pursuant to section 2.1 of the OAL CCR CONTRACT 2015, the parties agree to extend the contract by 1 year beginning 1/1/2020 and ending 12/31/2020. This is the second of two optional extensions provided for in Section 21.1 of the original contract.  
All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)  
West Publishing Corporation

CONTRACTOR BUSINESS ADDRESS  
610 Opperman Drive

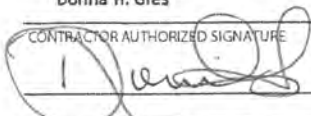
CITY  
Eagan

STATE  
MN

ZIP  
55123

PRINTED NAME OF PERSON SIGNING  
Donna H. Gies

TITLE  
Assistant General Counsel

CONTRACTOR AUTHORIZED SIGNATURE  


DATE SIGNED  
11-22-2019

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME  
Office of Administrative Law

CONTRACTING AGENCY ADDRESS  
300 Capitol Mall, Suite 1250

CITY  
Sacramento

STATE  
CA

ZIP  
95814

PRINTED NAME OF PERSON SIGNING  
Kenneth J. Pogue

TITLE  
Director

CONTRACTING AGENCY AUTHORIZED SIGNATURE  


DATE SIGNED  
12-2-19

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (if Applicable)



APPROVED  
DEC 10 2019  
OFFICE OF LEGAL SERVICES  
DEPT. OF GENERAL SERVICES

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0003

0003 00 0000

Document received by the CA 3rd District Court of Appeal.

STATE OF CALIFORNIA  
**STANDARD AGREEMENT AMENDMENT**  
 STD. 218 A (Rev 6/03)

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED \_\_\_\_\_ Pages


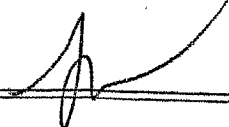
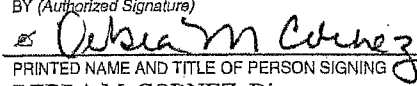
AGREEMENT NUMBER	AMENDMENT NUMBER
<b>OAL CCR CONTRACT 2015</b>	<b>1</b>
REGISTRATION NUMBER	

ORIGINAL

- This Agreement is entered into between the State Agency and Contractor named below:  
 STATE AGENCY'S NAME  
**OFFICE OF ADMINISTRATIVE LAW**  
 CONTRACTOR'S NAME  
**WEST PUBLISHING CORPORATION**
- The term of this Agreement is 1/1/2016 through 12/31/2019
- The maximum amount of this Agreement after this amendment is: \$Revenue contract - \$350,000 annual license fee plus 8.1% royalty payment.
- The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:  
 Pursuant to section 21.1 of the OAL CCR CONTRACT 2015, the parties mutually agree to extend the contract by one year beginning January 1, 2019 and ending December 31, 2019. This is the first of two optional extensions provided for in Section 21.1 of the contract.

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

<b>CONTRACTOR</b>		CALIFORNIA Department of General Services Use Only  <div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>APPROVED</b>   <b>NOV 30 2018</b>           OFFICE OF LEGAL SERVICES          DEPT. OF GENERAL SERVICES       </div>
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) <b>WEST PUBLISHING CORPORATION</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>11/15/18</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Alejandro Medrano, Manager, Government Customer Contracts</b>		
ADDRESS <b>610 Opperman Drive, Eagan, MN 55123</b>		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME <b>OFFICE OF ADMINISTRATIVE LAW</b>		<input type="checkbox"/> Exempt per:  
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>11-19-2018</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>DEBRA M. CORNEZ, Director</b>		
ADDRESS <b>300 Capitol Mall, Suite 1250, Sacramento, CA 95814</b>		

Document received by the CA 3rd District Court of Appeal.

**Exhibit B - 000004**



STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
 STD 213 (Rev 06/03)

AGREEMENT NUMBER <b>OAL CCR CONTRACT 2015</b>
REGISTRATION NUMBER


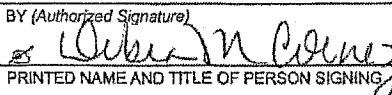
- This Agreement is entered into between the State Agency and the Contractor named below:
 

STATE AGENCY'S NAME <b>OFFICE OF ADMINISTRATIVE LAW</b>
CONTRACTOR'S NAME <b>WEST PUBLISHING CORPORATION</b>
- The term of this Agreement is: **1/1/2016** through **12/31/2018**
- The maximum amount of this Agreement is: \$ [Revenue Contract: \$350,000 Annual License Fee + 8.1% Royalty paid to OAL]
- The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.
 

Exhibit A – Scope of Work	9 page(s)
Exhibit B – Budget Detail and Payment Provisions	2 page(s)
Exhibit C* – General Terms and Conditions	1
Check mark one item below as Exhibit D:	
<input checked="" type="checkbox"/> Exhibit - D Special Terms and Conditions (Attached hereto as part of this agreement)	8 page(s)
<input type="checkbox"/> Exhibit - D* Special Terms and Conditions	
Exhibit E – Additional Provisions	page(s)

Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at [www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx](http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx)

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

<b>CONTRACTOR</b>		California Department of General Services Use Only  <div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>APPROVED</b>   <b>SEP 29 2015</b>           OFFICE OF LEGAL SERVICES          DEPT. OF GENERAL SERVICES       </div>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) <b>West Publishing Corporation</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>9/16/2015</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>John S. Nelson, Director, Procurement and Proposal Management</b>		
ADDRESS <b>610 Opperman Drive, Eagan MN 55123</b>		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME <b>Office of Administrative Law</b>		<input type="checkbox"/> Exempt per:
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>9-9-2015</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Debra M. Comez, Director</b>		
ADDRESS <b>300 Capitol Mall, Suite 1250, Sacramento, CA 95814</b>		

Document received by the CA 3rd District Court of Appeal.

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## **Exhibit A, Scope of Work/Required Publication Services**

### **1. Costs**

All costs incurred by the contractor in its performance of this contract are the responsibility of the contractor and shall not be charged to the state of California.

### **2. Master Database**

The contractor shall maintain the Official California Code of Regulations (CCR) in an electronic database, which for purposes of this contract shall be referred to as the "Master Database." To ensure that all CCR products accurately reflect the Official CCR content, the Master Database must be the source for all hard copy text and electronic products as well as the source for the contents of the Internet CCR.

Prompt and accurate updating of the CCR Master Database is a key component of the CCR publication contract. The contractor shall update the Master Database as soon as feasible after OAL provides the contractor with regulations that have been endorsed by the Secretary of State, preferably within 15 days but in no event longer than 30 days after OAL delivers the regulation text. The text of regulations and all other items in the Master Database shall be subject to inspection, revision, and correction by OAL. The contractor shall take immediate action to make any corrections specified by OAL.

The contractor shall maintain the Master Database in a secure environment and shall establish an Availability and Operational Recovery Plan to protect the integrity and availability of the Master Database against the risk of attacks that may cause nuisance, significant interruptions of service or unauthorized changes to the Master Database content. At a minimum, the contractor's Availability and Operational Recovery Plan shall include upgrading software and installing software patches and updates as often as necessary to address security risks; removal of unnecessary software applications that run with administrative privileges or that receive packets from the network; use of an external firewall; establishment of remote administration security; restricted server scripts; web server shields with packet filtering, and education of personnel working with the Master Database.

The CCR Master Database shall consist of material not subject to any claims of ownership or copyright, except those of OAL on behalf of the state of California. The CCR Master Database shall include tables of contents, headings and captions, regulation text including all charts, graphs, tables, illustrations, forms etc. designated by OAL for publication, authority and reference citations, and history notes.

Upon completion or termination of the contract, the contractor shall provide OAL with a useable electronic database containing the data from the Master Database. The data must be provided in a standard (free from any proprietary formatting or codes) portable and easily processed or converted format such as XML or a relational database capable of extraction via standard SQL queries. The contractor shall be responsible for all costs associated with transferring the data to OAL in a usable form upon completion or termination of the CCR publication contract.

### 3. California Code of Regulations

#### 3.1. Official California Code of Regulations

The contractor shall publish the Official CCR on 8½ by 11 inch pages, loose leaf, in a form which assures that pages can be easily inserted into standard three-ring binders. Text paper shall be 20 lb. standard weight with a minimum of 30% postconsumer recycled content. Regulation text shall be printed in black, with font size no smaller than that used in the Official CCR in 2014. The format of the Official CCR is subject to OAL approval prior to initial publication. The contractor must submit any future format changes to the Director of OAL for approval prior to implementing any changes. The contractor may offer binders for sale to subscribers but shall not require any subscriber to purchase binders.

The contractor shall accurately and legibly print regulations as filed with the Secretary of State, including all charts, graphs, tables, illustrations, notes, graphics, etc. Each volume of the Official CCR shall contain the following:

- (a) Title Page;
- (b) A page listing hierarchy for that title with a nomenclature cross-reference for the pre-1990 hierarchy;
- (c) Table of contents for that title listing the headings of each Division, Chapter, Subchapter, Group and Subgroup where applicable, and Article;
- (d) Division level table of contents preceding each division within a title;
- (e) Complete text of regulations, including all narrative text, forms, appendices, prefaces, footnotes, endnotes, tables, formulas, graphics, illustrations or other regulatory material designated by OAL for publication;
- (f) Authority and reference citations for each section;
- (g) History notes for each section;
- (h) The Register number and publication date of the last revision on each page to reflect the last date any item on that page was affected by a regulatory action;
- (i) Such other materials as OAL may direct to be published.

In addition to the items listed above, the Official CCR may, in the contractor's sole discretion, also include annotations, appropriate research references, or other editorial material created by the contractor, to which the contractor may retain all intellectual property rights.

#### 3.2. CCR Supplement ("Register")

The contractor shall compile the regulations filed during each calendar week, and use this compilation to update the CCR by publishing the weekly California Code of Regulations (CCR) Supplement. Using the underline (or italics) and strikethrough in regulation text to discern changes to the existing text of the CCR, the publisher shall integrate newly adopted, amended or repealed regulations into the CCR and publish the resulting regulatory changes in the CCR Supplement.

The contractor shall number the CCR Supplement by week and year (e.g. Register 2014, No. 42 contains regulations filed with the Secretary of State during the 42nd week of 2014);



and shall publish the weekly CCR Supplement preferably within 15 days but in no event longer than 30 days after OAL sends regulation text for publication.

For sections that are being repealed, the contractor shall add the word (Repealed) to the heading for the repealed section. If other repealed section(s) appear on a page being revised in that issue of the CCR Supplement, and the heading of the other repealed section(s) are missing the word (Repealed), the contractor shall add (Repealed) to that heading.

The Supplement shall match the format requirements stated above for the Official CCR. The CCR Supplement shall be distributed to subscribers accompanied by information adequate to inform subscribers how to replace the updated pages of the Official CCR. The contractor shall distribute the CCR Supplement on a timely basis to subscribers for all full sets, subscribers to individual title(s) or subscribers to any other product iteration offered by the publisher that are affected by the weekly updates.

### **3.3. CCR Tables of Contents**

#### **3.3.1. Master Table of Contents**

The contractor shall publish a Master Table of Contents with a complete listing by heading of all regulations in all titles (excluding Title 24) by Title, Division, Chapter, Subchapter, Group and Subgroup where applicable, and Article. The contractor shall update the Master Table of Contents quarterly to reflect regulations that were added, amended or repealed during the previous calendar quarter, and distribute any revised pages, accompanied by instructions adequate to inform subscribers how to replace the updated pages.

#### **3.3.2. Division Level Table of Contents**

Each Division of the CCR shall be preceded by a Division Level Table of Contents for that Division listing the headings of each Chapter, Subchapter, Group and Subgroup where applicable, Article and Section. The contractor shall update the Division Level Tables of Contents quarterly to reflect regulations that were added, amended or repealed during the previous calendar quarter, and distribute any revised pages, accompanied by instructions adequate to inform subscribers how to replace the updated pages, except that if regulatory material filed by OAL with the Secretary of State includes entire new chapters or entire new articles, the contractor shall distribute a revised Division level Table of Contents (or revised pages in the Division Level Table of Contents) when it publishes the new chapter or article.

### **4. Master Index**

The contractor shall create and publish a Master Index to which the contractor may retain all intellectual property rights. The Master Index shall include a Table of Statutes to Regulations, listing all of the California statutes cited in the Authority and Reference notes following each section of the CCR. The Master Index shall be updated no less than annually.

The Master Index may, in the contractor's sole discretion, include appropriate research references, annotations or other editorial material to which the contractor may retain all

intellectual property rights. The title page of the Master Index shall indicate that the Master Index has not been reviewed by the Office of Administrative Law and is not part of the Official California Code of Regulations. The contractor shall publish the Master Index no later than 180 days after the start date of the CCR publication contract.

The contractor may copyright the Master Index. If the contractor declines to obtain a copyright on its own behalf, the contractor shall obtain a copyright in the name of OAL on behalf of the State of California. All expenses of obtaining such copyright, either on behalf of the contractor or OAL, shall be the responsibility of the contractor.

## 5. Electronic CCR

The contractor shall publish the CCR on CD-ROM, or other successor technology as may otherwise be agreed to by OAL and the contractor, monthly at a minimum. The Electronic CCR shall contain all elements of the Official CCR and shall accurately reflect the complete contents of the Official CCR. The Electronic CCR may, in the contractor's sole discretion, also include other appropriate research references, annotations or other editorial material to which the contractor may retain all intellectual property rights.

## 6. CCR Products

In addition to selling full sets of the CCR in hardcopy and CD-ROM, and licensing all or part of the CCR to other publishers, the contractor may, in its sole discretion, elect to additionally publish any segments or compilations of the CCR for sale as separate units, in any topic area or other grouping, and in any format.

## 7. Internet CCR

The contractor shall make available on the Internet and free to the public an electronic version of the CCR which is capable of accommodating a high number of simultaneous users, at minimum supporting the number of simultaneous users who visited the Internet CCR in 2014. The Internet CCR shall meet the following minimum requirements:

- (a) Accessible to Persons with Disabilities: The contractor shall ensure that the Internet CCR complies with applicable state and federal requirements for accessibility by persons with disabilities.
- (b) Content: The Internet CCR shall accurately reflect the content of the Official CCR. The contractor shall update the Internet CCR no later than 5:00 p.m. Pacific time on the next business day following the date it issues the weekly CCR Supplement. The Internet CCR shall accurately reflect the date on which the online CCR was last updated.
- (c) Format: The Internet CCR shall include any necessary information, software, and technical support to make the complete CCR available, including graphics, tables, forms and any other material included in the Official CCR. The format shall be compatible with all Internet browser software and supported versions widely in use, including, but not limited, to Internet Explorer, Mozilla Firefox, Apple Safari and Google Chrome. The use of browser plugins or additional software (such as Adobe Flash, Microsoft Silverlight etc.) to view the database content is discouraged.

- (d) Agency List and Division Level Links: The Internet CCR shall contain list of state agency names and addresses, each of which shall contain a permanent link (i.e. hard link that a user may save as a "favorite" or "bookmark" browser link) to the division level table of contents for that agency.
- (e) Data Integrity and Availability: The contractor shall make the Internet CCR available 24 hours a day, 7 days a week, excluding scheduled maintenance approved by OAL not to exceed 2 hours per week. The maximum allowable outage during times of disaster shall not exceed 5 working days. The contractor shall take steps to protect the integrity and availability of the Internet CCR against the risk of attacks that may cause nuisance, alter the data by unauthorized individuals, or significant interruptions of service. These steps shall include upgrading software and installing patches as often as necessary to address security risks; removal of unnecessary software applications that run with administrative privileges or that receive packets from the network; use of an external firewall; establishment of remote administration security; restricted server scripts; web server shields with packet filtering, and education of personnel working with the Internet CCR.
- (f) Accuracy: The contractor shall ensure that the Internet CCR accurately reflects the most recent weekly updated version of the Official CCR; that it is complete and contains all the material defined as part of the Official CCR; and that it is fit for publication on the Internet.
- (g) User-Friendly: Response time for a basic query must be comparable to response times for Internet legal research databases widely in use. The contractor shall ensure that users can view, print and search with reasonable ease of use. The contractor shall provide users with a universal search capability, including, but not limited to search by natural language, literal strings, and available use of Boolean operators. The contractor shall include a link to "FAQ" and/or "Help" on the home page to provide information to help users navigate the website. Linking commercial advertising is expressly prohibited without the prior written consent of the Director of OAL.
- (h) User Support: The contractor shall provide toll-free customer assistance during regular business hours. The contractor shall respond to customer service inquiries within two business days of receiving a voice message, written communication, or email.
- (i) Privacy: The contractor shall collect information adequate to report to OAL the number of visits to the website and length of session; however the contractor shall not collect personally identifiable information from any user's Internet session without the explicit, opt-in consent of the user. The contractor shall post a "privacy and conditions of use" page informing users about the collection and use of information regarding visits to the online CCR.
- (j) Reports: The contractor shall provide OAL with quarterly reports about usage of the Internet CCR during the prior calendar quarter. This report shall contain information about the number of users visiting the Internet CCR, including the number of visitors per week and average session length. The contractor shall also report the number and type of technical support queries for the Internet CCR, and provide a detailed explanation for any unanticipated interruption in service that exceeds one hour.

- (k) Title 24 Explanatory Note: The contractor shall list title 24 in the list of CCR titles in the Internet CCR, state that title 24 is published by the Building Standards Commission (BSC) and link the listing for title 24 to the BSC website at <http://www.bsc.ca.gov/default.htm>.

## 8. The California Regulatory Notice Register

The contractor shall publish the California Regulatory Notice Register (Notice Register) each Friday using material provided by OAL the previous week. The contractor may elect to receive the material in hardcopy or via electronic mail. The Notice Register shall be printed on 8½ by 11 inch pages, three-hole punched, in a format of comparable quality to that in use in 2014. Text paper shall be 20 lb. standard weight with a minimum of 30% postconsumer recycled content. Text shall be printed in black; font size shall be no smaller than 10 point for text within paragraphs.

Potential elements of the Notice Register include, but are not limited to:

- (a) Notices of Proposed Regulatory Action
- (b) Summaries of approved regulations filed with the Secretary of State the previous week
- (c) Summaries of regulation decisions issued during the previous week and summaries of the reasons for OAL disapproval of a proposed regulation
- (d) Quarterly index of OAL regulation decisions
- (e) An agency's request for review of an OAL disapproval decision, OAL's response to the agency request for review, and the Governor's decision
- (f) Underground regulation petitions and underground regulation determinations issued pursuant to Government Code section 11340.5
- (g) General Public Interest Notices
- (h) Petition decisions pursuant to Government Code section 11340.7
- (i) Periodic indices of regulations approved and filed with the Secretary of State
- (j) OAL announcements
- (k) An Annual Rulemaking Calendar pursuant to Government Code section 11017.6.  
The contractor may distribute the Annual Rulemaking Calendar to subscribers on CD or other electronic format, but shall provide a print version upon request by any subscriber.

By 10:00 a.m. Pacific Time on every Friday, the contractor shall send a linked PDF copy of that day's issue of the Notice Register which fully and accurately reflects the print version of the Notice Register. (For purposes of this RFP, the term "linked PDF copy" means that each item listed in the online Table of Contents shall include a hyperlink so that clicking on that item in the Table of Contents takes the user to that notice in the text of the Notice Register.) The linked PDF copy of the Notice Register shall be sent by electronic mail to the person(s) designated by the Director of OAL to receive the linked PDF copy of the Notice Register.

## 9. Transmission of Material for Publication

OAL shall furnish to the contractor, at the contractor's expense, all regulations, notices and any other material designated for publication under the CCR publication contract. OAL shall deliver to the contractor, at the contractor's expense, a copy of approved regulations

endorsed by the Secretary of State each day that OAL files regulations with the Secretary of State. The contractor's method for collection and delivery shall provide for routine delivery the next business day after OAL files approved regulations with the Secretary of State. OAL shall provide the contractor with approved notices once each week via electronic mail.

The contractor may elect to receive an unofficial advance copy of proposed regulations prior to review and action by OAL, to be transmitted to the contractor at the contractor's expense. The contractor shall understand that these unofficial advance copies of regulations may be revised before filing or may never be filed with the Secretary of State, and may therefore not become part of the Official CCR.

By 10:00 a.m. on the business day following the date OAL takes action on any proposed regulatory action, OAL shall inform the contractor of such action by sending, via electronic mail, a Daily Action Report containing the following information:

- (a) OAL File Number
- (b) Title affected
- (c) Agency
- (d) OAL Action (Approval/Disapproval/Withdrawn)
- (e) Date of filing with Secretary of State

## **10. Editorial Responsibilities and Accuracy**

The contractor shall ensure that regulation text, as published, accurately reflects the final regulation text as filed with the Secretary of State. The contractor shall ensure that notice text, as published, accurately reflects the text of the notice provided by OAL. All editorial work, including but not limited to proofreading, copyreading, correction, data preparation, formatting, and typographical composition work for the CCR and Notice Register, shall be performed at the contractor's expense.

The contractor shall not alter the text of regulations, notices or any other materials furnished by OAL for publication, except as expressly directed or authorized by OAL. If, at any time during the CCR publication contract, OAL determines that the publisher's editorial work is unsatisfactory, OAL will advise the publisher in writing and give the publisher a reasonable opportunity to correct any deficiencies. OAL defines a satisfactory level of accuracy as zero percentage (0%) of error rate as compared to the final regulation text filed with the Secretary of State or as compared to the text of notices provided by OAL.

The text of regulations and all data in the Master Database shall be subject to inspection, revision, and correction by OAL. Questions regarding the text of regulations or notices shall be promptly called to the attention of OAL. Inferior, unprofessional, or unsatisfactory work shall be rejected and returned to the contractor for prompt correction at no additional cost to the state or CCR subscribers. OAL's inspection, revision, or acceptance of work shall not be considered a waiver of the contractor's duty to correct, at the contractor's own expense, errors or defects subsequently discovered.

The contractor shall advise the Director of OAL in advance, in writing, of any proposed changes in the method and manner of performing editorial work covered by the CCR

publication contract. The Director of OAL, or designated representative, and the contractor's representative shall, on the request of either party or at reasonable intervals, meet and confer to foster communication and cooperation between OAL and the contractor about the parties' rights and responsibilities under the CCR publication contract.

## 11. Publications and Services for OAL

The contractor shall provide OAL during the term of the CCR publication contract with the following publications and products, free of charge:

- (a) Four (4) subscriptions to the Official CCR and CCR Supplement in hard copy;
- (b) Three (3) subscriptions to the Master Table of Contents, in hard copy;
- (c) Three (3) subscriptions to the Master Index, in hard copy;
- (d) One (1) subscription to the CD-Rom version of the CCR;
- (e) One (1) subscription to Annotated California Codes;
- (f) Five (5) copies of each issue of the California Regulatory Notice Register;
- (g) One (1) complete replacement set of CCR binders annually;
- (h) 1000 copies annually of a softbound book containing selected statutes and regulations specified by OAL as relevant to California rulemaking law. The format and content of the book shall be substantially similar to the 2014 edition of "California Rulemaking Law under the Administrative Procedure Act."

Additionally, the contractor shall provide each employee of OAL, for the exclusive use by OAL, with free access to any online legal research database services provided by the contractor. The level of service provided shall include, at a minimum, access to cases and judicial materials, statutes and legislative materials, administrative law and regulations, analytical materials, and journals and law reviews for all states and the federal government; news and business materials available to basic national service subscribers, any other features available to subscribers that are reasonably relevant to OAL's duties, and to new online legal research database services created during the term of the CCR publication contract that are reasonably relevant to OAL's duties.

## 12. Publications for County Clerks and Depository Libraries

The contractor shall provide, free of charge, one (1) subscription of the hard copy version of the CCR (or, at the recipient's option, subscription to CD-ROM or other mutually agreeable electronic format) to each of the fifty-eight (58) county clerks or their designees, pursuant to Government Code section 11343.5; and to each state depository library, pursuant to Government Code sections 14900-14912.

The contractor shall provide, free of charge, one (1) subscription of the hardcopy version of the Notice Register (or, at the recipient's option, subscription to CD-ROM or other mutually agreeable electronic format) to state depository libraries, pursuant to Government Code sections 14900-14912.

### 13. Reports

The contractor shall provide OAL with periodic reports regarding the content of the Official CCR and the Notice Register. These reports are to be provided no less often than annually and shall include but are not limited to:

- (a) The number of regulation sections in existence at the end of the prior calendar year. This report shall specify the total number of active regulation sections and the total number of repealed regulation sections in each title, and in addition shall specify the total number of sections in all CCR titles combined;
- (b) A tally of the number of regulations adopted, amended or repealed during the prior calendar year. This report shall specify the number of files sent by OAL for publication and the number of regulation sections that were adopted, amended or repealed during the period covered.
- (c) A page count of the Official CCR for the prior calendar year. This report shall state the number of pages in each title and include the total number of pages for all titles.

## Exhibit B, Revenue Provisions

### 14. Annual License Fee and Royalty

In exchange for being granted the exclusive rights to publish the Official California Code of Regulations and the California Regulatory Notice Register, the contractor agrees to pay an annual license fee of \$350,000.00 and a royalty of 8.1% on net revenues.

For purposes of this agreement, "net revenues" means all sales proceeds less returns, discounts refunded to the customer, and, if not charged separately but included in the sales price, sales taxes, transportation and handling, and in addition, all revenues received from licenses to third parties (including affiliated companies) without any reduction.

The contractor shall pay the annual license fee in advance, at quarterly intervals, beginning with the commencement of the CCR publication contract on January 1, 2016. No portion of the annual license fee shall be refundable during a quarter notwithstanding early termination of the contract.

The contractor shall pay the royalty at quarterly intervals. All royalties payable pursuant to this agreement shall accrue to the benefit of OAL, and be accounted for by the contractor, during each of the quarterly periods ending on March 31, June 30, September 30 and December 31 of each calendar year. The contractor shall pay OAL any and all royalty amounts due for each quarterly period within 90 days after the end of that quarterly period.

If the contractor provides academic institutions or governmental entities such as the courts with significantly discounted rates for its Internet legal research database because of their academic nature or the public benefit they provide, no royalties shall be paid by the contractor for CCR-related usage of the contractor's Internet legal research database by those customers. This exemption shall not apply to any academic institution or governmental entity whose subscription agreement is modified to require payments at rates comparable to those paid by commercial entities.

### 15. Compensation Delivery Requirements

Compensation shall be mailed or delivered to the following address:

Office of Administrative Law  
ATTN: Debra Comez, Director  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

### 16. Standard Budget Contingency Clause

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.



If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the state of California shall have the option to either cancel this agreement with no liability occurring to the state, or offer an agreement amendment to the contractor to reflect the reduced amount.

**Exhibit C, State of California General Terms and Conditions**

The state of California General Terms and Conditions (GTC-610) are hereby incorporated by reference and made part of this agreement as if attached hereto. This document can be viewed at <http://www.dgs.ca.gov/pd/Resources/FormsResourcesLibrary.aspx>.

**Exhibit D, Special Terms and Conditions**

**17. Compensation and Royalties**

Refer to Exhibit B, Revenue Provisions.

**18. Intellectual Property Rights**

The Official CCR, Notice Register and the Master Database, in all forms, are the sole and exclusive property of the state of California. The copyrights in the Official CCR, Notice Register and the Master Database shall be owned, noticed, and registered in the name of OAL on behalf of the state of California. In no event shall the Official CCR, Notice Register or Master Database be considered a "joint work" as that term is defined in 17 U.S.C. section 101. Except as to editorial enhancements described below, all rights in all copyrightable works prepared by the contractor, either individually or jointly with others, in connection with, or related to, the services performed by the contractor for OAL or the state of California shall belong exclusively to the state of California and shall constitute "works made for hire." The contractor agrees to execute, acknowledge and deliver to OAL, at no cost to the state of California, all documents required to register or otherwise protect such works in the United States or in any other country and to recognize ownership in such works by the state of California, its assignees or designees. The contractor shall take no action which will infringe or abridge the rights of the state of California in any of the works which are the subject of this CCR publication contract.

The contractor shall not procure or claim any copyright or other intellectual property rights with respect to the Official CCR, the Notice Register or the Master Database, or in the Master Table of Contents the contractor develops pursuant to this CCR publication contract, or in any of the following material:

- Tables of contents for each Title and Division
- The hierarchical structure of the CCR (divisions, chapters, articles, etc.)
- The captions (e.g. Title 1, Section 6, "Submission of Regulatory Actions (Form 400)")
- The text of the regulations, including any appendices, tables, graphics, illustrations, charts, forms or other items that are part of regulatory material filed with the Secretary of State and designated by OAL for publication in the CCR
- Authority and Reference citations
- History Notes
- The Official California Code of Regulations Supplement

The state of California will own the data used to publish the California Code of Regulations and the California Regulatory Notice Register. Pursuant to section 2 of this contract, the contractor will provide to the state of California, upon contract termination at no additional cost, all data in the Master Database in an electronic format that preserves the content of the CCR for future publication.

The state of California expressly reserves the right to use the CCR, its captions, text, and related notations, etc., in any manner that the state so chooses.

The state grants the contractor the exclusive right to publish and use the Official CCR and Notice Register and/or provide the Official CCR and Notice Register to third parties in whatever form and by whatever means it desires, subject to the licensing and royalty provisions of this contract. All versions of the CCR licensed shall accurately reflect the content of the Official CCR.

The contractor may add editorial enhancements which do not alter the substance of the CCR, CCR Supplement, or Notice Register, and may copyright the editorial enhancements. All expenses of obtaining copyright, either on behalf of the contractor or the state of California, will be the responsibility of the contractor, and copies of any documents pertaining to copyright must be provided to the Director of OAL. If the contractor declines to obtain a copyright in the editorial enhancements on its own behalf, the contractor shall obtain a copyright in the name of OAL on behalf of the state of California. OAL and the state of California shall have a royalty-free, worldwide, nonexclusive, perpetual license, for use of all intellectual property rights in all editorial enhancements created by the contractor during the term of this contract: For the purposes of this provision, "use" shall include reproduction or disclosure by OAL or the state for informational purposes or as otherwise required by law, including but not limited to the Public Records Act.

If OAL terminates this CCR publication contract before the anticipated term due to the contractor's breach, default, or abandonment of the CCR and/or Notice Register publications, both OAL and any successor publisher of the CCR and/or Notice Register shall be held harmless for any infringement of the contractor's intellectual property rights in the editorial enhancements, including copyright, relating to action taken by OAL in good faith to facilitate continued publication and availability of the CCR and Notice Register. OAL and any successor publisher shall be held harmless for any such infringement even if the premature termination of the CCR publication contract by OAL is ultimately found to have been without cause.

In continuance of its rights under the current contract, upon contract termination or expiration, the contractor may, in its sole discretion, continue using and publishing, in its entirety the CCR data in its possession at the time of termination or expiration, including the Master Index and Master Table of Contents in an unofficial capacity as the contractor deems fit. To facilitate this use, the contractor shall have a non-exclusive, royalty-free, worldwide, perpetual license to make, have made, sell, use, reproduce, modify, adapt, display, distribute, make other versions of and disclose the data in its possession at the time of termination or expiration, and to sublicense others to do these things.

**Pre-existing intellectual property:** In performing any services or providing any deliverables under this CCR publication contract, the contractor will not use any pre-existing intellectual property including, but not limited to, any trade secret, invention, work of authorship or protectable design that has already been conceived or developed by anyone before the contractor renders any services under this contract, unless the contractor has the right to use it for OAL's benefit. If the contractor is not the owner of such pre-existing intellectual property, the contractor will obtain from the owner any rights necessary to enable the contractor to comply with this agreement. If the contractor uses any pre-existing intellectual

property in connection with this agreement, the contractor hereby grants to OAL a non-exclusive, royalty-free, worldwide perpetual license to make, have made, sell, use, reproduce, modify, adapt, display, distribute, make other versions of and disclose the property and to sublicense others to do these things.

Intellectual property indemnification: The contractor will give OAL notice immediately if at any time the contractor knows or reasonably should know of any third party claim to any pre-existing intellectual property provided by the contractor to OAL pursuant to this agreement. The contractor will indemnify and hold harmless OAL from all liability arising from the contractor's use of such pre-existing intellectual property.

## **19. Damages**

### **19.1. Actual Damages**

In the event that the contractor fails to satisfactorily complete or perform the activities it is obligated to perform under the CCR publication contract, the contractor shall be liable for the state's full cost in securing completion of any activities or services needed to publish the CCR and Notice Register and other publications covered by the CCR publication contract. The state shall not be liable for any of the contractor's costs, other than those specifically covered by this contract, in complying with the contract requirements.

### **19.2. Liquidated Damages**

Time is of the essence in the CCR publication contract. It is OAL's intent to have hard copy, electronic and Internet publishing services performed in such a way that the system is kept completely and continuously up-to-date. Delays in publication, inaccurate publication, or a failure by the contractor to cooperate with OAL, will result in damages to the state of California and the public that would be difficult to accurately assess, and for that reason, the CCR publication contract provides for liquidated damages in the amount of \$15,000 for each day of delayed publication of any publication covered by the CCR publication contract, or for each day the contractor fails in a material way to perform its obligations under the contract. The contractor shall pay the state of California for such failures at the sole discretion of the state according to this section.

The purpose of liquidated damages is to ensure adherence to the requirements in the contract. No punitive intention is inherent. OAL will provide written notification to the contractor of each failure to meet a performance requirement. If the failure is not resolved to the satisfaction of OAL within a reasonable warning/correction time period specified by OAL, liquidated damages may be imposed retroactively to the date of failure to perform.

From January 1, 2016 through February 28, 2016, a "grace period" will be in effect during which time the contractor shall perfect its update and production processes for publication of the Official CCR, online CCR and Notice Register. During this period, liquidated damages will not be imposed.

## 20. Audits

In addition to the audit provision contained in the state of California General Terms and Conditions, on written request by OAL, the contractor will allow the Bureau of State Audits, the State Controller or designee of OAL, or in the alternative, an independent certified public accountant who is mutually acceptable to the contractor and OAL to have access to, and to copy, during ordinary business hours and for as many days as required, the contractor's books and financial records as necessary to calculate the royalty for any quarter during the term of this CCR publication contract. If the contractor and OAL cannot agree on the selection of an independent certified public accountant, the contractor and OAL will each select a certified public accountant, and the two accountants will choose a third certified public accountant who will then review the contractor's books and records to determine the amount of the royalty.

The determination of the amount of royalties by the auditor will be final and binding on the contractor and OAL. If the auditor finds any discrepancy between the amount of royalty due and the amount of royalty paid for such quarter, the difference will be paid by the contractor to OAL, or refunded by OAL to the contractor, as the case may be, within 30 working days after written notice of the discrepancy is given to both parties. If the amount of the royalty paid for any quarter is less than 95% of the amount due, the contractor will pay all accounting costs. In all other instances, OAL will pay all accounting costs. The contractor will bear all other costs of access to its books and records.

The auditor will hold the contractor's financial information and trade secrets in confidence and will disclose to OAL only the amount of royalties due OAL and the factual basis for the determination of the amount(s) due.

Audits conducted under this provision shall be in accordance with generally accepted auditing standards.

## 21. Term; Termination

### 21.1. Term

The CCR publication contract shall begin January 1, 2016, and have a term of three years, with 2 optional 1-year extensions to be exercised upon mutual agreement of OAL and the contractor.

### 21.2. Failure to Perform

OAL may terminate this CCR publication contract if the contractor fails to perform the covenants herein contained at the time and in the manner herein provided. In the event of termination, OAL may proceed with the work in any manner deemed proper by OAL. The cost to the state shall be added to any sum due from the contractor to OAL under this CCR publication contract.

Persistent failure to meet publication dates or persistent failure to take corrective actions specified by OAL shall constitute a material breach of the CCR Publication Contract. In the

event the contractor fails to perform the CCR publication contract, or a substantial part thereof, the Director of OAL shall provide written notice of the failure and make a reasonable effort to resolve the failure with the contractor. If the contractor's failure is not resolved, OAL may, in its sole judgment reasonably exercised, terminate the contract, in whole or in substantial part, by presenting written notice of termination to the contractor. The notice shall specify the extent to which the contract is terminated and the date upon which such termination becomes effective. Upon termination, OAL will retain all legal remedies available to it, including damages for increased expense on behalf of all subscribers, for the remaining term of the contract.

### **21.3. Parties' Obligations Upon Termination**

If the contract is terminated for any reason other than by the expiration of the term specified in the contract or the term of any extension thereto, the contractor shall deliver or transmit to OAL, within 10 days after termination, the complete Master Database current as of the date of termination. The Master Database shall be provided to OAL in electronic form pursuant to Section 2 of this contract.

If the contract terminates by the expiration of the term specified in the contract or the term of any extension thereto, the contractor shall provide OAL with the Master Database in electronic form pursuant to Section 2 of this contract according to the following schedule: 1) 90 days prior to the anticipated expiration of the term; 2) 30 days prior to the anticipated expiration of the term; and 3) concurrently with the expiration of the term.

Upon termination of this contract for any reason, the contractor loses the right to publish the Official CCR. The contractor agrees, upon OAL's request, to provide to OAL within 10 days of termination, lists in mutually acceptable electronic form of the subscribers to all forms of the publications covered by this contract, and of all entities granted a license to publish any of the publications covered by this contract. In addition, for a period of sixty (60) days after termination of this contract, the contractor agrees to cooperate with OAL and any successor publisher of the Official CCR to provide information necessary for the continued publication of the Official CCR.

## **22. Changes**

If changes in California law oblige OAL to alter the publication services to be performed under this contract, or to alter the time allowed for performance of services under this contract, and such changes cause an increase in the costs to the contractor, or the time required for the contractor's performance of this contract, OAL and the contractor shall negotiate an equitable adjustment to the compensation, or time of performance, or both, and the contract shall be modified accordingly. Any such modification must be in writing and is subject to the approval of the Department of General Services before it becomes effective.

Any claim by the contractor for equitable adjustment under this provision must be asserted in writing to the director of OAL or designated representative not later than thirty (30) days after the date OAL notifies the contractor of a change in California law, or within such

extension as OAL may grant in writing. OAL may, in its sole discretion, consider any such claim regardless of when asserted.

Pending any such equitable adjustment, the contractor shall diligently proceed with the contract as modified. Where the cost of property made excess or obsolete as a result of the change is included in the contractor's claim for equitable adjustment, OAL shall have the right to require the submission of supporting cost data and/or to inspect the contractor's pertinent books and records for the purpose of verifying the contractor's claim and determining the basis for entitlement to an equitable adjustment.

The contractor's claim for equitable adjustment shall be fully supported by factual information and shall separately identify all increases and decreases in costs. The claim shall be submitted by a senior official authorized to bind the contractor in a signed writing that contains the following certification statement: "I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief and that the amount requested to be changed accurately reflects the contract adjustment for which (insert contractor's name here) believes the state is liable."

### **23. Substitutions**

If it becomes necessary for the contractor to substitute any subcontractor, or management, supervisory or key personnel, those substitutions must include replacements with equal or greater qualifications. The contractor shall provide OAL with detailed justification documenting the necessity for the substitutions. No substitute subcontractor(s) or personnel are authorized to begin work until the contractor has received written approval from OAL. OAL reserves the right to reject any proposed subcontractor or personnel at any time.

### **24. Severability**

Should any provision of this contract be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions shall not be affected thereby.

### **25. Waiver/Non-Waiver**

Any waiver of the terms and conditions of the CCR publication contract must be in writing. Any single waiver does not imply any future waiver of any terms or conditions. Failure of either party to enforce any provision of this contract shall not constitute or be construed as a waiver of such provision or the right to enforce such provision.

### **26. Rights of State Agencies**

Nothing in this contract shall prevent the state of California or a California state agency from publishing, reproducing, or distributing its own regulations, except that no agency of the state of California may, during the term of this contract, authorize commercial publication of regulations unless the commercial publisher has obtained a license from the contractor.



## **27. Right of Inspection**

The director of OAL or designated representative, shall have a continuing right to inspect, at reasonable intervals, all manufacturing and editorial premises used in performance of the CCR publication contract, including premises occupied by the contractor's subcontractors, if any. The contractor shall provide for such right of inspection in any subcontractors' facilities by arrangements with subcontractors or agents. The contractor shall be responsible for all reasonable expenses relating to any meeting or inspection pursuant to this contract, including reasonable transportation, lodging, and related travel expenses of OAL personnel reasonably necessary to the purpose of any meeting or inspection.

Upon request by the Director of OAL or designated representative, the contractor shall provide one copy of any of its CCR or Notice Register products for inspection by OAL.

## **28. Subscription Lists**

Upon completion or termination of this contract, including premature termination due to a breach, default, abandonment or any other reason, the contractor shall provide a copy to OAL, or to a successor publisher designated by OAL, of each and every subscription list for all contractor's Official CCR products. The copy of each and every subscription list shall include all relevant information reasonably needed by a successor publisher to fulfill subscription obligations. This includes, but is not limited to, the names and addresses of subscribers, types and categories of subscriptions for all Official CCR products for each subscriber, and subscription cost information, including current payment status of all subscribers, and beginning and ending dates of each subscription.

## **29. Miscellaneous Provisions**

### **29.1. Short Title**

This contract shall be referred to by the parties as the "CCR Publication Contract."

### **29.2. Statutory Requirements**

The contractor shall ensure that the content and distribution of all CCR and Notice Register products published pursuant to this contract comply with applicable requirements of the Administrative Procedures Act, including, but not limited to, Government Code sections 11344 and 11344.1.

### **29.3. Cooperation**

Each party shall cooperate with the other party as is reasonably necessary to further the purposes of this contract and the other party's performance hereunder.

### **29.4. Electronic Submission Plan**

The contractor shall work with OAL to devise a format and/or method that will allow for the future electronic transmission of proposed regulation text and notices.

**29.5. Marketing and Advertising Of CCR**

The contractor shall undertake reasonable efforts to market and advertise the CCR during the term of this contract. The contractor shall keep the Director of OAL advised informally as to the manner in which the CCR is marketed and advertised during the term of the contract. No advertisements shall be published in the Official CCR or in the Internet CCR except with express written permission of the Director of OAL.

**30. Entire Agreement**

This document constitutes the entire agreement of the parties. However, RFP-CCR-2015 and the contractor's proposal shall be used to establish intent in resolving any ambiguities that may be contained herein.

**31. Contract Administration**

Subject to the other party's continuing approval, each party shall assign overall responsibility for its performance of this agreement to a contract administrator who is competent in the management and performance of the party's obligations under this agreement. Each party's contract administrator shall be the primary contact for the other party with regard to matters related to this agreement.

The contract administrator for OAL is:

Kevin D. Hull, Senior Attorney  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
[Kevin.Hull@oal.ca.gov](mailto:Kevin.Hull@oal.ca.gov)  
Phone: 916-323-8916  
Fax: 916-323-6826

The contractor administrator for the contractor is: (for contract-related issues)

~~John S. Nelson~~ Kris Wendorff  
~~Director, Procurement and Proposal Management~~, Contracts Counsel  
Office of General Counsel  
Thomson Reuters  
610 Opperman Drive  
Eagan, MN 55123  
Phone: 651-687-~~XXXX~~ 4391  
Fax: 651-687-5686  
~~XXXXXXXXXXXXXXXXXXXX~~ [kris.wendorff@thomsonreuters.com](mailto:kris.wendorff@thomsonreuters.com)  
[thomsonreuters.com](http://thomsonreuters.com)

*JSN*  
*ome*

Project Administrators (for day-to-day project or account issues):

William McKay, Business Manager  
Thomson Reuters  
50 California Street  
San Francisco, CA 94111  
Phone: 415.344.5193  
Fax: 415.344.3906  
[william.mckay@thomsonreuters.com](mailto:william.mckay@thomsonreuters.com)

*JSN*  
*ome*

Stefan Vasiliou, Managing Editor  
Thomson Reuters  
50 California Street  
San Francisco, CA 94111  
Phone: 415.344.3937  
Fax: 415.344.3906  
[stefan.vasiliou@thomsonreuters.com](mailto:stefan.vasiliou@thomsonreuters.com)



# Exhibit C

Document received by the CA 3rd District Court of Appeal.



**PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation**

**Open Source “America’s Operating System”**

“It’s Not Just A Good Idea—It’s The Law!”

December 29, 2020

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814-4339

Re: California Public Records Act Request (via email to staff@oal.ca.gov)

Dear Office of Administrative Law:

Under the California Public Records Act (Government Code § 6250 et seq.) and Article I, § 3(b) of the California Constitution, I write to request a copy of Titles 1-5, 7-23, and 25-28 of the California Code of Regulations.

The contents of these Titles are public records under Government Code § 6252(e) (“Public records’ includes any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”).

Please provide these records in all formats in your possession, including (but not limited to) structured, machine-readable digital formats, such as XML or PDF files. Under Government Code § 6250(a)(1), you must provide these records in “any electronic format in which [you] hold[] the information.” Additionally, Government Code § 6250(a)(2) directs you to “provide a copy of an electronic record in the format requested if the requested format is one that has been used by [you] to create copies for [your] own use or for provision to other agencies.” Thus, you must provide copies of these records in all formats that you hold, use, or provide to other agencies.

If you determine that any material is exempt from disclosure, please specify the exemption within 10 days, as required by Government Code § 6253.1(c). If you believe that an exemption is discretionary, please state why you are withholding the information. If, for any reason, you refuse to disclose any part of these records, Government Code § 6255 requires you to explain why.

Please provide a determination on this request within 10 days, as required by Government Code § 6253(c).

If needed, please contact me at (707) 385-1617 or carl@media.org. Please notify me of any duplication costs exceeding \$100 before you duplicate the records so that I may decide which records I want copied.

Sincerely,

DocuSigned by:  
*Carl Malamud*  
E80A36AECAF6462...

Carl Malamud  
Public.Resource.Org, Inc.

cc: Matthew Caplan, Cooley LLP  
Joseph D. Mornin, Cooley LLP  
Ryan T. O’Hollaren, Cooley LLP  
David Halperin, Of Counsel, Public Resource

Document received by the CA 3rd District Court of Appeal.

# Exhibit D

Document received by the CA 3rd District Court of Appeal.

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**From:** Escobar, Steven@OAL <Steven.Escobar@oal.ca.gov>  
**Sent:** Tuesday, March 2, 2021 3:55 PM  
**To:** 'Carl Malamud'  
**Cc:** 'David Halperin'; Caplan, Matt; Mornin, Joe; O'Hollaren, Ryan T.  
**Subject:** RE: California Public Records Act request to the Office of Administrative Law

[External]

---

Dear Mr. Malamud,

In our prior responses on January 22, 2021, February 17, and February 26, 2021, OAL identified the electronic formats in which OAL has the CCR and identified options for making it available to you. On February 24, 2021, you subsequently requested a copy of "a CCR Master Database." OAL responds to this request as follows:

OAL does not have a copy of a CCR Master Database.

OAL does not have the CCR in any other electronic format other than that previously identified and, therefore, OAL considers our response to your Public Records Act request complete. Please let us know if you are interested in any of the formats previously identified so that we can work with you to coordinate inspection or copying.

Sincerely,

**Steven Escobar**  
Senior Attorney  
Office of Administrative Law  
Phone: (916) 324-6948  
Fax: (916) 323-6826  
E-Mail: [steven.escobar@oal.ca.gov](mailto:steven.escobar@oal.ca.gov)

---

**From:** Escobar, Steven@OAL  
**Sent:** Friday, February 26, 2021 9:56 AM  
**To:** 'Carl Malamud' <carl@media.org>  
**Cc:** David Halperin <davidhalperindc@gmail.com>; Caplan, Matt <mcaplan@cooley.com>; Mornin, Joe <jmornin@cooley.com>; O'Hollaren, Ryan T. <rohollaren@cooley.com>  
**Subject:** RE: California Public Records Act request to the Office of Administrative Law

Dear Mr. Malamud,  
Thank you for your email dated February 19, 2021, which was in response to OAL's email response dated February 17, 2021. In your February 19, 2021 email, you raised several additional questions. Below, those questions are restated along with OAL's responses to each question immediately following.

1. When you say you will provide us the contents of CD-ROM, I wasn't sure what that means. Will you send us a CD or DVD? Will you extract the .rtf files and graphics files

and send them to us? Or, could we come to your office with a laptop to use your CDs there and extract the files ourselves? Or, perhaps you were going to print out the documents?

OAL will make the contents of the CD ROM available in whichever manner you choose, so long as OAL has the capability to do so. Please note that OAL cannot directly copy the entire disc, therefore, copying the contents of the CD ROM by OAL, whether copying and pasting into a separate file or printing each section, will take a considerable amount of time for which OAL will need to be compensated consistent with the PRA. It may be most efficient and cost effective if you come to OAL's office and use your computers to extract the desired content yourselves.

2. My discussions with your vendor about purchasing the electronic files was that they no longer sell the CD-ROM product. I believe that means that any CCR you allow us to inspect will be considerably out of date. Do you happen to know the most recent date of the CD-ROMs you do have?

As stated in OAL's prior response, the most recent CD ROM that OAL has is current through October 16, 2020.

3. When you say you do not have an electronic copy, how does the company posting the CCR online get the CCR and its updates? Does the company get the files directly from the agencies? Or does the company read the Register and then make the updates?

Final regulatory changes that are approved by OAL for publication in the CCR are in hard copy. Each day that regulations are approved by OAL for publication, Thomson Reuters sends a courier to OAL to pick up hard copies of those regulations. OAL does not provide the regulatory changes to Thomson Reuters in electronic format nor does Thomson Reuters get the official changes directly from the rulemaking agencies.

4. If OAL doesn't have an electronic copy, are you aware of other agencies in the government that do have it?

OAL does not know whether any other state agencies have electronic copies of the official CCR in their possession.

Once again, please let us know if you have any questions or how you would like to proceed. We also received your subsequent request of February 24, 2021 and will be responding to that request separately.

Sincerely,

**Steven Escobar**

Senior Attorney

Office of Administrative Law

Phone: (916) 324-6948

Fax: (916) 323-6826

E-Mail: [steven.escobar@oal.ca.gov](mailto:steven.escobar@oal.ca.gov)

---

**From:** Carl Malamud <[carl@media.org](mailto:carl@media.org)>

**Sent:** Wednesday, February 24, 2021 9:59 AM

**To:** Escobar, Steven@OAL <[Steven.Escobar@oal.ca.gov](mailto:Steven.Escobar@oal.ca.gov)>

**Cc:** David Halperin <[davidhalperindc@gmail.com](mailto:davidhalperindc@gmail.com)>; Caplan, Matt <[mcaplan@cooley.com](mailto:mcaplan@cooley.com)>; Mornin, Joe <[jmornin@cooley.com](mailto:jmornin@cooley.com)>; O'Hollaren, Ryan T. <[rohollaren@cooley.com](mailto:rohollaren@cooley.com)>

**Subject:** Re: California Public Records Act request to the Office of Administrative Law

Dear Mr. Escobar -

I was just checking in to see if you had received my messages with a few quick questions. As you know from my previous letter, we were hoping get an answer by this Friday. Understood you may be busy!



There is one thing that puzzles me however. I know you are offering inspection of the CD-ROMs, but those are out-of-date. But, my understanding of how this all works is the CCR is stored in a CCR Master Database, which is current. That certainly is an electronic record and would suit our purposes just fine. Can't you just make us a copy of that? Looking forward to hearing from you soon!

With best regards,

Carl Malamud

On Fri, Feb 19, 2021 at 1:06 PM Carl Malamud <[carl@media.org](mailto:carl@media.org)> wrote:

Dear Mr. Escobar -

Thank you for your email of February 17. I'm familiar with the CD-ROM product, which I subscribed to in 2012 and 2013. We were translating the CCR into HTML files and making them available for people to read on the Internet. I stopped my subscription because I couldn't afford the cost. One of the goals of Public Resource is to make the regulations of all 50 states available in a common format to allow people to access the documents if they are visually impaired, to allow people to compare changes in regulations across time, to allow people to similar regulations in different states, and of course to download in bulk all the state regulations to build other sites.

My understanding of the CD-ROM product, at least in 2012, was that I could extract an "rtf" word processing file for each title. In addition, I was able to get "tif" images for graphics included in the CCR. My experience was that the rtf format was very rudimentary, I seem to remember the CD came with terms of use, and it was terribly difficult to map the graphic files to the rtf word processing files once they were out of the proprietary interface.

I did have a few quick questions for you.

1. When you say you will provide us the contents of CD-ROM, I wasn't sure what that means. Will you send us a CD or DVD? Will you extract the .rtf files and graphics files and send them to us? Or, could we come to your office with a laptop to use your CDs there and extract the files ourselves? Or, perhaps you were going to print out the documents?
2. My discussions with your vendor about purchasing the electronic files was that they no longer sell the CD-ROM product. I believe that means that any CCR you allow us to inspect will be considerably out of date. Do you happen to know the most recent date of the CD-ROMs you do have?
3. When you say you do not have an electronic copy, how does the company posting the CCR online get the CCR and its updates? Does the company get the files directly from the agencies? Or does the company read the Register and then make the updates?
4. If OAL doesn't have an electronic copy, are you aware of other agencies in the government that do have it?

Thanks very much for your time. If you prefer a zoom call or phone call, we could do that. Email works fine for me however if that is convenient!

With best regards,

Carl

On Wed, Feb 17, 2021 at 5:58 PM Escobar, Steven@OAL <[Steven.Escobar@oal.ca.gov](mailto:Steven.Escobar@oal.ca.gov)> wrote:

Dear Mr. Malamud:

On December 29, 2020, you emailed the Office of Administrative Law ("OAL") Reference Attorney, in which you requested copies of Titles 1 through 5, 7 through 23, and 25 through 28 of the California Code of Regulations (the "CCR"). Specifically, you requested that OAL "provide these records in all formats in [our] possession, including (but not limited to) structured, machine-readable digital formats, such as XML or PDF files." On January 8, 2021, OAL notified you that we would respond within the additional 14-days pursuant to

Government Code section 6253, subdivision (c). OAL subsequently responded (see below) on January 22, 2021, which included guidance as to the formats in which OAL holds the CCR and sought further clarification of what records you were interested in receiving. On February 3, 2021, you clarified that you were seeking all electronic versions of the referenced titles. We therefore respond as follows:

As OAL mentioned in its January 22, 2021, response, in addition to the hard copy and online version of the CCR, OAL has historical versions of the requested titles. These historical versions are contained on CD ROM and constitute the only electronic format in which OAL holds the information. The most recent version OAL has is dated November 2020 and is current through October 16, 2020. OAL no longer receives the CCR on CD ROM and this CD ROM is the last one OAL expects to receive. OAL also has various prior versions of the CCR on CD ROM. Based on OAL's examination of the November 2020 CD ROM, the regulatory content of the CD ROM is the same as that which is available online, however, it is current only through October 16, 2020, whereas the online version is updated weekly. Please note that upon OAL's review of this CD ROM, it is OAL's understanding that the contents of the CD ROM cannot be copied in whole and transferred to another storage device. It is OAL's understanding that in order to copy or produce the regulatory content of the CD ROM, each section would need to be manually extracted and copied from the CD ROM individually.

Other than the CD ROMs discussed above, OAL does not have the requested CCR titles in the electronic format(s) requested, including in a structured, machine-readable XML or PDF file. OAL staff uses the on-line version and the hard copy CCR. If you would like the contents of any of the CD ROMs, please let us know so that we can coordinate inspection or copying in accordance with the Public Records Act.

Please let us know if you have any questions or how you would like to proceed.

Sincerely,

**Steven Escobar**

Senior Attorney

Office of Administrative Law

Phone: (916) 324-6948

Fax: (916) 323-6826

E-Mail: [steven.escobar@oal.ca.gov](mailto:steven.escobar@oal.ca.gov)

---

**From:** Carl Malamud <[carl@media.org](mailto:carl@media.org)>

**Sent:** Wednesday, February 3, 2021 12:07 PM

**To:** Escobar, Steven@OAL <[Steven.Escobar@oal.ca.gov](mailto:Steven.Escobar@oal.ca.gov)>

**Cc:** David Halperin <[davidhalperindc@gmail.com](mailto:davidhalperindc@gmail.com)>; Caplan, Matt <[mcaplan@cooley.com](mailto:mcaplan@cooley.com)>; Mornin, Joe

<[jmornin@cooley.com](mailto:jmornin@cooley.com)>; O'Hollaren, Ryan T. <[rohollaren@cooley.com](mailto:rohollaren@cooley.com)>

**Subject:** Re: California Public Records Act request to the Office of Administrative Law

Dear Mr. Escobar -

Please find attached a letter in response to your January 22 electronic mail.

Please don't hesitate to contact me if you have any questions.

With best regards,

Carl Malamud

On Fri, Jan 22, 2021 at 11:34 AM Escobar, Steven@OAL <[Steven.Escobar@oal.ca.gov](mailto:Steven.Escobar@oal.ca.gov)> wrote:

Dear Mr. Malamud:

This is in response to the e-mail you sent to the Office of Administrative Law ("OAL") Reference Attorney on December 29, 2020, in which you requested copies of Titles 1 through 5, 7 through 23, and 25 through 28 of the California Code of Regulations (the "CCR"). Specifically, you requested that OAL "provide these records in all formats in [our] possession, including (but not limited to) structured, machine-readable digital formats, such as XML or PDF files." On January 8, 2021, we responded to your request and invoked the 14-day extension to respond pursuant to Government Code section 6253, subdivision (c). Our follow-up response is below.

The most up-to-date version of the CCR Titles you request are available online at <https://govt.westlaw.com/calregs/Index>. We also have the Titles you request in hard copy, which are considered the "official version" of the CCR. They comprise 38 volumes plus the Master Index. We can provide a paper copy of these records at a cost of \$0.20 per page. If you desire an electronic copy, we can also scan each page of the print version of the CCR into PDF files and provide those files to you. However, scanning each page of the print version of the CCR into PDF would be very time consuming and include additional costs, as there are over 29,000 pages in the print version of the CCR when you include the Master Index. OAL estimates that it would take approximately two to four weeks for one of our office technicians to scan this number of pages, and the cost of the office technician's time would need to be paid by you. If you choose to have OAL scan each page of the print version of the CCR into PDF files, please inform us of your request, as we will only begin scanning pages upon your specific request and payment of fees.

In addition, we also have historical versions of the CCR that we retain but that are not as up-to-date as those that you will find in the on-line version. All past versions are a snapshot in time of what was published during a particular period. We anticipate that you are looking for the most recent version of what is published, and therefore, suggest the online version. If this is not what you are seeking, please clarify what additional records you are looking for and we will let you know if we have them.

Document received by the CA 3rd District Court of Appeal.

If you need help searching the online CCR, please contact the OAL Reference Attorney at [staff@oal.ca.gov](mailto:staff@oal.ca.gov), or the Thomson Reuters technical support, which is on the same contact page as provided above.

Please let us know if we can be of further assistance.

Sincerely,

**Steven Escobar**

Senior Attorney

Office of Administrative Law

Phone: (916) 324-6948

Fax: (916) 323-6826

E-Mail: [steven.escobar@oal.ca.gov](mailto:steven.escobar@oal.ca.gov)

---

**From:** Carl Malamud <[carl@media.org](mailto:carl@media.org)>

**Sent:** Friday, January 8, 2021 5:26 PM

**To:** Escobar, Steven@OAL <[Steven.Escobar@oal.ca.gov](mailto:Steven.Escobar@oal.ca.gov)>

**Cc:** David Halperin <[davidhalperindc@gmail.com](mailto:davidhalperindc@gmail.com)>; Caplan, Matt <[mcaplan@cooley.com](mailto:mcaplan@cooley.com)>; Mornin, Joe <[jmornin@cooley.com](mailto:jmornin@cooley.com)>; O'Hollaren, Ryan T. <[rohollaren@cooley.com](mailto:rohollaren@cooley.com)>

**Subject:** Re: California Public Records Act request to the Office of Administrative Law

Dear Mr. Escobar:

Thank you for your note. We are happy to wait until January 22 for your response.

Best regards,

Carl Malamud

On Fri, Jan 8, 2021 at 5:20 PM Escobar, Steven@OAL <[Steven.Escobar@oal.ca.gov](mailto:Steven.Escobar@oal.ca.gov)> wrote:

Dear Mr. Malamud:

This is in response to the e-mail you sent to the Office of Administrative Law ("OAL") Reference Attorney on December 29, 2020, in which you requested copies of Titles 1 through 5, 7 through 23, and 25 through 28 of the California Code of Regulations (the "CCR"). Specifically, you requested that OAL "provide these records in all formats in [our] possession, including (but not limited to) structured, machine-readable digital formats, such as XML or PDF files" (your "CPRA Request").

Agencies are permitted to extend the date for responding to a public records request for fourteen days beyond the original 10-day deadline under specified circumstances. (Govt. Code, § 6253, subd. (c).) Your request was received by this office on December

29, 2020 and the initial deadline of our response therefor is January 8, 2021. Fourteen days beyond this date is January 22, 2021.

In this instance, an extension is needed as OAL needs to search for, collect, and appropriately examine a voluminous amount records, and consult with various individuals within OAL to respond to your CPRA request. We will provide a further response on or before January 22, 2021.

Sincerely,

**Steven Escobar**

Senior Attorney

Office of Administrative Law

Phone: (916) 324-6948

Fax: (916) 323-6826

E-Mail: [steven.escobar@oal.ca.gov](mailto:steven.escobar@oal.ca.gov)

**CONFIDENTIALITY NOTICE:** This e-mail from the State of California, with its contents and attachments, is solely for the use of the intended recipient and may contain confidential and privileged information. Unauthorized interception, review, copying, distribution, use, disclosure or reliance is prohibited. If you are not the intended recipient, please contact the sender and destroy all copies of this e-mail.

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**From:** Escobar, Steven@OAL

**Sent:** Friday, January 1, 2021 6:49 PM

**To:** 'Carl Malamud' <[carl@media.org](mailto:carl@media.org)>

**Cc:** David Halperin <[davidhalperindc@gmail.com](mailto:davidhalperindc@gmail.com)>; Caplan, Matt <[mcaplan@cooley.com](mailto:mcaplan@cooley.com)>; Mornin, Joe <[jmornin@cooley.com](mailto:jmornin@cooley.com)>; O'Hollaren, Ryan T. <[rohollaren@cooley.com](mailto:rohollaren@cooley.com)>

**Subject:** RE: California Public Records Act request to the Office of Administrative Law

Hi Carl,

This e-mail is to acknowledge receipt of your request.

Sincerely,

**Steven Escobar**

Senior Attorney

Office of Administrative Law

Phone: (916) 324-6948

Document received by the CA 3rd District Court of Appeal.

Fax: (916) 323-6826

E-Mail: [steven.escobar@oal.ca.gov](mailto:steven.escobar@oal.ca.gov)

---

**From:** Carl Malamud <[carl@media.org](mailto:carl@media.org)>

**Sent:** Tuesday, December 29, 2020 12:00 PM

**To:** OAL Reference Attorney <[OALReferenceAttorney@oal.ca.gov](mailto:OALReferenceAttorney@oal.ca.gov)>

**Cc:** David Halperin <[davidhalperindc@gmail.com](mailto:davidhalperindc@gmail.com)>; Caplan, Matt <[mcaplan@cooley.com](mailto:mcaplan@cooley.com)>; Mornin, Joe <[jmornin@cooley.com](mailto:jmornin@cooley.com)>; O'Hollaren, Ryan T. <[rohollaren@cooley.com](mailto:rohollaren@cooley.com)>

**Subject:** California Public Records Act request to the Office of Administrative Law

Dear Sir/Madam -

Please find attached a California Public Records Act request to the Office of Administrative Law. I would appreciate it if you would acknowledge receipt.

With best regards,

Carl Malamud, President

[Public.Resource.Org](http://Public.Resource.Org), Inc.

Document received by the CA 3rd District Court of Appeal.

# Exhibit E

Document received by the CA 3rd District Court of Appeal.



**PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation**

**Open Source “America’s Operating System”**

“It’s Not Just A Good Idea—It’s The Law!”

February 3, 2021

Steven Escobar  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA  
95814-4339  
[steven.escobar@oal.ca.gov](mailto:steven.escobar@oal.ca.gov)

Re: California Public Records Act Request

Dear Mr. Escobar:

I write in response to your [January 22, 2021 email response](#) to my California Public Records Act (“PRA”) request for electronic copies of Titles 1 through 5, 7 through 23, and 25 through 28 of the California Code of Regulations (the “CCR”).

We understand from your response that you possess the documents and information that we’ve requested, but that you are refusing to produce them. In so doing, the PRA places the burden on you to prove that disclosure is not warranted – either through a statutory exemption, or based on the public interest. *Becerra v. Superior Court*, 44 Cal. App. 5th 897, 914 (2020), review denied (May 13, 2020); *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal.4th 59, 70 (2014); *County of Los Angeles v. Superior Court*, 211 Cal.App.4th 57, 63 (2012); § 6255. Your letter did neither.

Instead, your letter ignores the PRA and offers to provide paper copies or scanned PDFs of paper copies. Neither option satisfies your duties under the PRA.

First, your letter states that the CCR is available online at <https://govt.westlaw.com/calregs/Index>. This does not satisfy your duty to provide electronic copies in every electronic format (1) in which you hold the information or (2) that you use to create copies for your own use or to provide to other agencies. *Cal. Gov. Code §§ 6253.9(a)(1)* (“The agency shall make the information available in any electronic format in which it holds the information.”), (a)(2) (“Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.”). When a request is made, “the agency may charge the cost to construct a record,” but it must produce a compliant electronic copy to the requestor. *Cty. of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1336 (2009). Your letter identifies no authority to the contrary. And indeed, none exists.

Moreover, the CCR version on the website you provided is not “publicly available” within the meaning of the PRA. This version is not “publicly available” because it imposes “end user restrictions” that “are incompatible with the purposes and operation of the CPRA.” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1334. For instance, it is constrained by terms of use that restrict users’ activity (<https://legal.thomsonreuters.com/en/legal-notices/terms-of-use>) a privacy policy governing the use of personal information (<https://www.thomsonreuters.com/en/privacy-statement.html>), and a cookie policy requiring users to enable first-party and third-party cookies to access the CCR (<https://www.thomsonreuters.com/en/privacy-statement.html#cookies>).

Second, paper copies and scanned PDFs are insufficient. The PRA clearly states that you must produce electronic copies in the electronic format (1) in which you hold the information or (2) that you use to create copies for your own use or to provide to other agencies. *Cal. Gov. Code §§ 6253.9(a)(1)-(2)*. Your letter does not state that you only possess paper copies of the CCR. Nor does your letter state that you do not possess copies in the file types that I requested:



“structured, machine-readable digital formats, such as XML or PDF files.” To be sure, a scanned PDF of a paper document is not a “structured, machine-readable digital format.” Thus, your response is inconsistent with your obligations to provide the information in an electronic format in which you hold it (or which you use to provide the CCR to other agencies) and fails to respond to my request for the information in a structured, machine-readable format. If your office possesses other electronic formats of the CCR—which I am convinced that you do—then the PRA mandates that you disclose those records to me in each of those electronic formats.

Please provide copies of Titles 1 through 5, 7 through 23, and 25 through 28 in every electronic format in your possession—including (without limitation) structured, machine-readable formats, such as XML files—by February 17. If you withhold any materials, please identify them and state the basis for your decision to withhold them, as required by Government Code § 6253(c). In the event we do not satisfactorily resolve this issue by February 26, I will authorize my attorneys to initiate writ proceedings to challenge the OAL’s refusal to provide me with these public records.

With best regards,

DocuSigned by:  
*Carl Malamud*  
E80A36AECAF6462...  
Carl Malamud, President  
Public Resource



cc: Matthew Caplan, Cooley LLP  
Joseph D. Mornin, Cooley LLP  
Ryan T. O’Hollaren, Cooley LLP  
David Halperin, Of Counsel, Public Resource

Document received by the CA 3rd District Court of Appeal.

# Exhibit F

Document received by the CA 3rd District Court of Appeal.



**PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation**

**Open Source "America's Operating System"**

"It's Not Just A Good Idea—It's The Law!"

December 29, 2020

Office of Public Affairs  
Department of General Services  
707 3rd Street, 8th Floor  
West Sacramento, CA 95605

Re: California Public Records Act Request (via email to DGSPublicAffairs@dgs.ca.gov)

Dear Office of Public Affairs:

Under the California Public Records Act (Government Code § 6250 et seq.) and Article I, § 3(b) of the California Constitution, I write to request a copy of Title 24 of the California Code of Regulations.

The contents of Title 24 are public records under Government Code § 6252(e) ("Public records' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.").

Please provide these records in all formats in your possession, including (but not limited to) structured, machine-readable digital formats, such as XML or PDF files. Under Government Code § 6250(a)(1), you must provide these records in "any electronic format in which [you] hold[] the information." Additionally, Government Code § 6250(a)(2) directs you to "provide a copy of an electronic record in the format requested if the requested format is one that has been used by [you] to create copies for [your] own use or for provision to other agencies." Thus, you must provide copies of these records in all formats that you hold, use, or provide to other agencies.

If you determine that any material is exempt from disclosure, please specify the exemption within 10 days, as required by Government Code § 6253.1(c). If you believe that an exemption is discretionary, please state why you are withholding the information. If, for any reason, you refuse to disclose any part of these records, Government Code § 6255 requires you to explain why.

Please provide a determination on this request within 10 days, as required by Government Code § 6253(c).

If needed, please contact me at (707) 385-1617 or carl@media.org. Please notify me of any duplication costs exceeding \$100 before you duplicate the records so that I may decide which records I want copied.

Sincerely,

DocuSigned by:  
  
E80A36AECAF6462...

Carl Malamud  
Public.Resource.Org, Inc.

cc: Matthew Caplan, Cooley LLP  
Joseph D. Mornin, Cooley LLP  
Ryan T. O'Hollaren, Cooley LLP  
David Halperin, Of Counsel, Public Resource

# Exhibit G

Document received by the CA 3rd District Court of Appeal.

January 7, 2021

VIA EMAIL  
Mr. Carl Malamud  
carl@media.org

Dear Mr. Malamud:

The California Building Standards Commission (CBSC) received your Public Records Act request (enclosed) on December 29, 2020 for records on file at our office.

Upon review of your PRA request it appears you are requesting a free copy of the 2019 California Building Standards Code (Title 24, California Code of Regulations).

The 2019 Title 24 is available for public inspection at the CBSC office pursuant to Health and Safety Code Section 18942. Additionally, most [state document depository libraries](#) have a set available, or your local city or county building or planning department may have a printed copy of Title 24 available for public viewing and/or copying. Title 24 may also be viewed online free of charge via the [CBSC](#) website. Individual parts or a full set of Title 24 may be purchased from the [International Code Council](#), [International Association of Plumbing and Mechanical Officials](#) (Parts 4 & 5) or the [National Fire Protection Association](#) (Part 3).

CBSC does not have the publishing rights to Title 24 and therefore cannot provide free copies to the public. This is because Title 24 is based on and includes model codes produced by the publishing entities, and they then publish California's codes, retaining copyright protections. Please contact the publisher(s) of the code books (linked above) to obtain a complete copy.

If you have any questions or need further information you may contact me by telephone at (916) 263-0916 or by email at [cbsc@dgs.ca.gov](mailto:cbsc@dgs.ca.gov).

Sincerely,



Michael Nearman, Deputy Executive Director  
California Building Standards Commission

Enclosure: December 29, 2020 PRA request email

cc: CBSC Chron File  
Department of General Services—Office of Public Affairs  
Department of General Services—Office of Legal Services

**Exhibit G - 000042**

# Exhibit H

Document received by the CA 3rd District Court of Appeal.



**PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation**

**Open Source “America’s Operating System”**

“It’s Not Just A Good Idea—It’s The Law!”

January 29, 2021

Michael Nearman  
Deputy Executive Director  
California Building Standards Commission  
2525 Natomas Park Drive, Suite 130  
West Sacramento, CA 95833  
[michael.Nearman@dgs.ca.gov](mailto:michael.Nearman@dgs.ca.gov)

Re: California Public Records Act Request

Dear Mr. Nearman:

I write in response to your [January 7, 2021](#) letter in response to my California Public Records Act (“PRA”) request for electronic copies of Title 24 of the California Code of Regulations.

We understand from your response that you possess the documents and information that we’ve requested, but that you are refusing to produce them. In so doing, the PRA places the burden on you to prove that disclosure is not warranted – either through a statutory exemption, or based on the public interest. *Becerra v. Superior Court*, 44 Cal. App. 5th 897, 914 (2020), review denied (May 13, 2020); *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal.4th 59, 70 (2014); *County of Los Angeles v. Superior Court*, 211 Cal.App.4th 57, 63 (2012); § 6255. Your letter did neither. Nowhere in the PRA – or any other California law, for that matter – are private interests, such as those of publishers, favored over California’s constitutional right to publicly access the law of the land. Here, Title 24 of the California Code of Regulations is unambiguously a public record subject to disclosure, and no exemption or public interest applies. The justifications for withholding listed in your letter are insufficient, and inconsistent with both the text and spirit of the PRA and applicable law.

First, you state that print editions of Title 24 are available for inspection at certain locations, and can be purchased (in whole or part) from private organizations. This does not satisfy your duty to provide electronic copies upon request under the PRA. See Cal. Gov. Code § 6253.9(a) (“any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person”). Nowhere does the PRA say that making rival versions of the records available at select libraries and state buildings exempts the agency from complying with PRA requests. When a request is made, “the agency may charge the cost to construct a record,” but it must produce a compliant electronic copy to the requestor. *Cty. of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1336 (2009). Your letter identifies no authority to the contrary. And indeed, none exists.

Second, you state that Title 24 can be viewed on the Building Standards Commission (“BSC”) website. This does not satisfy your duty to provide electronic copies in every electronic format (1) in which you hold the information or (2) that you use to create copies for your own use or to provide to other agencies. Id. §§ 6253.9(a)(1) (“The agency shall make the information available in any electronic format in which it holds the information.”), (a)(2) (“Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.”).

Moreover, the version of Title 24 on the BSC website is not “publicly available” within the meaning of the PRA. You provided a link to <https://www.dgs.ca.gov/BSC/Codes>, which directs visitors to view Title 24 on the proprietary website of International Code Council, Inc. at <https://codes.iccsafe.org/>. This version is not “publicly available” because it imposes severe “end user restrictions” that “are incompatible with the purposes and operation of the CPRA.” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1334. For instance, the “Basic” access level only provides read-only

access in a proprietary format. For further access and functionality—such as the ability to copy, paste, print, and search—a reader must buy a subscription, priced between \$216 and \$865 per year. Such licensing schemes and end user agreements have been squarely rejected by the California Court of Appeal. Id. at 1334.

Third, you state that “CBSC does not have the publishing rights to Title 24 and therefore cannot provide free copies to the public” because “Title 24 is based on and includes model codes produced by the publishing entities, and they then publish California’s codes, retaining copyright protections.” This is not a valid basis to withhold materials in response to a PRA request. As noted above, an agency “shall make the information available in any electronic format in which it holds the information.” [Cal. Gov. Code § 6253.9\(a\)\(1\)](#). Any refusal to provide public records on the basis of copyright protection must be supported by express statutory authority. *Cty. of Santa Clara*, 170 Cal. App. 4th at 1333 (because no “express authorization to secure copyrights” existed for GIS data, the county could not assert copyright protection as a basis for nondisclosure); *City of Inglewood v. Teixeira*, No. CV-15-01815-MWF (MRWx), 2015 U.S. Dist. LEXIS 114539, at \*8-9 (C.D. Cal. Aug. 20, 2015) (because the city could identify “no affirmative grant of authority that permits it to obtain and assert a copyright for the City Council Videos,” the court held that the city could not withhold the videos on copyright grounds).

Your letter points to no authority to support the notion that any alleged copyright interest in Title 24, even if valid, would prevent BSC from producing such records in response to the PRA request. This is because none exists. In fact, the California Court of Appeal has held that assertions of copyright protections over public records were inconsistent with the PRA: “The same persuasive reasoning applies to the interplay between copyright law and California’s public records law, with the result that unrestricted disclosure is required. Doing so effectuates the purpose of the statute, which is ‘increasing freedom of information by giving members of the public access to information in the possession of public agencies.’” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1335 (citing *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871, 876 (Fla. Dist. Ct. App. 2004)).

Please provide copies of Title 24 in every electronic format in your possession—including (without limitation) structured, machine-readable formats, such as XML files—by February 12. If you withhold any materials, please identify them and state the basis for your decision to withhold them, as required by Government Code § 6253(c).

In the event we do not satisfactorily resolve this issue by February 26, I will authorize my attorneys to initiate writ proceedings to challenge the BSC’s refusal to provide me with these public records.

With best regards,

DocuSigned by:  
*Carl Malamud*  
E80A36AECAF6462...  
Carl Malamud, President  
Public Resource



- cc: Matthew Caplan, Cooley LLP
- Joseph D. Mornin, Cooley LLP
- Ryan T. O’Hollaren, Cooley LLP
- David Halperin, Of Counsel, Public Resource

Document received by the CA 3rd District Court of Appeal.



# Exhibit I

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**From:** Marvelli, Mia@DGS <Mia.Marvelli@dgs.ca.gov>  
**Sent:** Tuesday, March 2, 2021 4:11 PM  
**To:** carl@media.org  
**Cc:** Mills, Laura@DGS; Nearman, Michael@DGS; DGS Public Affairs@DGS; davidhalperindc@gmail.com; Caplan, Matt; Mornin, Joe; O'Hollaren, Ryan T.  
**Subject:** FW: Response to December 29, 2020 Public Records Act Request  
**Attachments:** PRA-10-20 Response-01-07-21.pdf

[External]

---

Dear Mr. Malamud,

BSC stands by its original response letter and there will be no additional response.

Sincerely,

**Mia Marvelli**, Executive Director  
she/her  
*California Building Standards Commission*  
[dgs.ca.gov/BSC](https://dgs.ca.gov/BSC)  
916-263-0916

---

**From:** Carl Malamud <[carl@media.org](mailto:carl@media.org)>  
**Sent:** Wednesday, February 24, 2021 10:45 AM  
**To:** Mills, Laura@DGS <[Laura.Mills@dgs.ca.gov](mailto:Laura.Mills@dgs.ca.gov)>  
**Cc:** Nearman, Michael@DGS <[Michael.Nearman@dgs.ca.gov](mailto:Michael.Nearman@dgs.ca.gov)>; DGS Public Affairs@DGS <[DGSPublicAffairs@dgs.ca.gov](mailto:DGSPublicAffairs@dgs.ca.gov)>; David Halperin <[davidhalperindc@gmail.com](mailto:davidhalperindc@gmail.com)>; Caplan, Matt <[mcaplan@cooley.com](mailto:mcaplan@cooley.com)>; Mornin, Joe <[jmornin@cooley.com](mailto:jmornin@cooley.com)>; O'Hollaren, Ryan T. <[rohollaren@cooley.com](mailto:rohollaren@cooley.com)>  
**Subject:** Re: Response to December 29, 2020 Public Records Act Request

**CAUTION:** This email originated from a NON-State email address. Do not click links or open attachments unless you are certain of the sender's authenticity.

Dear Mr. Nearman and Ms. Mill -

I had not received any response to my letter of January 29, 2021. I was wondering if we should be expecting one from you? We had requested a response by February 12 with the hope that we could resolve these issues by February 26, which is this Friday.

Would you mind letting me know if you plan on responding? The letter is at the following address in case it was lost in the shuffle:

<https://law.resource.org/pub/us/cfr/regulations.gov/foia/bsc.ca.gov.20210129.pdf>

With best regards,

Carl Malamud

On Fri, Jan 29, 2021 at 1:16 PM Carl Malamud <[carl@media.org](mailto:carl@media.org)> wrote:

Dear Mr. Nearman and Ms. Mills -

Please find attached a reply to your letter of January 7, 2021.

Best regards,

Carl Malamud

On Thu, Jan 7, 2021 at 2:50 PM Mills, Laura@DGS <[Laura.Mills@dgs.ca.gov](mailto:Laura.Mills@dgs.ca.gov)> wrote:

Dear Mr. Malamud:

Please find attached CBSC's response letter to your request of December 29, 2020.

Best regards,

*Laura Mills, AGPA*

Department of General Services  
California Building Standards Commission  
2525 Natomas Park Drive, Suite 130  
Sacramento, CA 95833  
Office (916) 263-0916  
Direct (916) 263-1330  
Email [laura.mills@dgs.ca.gov](mailto:laura.mills@dgs.ca.gov)  
Website [www.dgs.ca.gov/bsc](http://www.dgs.ca.gov/bsc)



*CONFIDENTIALITY NOTICE: This message, together with any attachments, is intended only for the use of the individual or entity to which it is addressed. It may contain information that is confidential and prohibited from disclosure. If you are not the intended recipient, you are hereby notified that any dissemination or copying of this message or any attachment is strictly prohibited. If you have received this message in error, please notify the original sender immediately by telephone or by return e-mail and delete this message, along with any attachments, from your computer. Thank you.*

1 COOLEY LLP  
MATTHEW D. CAPLAN (260388)  
2 (mcaplan@cooley.com)  
JOSEPH D. MORNIN (307766)  
3 (jmornin@cooley.com)  
RYAN O'HOLLAREN (316478)  
4 (rohollaren@cooley.com)  
101 California Street, 5th Floor  
5 San Francisco, California 94111-5800  
Telephone: +1 415 693 2000  
6 Facsimile: +1 415 693 2222  
7 Attorneys for Plaintiff  
PUBLIC.RESOURCE.ORG, INC.  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SACRAMENTO  
11

12 PUBLIC.RESOURCE.ORG, INC.,  
13 Petitioners,  
14 v.  
15 CALIFORNIA OFFICE OF  
ADMINISTRATIVE LAW, and the  
16 CALIFORNIA BUILDING STANDARDS  
COMMISSION  
17 Respondents.  
18

Case No.  
[PROPOSED] ORDER GRANTING VERIFIED  
PETITION FOR WRIT OF MANDATE

19  
20 **TO ALL PARTIES AND TO THEIR ATTORNEY(S) OF RECORD HEREIN:**  
21  
22 Petitioner PUBLIC.RESOURCE.ORG, INC. ("Public Resource")'s Verified Petition for a Writ  
23 of Mandate came on regularly before this Court on \_\_\_\_\_, 2021.

24 This Court, having considered all submissions and oral arguments, orders as follows:

- 25 **1.** Public Resource's verified Petition for a Writ of Mandate directing Respondents  
26 California Office of Administrative Law and California Building Standards Commission  
27

BY FAX  
Document received by the CA 3rd District Court of Appeal.

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to comply with the California Public Records Act (Gov't. Code § 6250, *et seq.*) is  
GRANTED.

IT IS SO ORDERED.

Dated: \_\_\_\_\_ 2021

By: \_\_\_\_\_  
Judge of the Sacramento Superior Court

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COOLEY LLP  
MATTHEW D. CAPLAN (260388)  
(mcaplan@cooley.com)  
JOSEPH D. MORNIN (307766)  
(jmornin@cooley.com)  
RYAN O'HOLLAREN (316478)  
(rohollaren@cooley.com)  
101 California Street, 5th Floor  
San Francisco, California 94111-5800  
Telephone: +1 415 693 2000  
Facsimile: +1 415 693 2222

Attorneys for Petitioner  
PUBLIC.RESOURCE.ORG, INC.

**FILED/ENDORSED**  
**APR 20 2021**  
By: T. Crowther  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

PUBLIC.RESOURCE.ORG, INC.,  
  
Petitioners,  
  
v.  
  
CALIFORNIA OFFICE OF  
ADMINISTRATIVE LAW, and the  
CALIFORNIA BUILDING STANDARDS  
COMMISSION  
  
Respondents.

Case No. 34-2021-80003612  
  
NOTICE OF SUPPLEMENTAL AUTHORITY IN  
SUPPORT OF PETITION FOR WRIT OF  
MANDATE

Petitioner Public.Resource.Org., Inc. ("Public Resource") brings to the Court's attention the attached current contract between Respondent Office of Administrative Law ("OAL") and West Publishing Corporation ("West"). As explained in Public Resource's petition for a writ of mandate ("Petition"), the current version of this contract was not publicly available at the time of filing. (Petition at 8). Thus, Public Resource attached the prior version of the contract to its Petition (*Id.*, Exhibit B), along with public notices from OAL stating that none of the relevant provisions of the agreement were altered for the renewed 2021 contract with West. (*Id.*, Exhibit A).

BY FAX  
Document received by the CA 3rd District Court of Appeal.

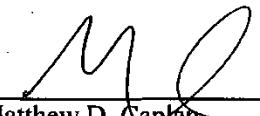
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Now that the current version of the contract is available, Public Resource has confirmed that the relevant provisions of the new contract are substantively identical to the prior agreement, and do not alter any of the argumentation or analysis contained in the Petition. Public Resource now writes to notify the Court and supplement the Petition with:

- 2021-2023 Contract between OAL and West Re: Publication of the California Code of Regulations, a copy of which is attached hereto as **Exhibit J**.

Dated: April 20, 2021

COOLEY LLP

By:   
Matthew D. Kaplan

*Attorneys for Petitioner*  
Public.Resource.Org, Inc.

Document received by the CA 3rd District Court of Appeal.

# Exhibit J

Document received by the CA 3rd District Court of Appeal.



SCO ID: 7910-OALCCR2020

STATE OF CALIFORNIA  
**AGREEMENT SUMMARY**  
 STD 215 (Rev. 04/2020)

AGREEMENT NUMBER <b>OAL-CCR-2020</b>	AMENDMENT NUMBER
---	------------------

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED

1. CONTRACTOR'S NAME West Publishing Corporation, a Thomson Reuters business		2. FEDERAL I.D. NUMBER 41-1426973
3. AGENCY TRANSMITTING AGREEMENT Office of Administrative Law	4. DIVISION, BUREAU, OR OTHER UNIT	5. AGENCY BILLING CODE 010385
6a. CONTRACT ANALYST NAME Kevin Hull, Senior Attorney	6b. EMAIL kevin.hull@oal.ca.gov	6c. PHONE NUMBER (916) 323-8916
7. HAS YOUR AGENCY CONTRACTED FOR THESE SERVICES BEFORE? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (If Yes, enter prior Contractor Name and Agreement Number) PRIOR CONTRACTOR NAME: West Publishing Corporation    PRIOR AGREEMENT NUMBER: OAL CCR Contract 2015		

8. BRIEF DESCRIPTION OF SERVICES  
 Legal Publishing Services – publication of California Code of Regulations & California Regulatory Notice Register (print & online).

9. AGREEMENT OUTLINE (Include reason for Agreement; Identify specific problem, administrative requirement, program need or other circumstances making the Agreement necessary; Include special or unusual terms and conditions.)

Administrative Requirement: Gov. Code § 11344 requires OAL to provide for the official compilation, printing and publication of state regulations in the California Code of Regulations (CCR) and to update the CCR weekly. Gov. Code § 11344.1 requires OAL to provide for the weekly publication of the California Regulatory Notice Register (CRNR). OAL is required to provide free internet access to the CCR and CRNR.

Revenue Agreement: Pursuant to SAM 8609, intellectual property is intangible property. Pursuant to SAM 8615 intangible property includes copyrights. OAL asserts a copyright in the CCR and CRNR. The contractor compensates the state for being granted the exclusive publication rights to the CCR and CRNR.

Special Terms and Conditions: See Exhibit D for special terms and conditions regarding ownership of IP rights, damages, audit provisions, special obligations upon termination of contract (transfer of data & subscription lists).

10. PAYMENT TERMS (More than one may apply)

Monthly Flat Rate     Quarterly     One-Time Payment     Progress Payment  
 Itemized Invoice     Withhold \_\_\_\_\_ %     Advanced Payment Not To Exceed \_\_\_\_\_ or \_\_\_\_\_ %  
 Reimbursement / Revenue  
 Other (Explain)

11. PROJECTED EXPENDITURES

FUND TITLE	ITEM	FISCAL YEAR	CHAPTER	STATUTE	PROJECTED EXPENDITURES
NA - Revenue Agreement					
OBJECT CODE	AGREEMENT TOTAL				

SCO ID: 7910-OAL-CCR-2020


STATE OF CALIFORNIA  
**AGREEMENT SUMMARY**  
 STD 215 (Rev. 04/2020)

AGREEMENT NUMBER <b>OAL-CCR-2020</b>	AMENDMENT NUMBER
---	------------------

OPTIONAL USE	AMOUNT ENCUMBERED BY THIS DOCUMENT \$0.00
	PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT \$0.00

I certify upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.

TOTAL AMOUNT ENCUMBERED TO DATE \$0.00
---

ACCOUNTING OFFICER'S SIGNATURE 	ACCOUNTING OFFICER'S NAME (Print or Type) Belinda Lindstrom	DATE SIGNED Nov. 24, 2020
---	--	------------------------------

12. AGREEMENT

AGREEMENT	TERM FROM	TERM THROUGH	TOTAL COST OF THIS TRANSACTION	BID, SOLE SOURCE, EXEMPT
Original	1/1/2021	12/31/2023	\$0.00	Bid
<input checked="" type="checkbox"/> Amendment 1				
<input checked="" type="checkbox"/> Amendment 2				
<input checked="" type="checkbox"/> Amendment 3				
<b>TOTAL</b>			\$0.00	

13. BIDDING METHOD USED

- Request for Proposal (RFP) (Attach justification if secondary method is used)
- Invitation for Bid (IFB)
- Other (Explain)
- Exempt from Bidding (Give authority for exempt status)
- Use of Master Service Agreement
- Sole Source Contract (Attach STD. 821)

Note: Proof of advertisement in the State Contracts Register or an approved form STD. 821, Contract Advertising Exemption Request, must be attached

14. SUMMARY OF BIDS (List of bidders, bid amount and small business status) (If an amendment, sole source, or exempt, leave blank)  
 One fully responsive bid was received from West Publishing Corporation offering revenue of \$200,000 annual payment plus 15.00% royalty on net revenues. Only other known potential bidder was LexisNexis who sent a letter dated 10/15/2020 declining to bid.

15. IF AWARD OF AGREEMENT IS TO OTHER THAN THE LOWER BIDDER, EXPLAIN REASON(S) (If an amendment, sole source, or exempt, leave blank)  
 NA


16. WHAT IS THE BASIS FOR DETERMINING THAT THE PRICE OR RATE IS REASONABLE?  
 Competitive bidding method was used for this revenue generating contract. \$200,000 annual license fee, 15.00% royalty payments and additional services to be provided to state represent significant benefit to state. Rejecting all bids would result in detriment to state.

17a. JUSTIFICATION FOR CONTRACTING OUT (Check one)

- Contracting out is based on cost savings per Government Code 19130(a). The State Personnel Board has been so notified.
- Not Applicable (Interagency / Public Works / Other \_\_\_\_\_)
- Contracting out is justified based on Government Code 19130(b). When this box is checked, a completed JUSTIFICATION - CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 547.60 must be attached to this document.

17b. EMPLOYEE BARGAINING UNIT NOTIFICATION

By checking this box, I hereby certify compliance with Government Code section 19132(b)(1).

AUTHORIZED SIGNATURE 	SIGNER'S NAME (Print or Type) Kenneth J. Pogue, Director	DATE SIGNED 11/24/2020
---	---	---------------------------

18. FOR AGREEMENTS IN EXCESS OF \$5,000: Has the letting of the agreement been reported to the Department of Fair Employment and Housing? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A	22. REQUIRED RESOLUTIONS ARE ATTACHED <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A
19. HAVE CONFLICT OF INTEREST ISSUES BEEN IDENTIFIED AND RESOLVED AS REQUIRED BY THE STATE CONTRACT MANUAL SECTION 7.10? <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A	23. IS THIS A SMALL BUSINESS AND/OR A DISABLED VETERAN BUSINESS CERTIFIED BY DGS? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes SB/DVBE Certification Number:
20. FOR CONSULTING AGREEMENTS: Did you review any contractor evaluations on file with the DGS Legal Office? <input type="checkbox"/> None on file <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A	
21. IS A SIGNED COPY OF THE FOLLOWING ON FILE AT YOUR AGENCY FOR THIS CONTRACTOR? A. Contractor Certification Clauses <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A B. STD 204 Vendor Data Record <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A	

Document received by the CA 3rd District Court of Appeal

SCO ID: 7910-OALECR2020

STATE OF CALIFORNIA  
**AGREEMENT SUMMARY**  
STD 215 (Rev. 04/2020)

AGREEMENT NUMBER	AMENDMENT NUMBER
OAL-CCR-2020	

24. ARE DISABLED VETERANS BUSINESS ENTERPRISE GOALS REQUIRED? (If an amendment, explain changes if any)  No (Explain below)  Yes \_\_\_\_\_ % of Agreement  
This contract has been exempted from DVBE goals by the Director of OAL.

25. IS THIS AGREEMENT (WITH AMENDMENTS) FOR A PERIOD OF TIME LONGER THAN THREE YEARS?  No  Yes (If Yes, provide justification below)

Due to considerable investment required of contractor, including highly trained and specialized staff devoted to the CCR and CRNR publication, a term of greater than one year is necessary to provide maximum benefit to the state in terms of both quality of work to be performed and the licensing and royalties paid to the state.

I certify that all copies of the referenced Agreement will conform to the original agreement sent to the Department of General Services.

SIGNATURE	NAME/TITLE (Print or Type)	DATE SIGNED
	Kenneth J. Pogue, Director	11/24/2020

SCO ID: 7910-OALCCR2020

STATE OF CALIFORNIA  
**AGREEMENT SUMMARY**  
 STD 215 (Rev. 04/2020)

AGREEMENT NUMBER <b>OAL-CCR-2020</b>	AMENDMENT NUMBER
---	------------------

**JUSTIFICATION - CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 547.60**


In the space provided below, the undersigned authorized state representative documents, with specificity and detailed factual information, the reasons why the contract satisfies one or more of the conditions set forth in Government Code section 19130(b). Please specify the applicable subsection. Attach extra pages if necessary.

The specialized publication services required under the contract are complex and require expertise, knowledge and ability not available through civil service. OAL reviews regulations proposed by more than 200 state agencies and files approved regulations with the Secretary of State nearly every business day. The publisher must engage in extensive editorial analysis of each approved regulation, including review of graphics, charts, tables, formulas, forms or text with unusual characteristics. The publisher prepares galleys that are carefully proofed against the filed copy of regulations. The publisher must provide indexing services, maintain the CCR database, publish and distribute weekly updates to subscribers and publish the CRNR weekly. The contractor must provide the CCR in print and electronic formats and must maintain and provide a free internet version of the CCR. The contractor must also provide OAL with legal research services and additional publications at no additional cost. Contracting out also allows the state to obtain the benefit of commercial marketing practices by the contractor to establish a reasonable return for the states intellectual property. The Office of State Publishing has issued a Service Release Determination stating that OSP does not have the expertise to successfully produce the required publications under this contract.

*This justification is pursuant to Government Code section 19130(6)(3).*

*KP  
11/23/2020*

*The undersigned represents that, based upon his or her personal knowledge, information or belief the above justification correctly reflects the reasons why the contract satisfies Government Code section 19130(b).*

SIGNATURE 	NAME/TITLE (Print or Type) Kenneth J. Pogue, Director	DATE SIGNED 11-24-2020	
PHONE NUMBER (916) 323-6221	STREET ADDRESS 300 Capitol Mall, Suite 1250		
EMAIL kenneth.pogue@oal.ca.gov	CITY Sacramento	STATE CA	ZIP 95814

SCO ID: 7910-OALCCR2020

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER OAL-CCR-2020	PURCHASING AUTHORITY NUMBER (if Applicable)
----------------------------------	---

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Office of Administrative Law

CONTRACTOR NAME

West Publishing Corporation, a Thomson Reuters business

2. The term of this Agreement is:

START DATE

January 1, 2021

THROUGH END DATE

December 31, 2023

3. The maximum amount of this Agreement is:

Revenue Contract: \$200,000 annual licensing fee + 15.00% royalty paid to OAL

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits	Title	Pages
Exhibit A	Scope of Work	10
Exhibit B	Budget Detail and Payment Provisions	2
Exhibit C *	General Terms and Conditions - (GTC 04/2017) # 12/27/20	1
Exhibit D	Special Terms and Conditions	8

Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

**CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

West Publishing Corporation, a Thomson Reuters business

CONTRACTOR BUSINESS ADDRESS

610 Opperman Drive

CITY

Eagan

STATE

MN

ZIP

55123

PRINTED NAME OF PERSON SIGNING

John S. Nelson

TITLE

Director of Procurement & Proposal Management

CONTRACTOR AUTHORIZED SIGNATURE

*John Nelson*

DATE SIGNED

11/19/2020

**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

Office of Administrative Law

CONTRACTING AGENCY ADDRESS

300 Capitol Mall, Suite 1250

CITY

Sacramento

STATE

CA

ZIP

95814

PRINTED NAME OF PERSON SIGNING

Kenneth J. Pogue

TITLE

Director

CONTRACTING AGENCY AUTHORIZED SIGNATURE

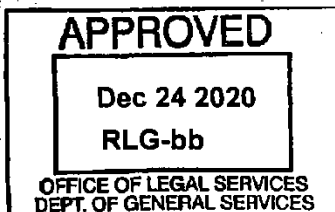
*[Signature]*

DATE SIGNED

11/24/2020

CALIFORNIA DEPARTMENT OF GENERAL SERVICES

EXEMPTION (if Applicable)



## **Exhibit A, Scope of Work/Required Publication Services**

### **1. Costs**

All costs incurred by the contractor in its performance of this contract are the responsibility of the contractor and shall not be charged to the state of California.

### **2. Master Database**

The contractor shall maintain the Official California Code of Regulations (CCR) in an electronic database, which for purposes of this contract shall be referred to as the "Master Database." To ensure that all CCR products accurately reflect the Official CCR content, the Master Database must be the source for all hard copy text and electronic products as well as the source for the contents of the Internet CCR.

Prompt and accurate updating of the CCR Master Database is a key component of the CCR publication contract. Except as provided herein, the contractor shall update the Master Database as soon as feasible after OAL provides the contractor with regulations that have been endorsed by the Secretary of State, preferably within 15 days but in no event longer than 30 days after OAL delivers the regulation text. The contractor may, after written notification and upon prior written approval by OAL, have an additional agreed upon number of days, not to exceed 7 days, to complete updates to the Master Database. In requesting such additional time, the contractor shall notify OAL at least 5 days in advance of the need for additional time, specify the amount of additional time needed and include an explanation of the reasons for the request, such as an unusually high volume of regulations delivered in the week at issue, intervening holidays, or information technology maintenance or upgrades. The text of regulations and all other items in the Master Database shall be subject to inspection, revision, and correction by OAL. The contractor shall take immediate action to make any corrections specified by OAL.

The contractor shall maintain the Master Database in a secure environment and shall establish an Availability and Operational Recovery Plan to protect the integrity and availability of the Master Database against the risk of attacks that may cause nuisance, significant interruptions of service or unauthorized changes to the Master Database content. At a minimum, the contractor's Availability and Operational Recovery Plan shall include upgrading software and installing software patches and updates as often as necessary to address security risks; removal of unnecessary software applications that run with administrative privileges or that receive packets from the network; use of an external firewall; establishment of remote administration security; restricted server scripts; web server shields with packet filtering, and education of personnel working with the Master Database.

The CCR Master Database shall include tables of contents, headings and captions, regulation text including all charts, graphs, tables, illustrations, forms etc. designated by OAL for publication, authority and reference citations, and history notes.

Upon completion or termination of the contract, the contractor shall provide OAL with a useable electronic database containing all the data from the Master Database required by

Exhibit J - 000052

this section or owned by OAL pursuant to section 18. The data must be provided in a standard (free from any proprietary formatting or codes) portable and easily processed or converted format such as XML or a relational database capable of extraction via standard SQL queries. The contractor shall be responsible for all costs associated with transferring the data to OAL in a usable form upon completion or termination of the CCR publication contract.

### **3. California Code of Regulations**

#### **3.1. Official California Code of Regulations**

The contractor shall publish the Official CCR on 8½ by 11 inch pages, loose leaf, in a form which assures that pages can be easily inserted into standard three-ring binders. Text paper shall be 20 lb. standard weight with a minimum of 30% postconsumer recycled content. Regulation text shall be printed in black, with font size no smaller than that used in the Official CCR in 2019. The format of the Official CCR is subject to OAL approval prior to initial publication. The contractor must submit any future format changes to the Director of OAL for approval prior to implementing any changes. The contractor may offer binders for sale to subscribers but shall not require any subscriber to purchase binders.

The contractor shall accurately and legibly print regulations as filed with the Secretary of State, including all charts, graphs, tables, illustrations, notes, graphics, etc. Each volume of the Official CCR shall contain the following:

- (a) Title Page;
- (b) A page listing hierarchy for that title with a nomenclature cross-reference for the pre-1990 hierarchy;
- (c) Table of contents for that title listing the headings of each Division, Chapter, Subchapter, Group and Subgroup where applicable, and Article;
- (d) Division level table of contents preceding each division within a title;
- (e) Complete text of regulations, including all narrative text, forms, appendices, prefaces, footnotes, endnotes, tables, formulas, graphics, illustrations or other regulatory material designated by OAL for publication;
- (f) Authority and reference citations for each section;
- (g) History notes for each section;
- (h) The Register number and publication date of the last revision on each page to reflect the last date any item on that page was affected by a regulatory action;
- (i) Such other materials as OAL may direct to be published.

In addition to the items listed above, the Official CCR may, in the contractor's sole discretion, also include annotations, appropriate research references, or other editorial material created by the contractor, to which the contractor may retain all intellectual property rights.

#### **3.2. CCR Supplement ("Register")**

The contractor shall compile the regulations filed during each calendar week, and use this compilation to update the CCR by publishing the weekly California Code of Regulations (CCR) Supplement. Using the underline (or italics) and strikeout in regulation text to discern

changes to the existing text of the CCR, the publisher shall integrate newly adopted, amended or repealed regulations into the CCR and publish the resulting regulatory changes in the CCR Supplement.

The contractor shall number the CCR Supplement by week and year (e.g. Register 2019, No. 42 contains regulations filed with the Secretary of State during the 42nd week of 2019); and shall publish the weekly CCR Supplement preferably within 15 days but in no event longer than 30 days after OAL delivers regulation text for publication. The contractor may, after written notification and upon prior written approval by OAL, have an additional agreed upon number of days, not to exceed 7 days, to complete publication. In requesting such additional time, the contractor shall notify OAL at least 5 days in advance of the need for additional time, specify the amount of additional time needed and include an explanation of the reasons for the request, such as an unusually high volume of regulations delivered in the week at issue, intervening holidays, or information technology maintenance or upgrades.

For sections that are being repealed, the contractor shall add the word (Repealed) to the heading for the repealed section. If other repealed section(s) appear on a page being revised in that issue of the CCR Supplement, and the heading of the other repealed section(s) are missing the word (Repealed), the contractor shall add (Repealed) to that heading.

The Supplement shall match the format requirements stated above for the Official CCR. The CCR Supplement shall be distributed to subscribers accompanied by information adequate to inform subscribers how to replace the updated pages of the Official CCR. The contractor shall distribute the CCR Supplement on a timely basis to subscribers for all full sets, subscribers to individual title(s) or subscribers to any other product iteration offered by the publisher that are affected by the weekly updates.

### **3.3. CCR Tables of Contents**

#### **3.3.1. Master Table of Contents**

The contractor shall publish a Master Table of Contents with a complete listing by heading of all regulations in all titles (excluding Title 24) by Title, Division, Chapter, Subchapter, Group and Subgroup where applicable, and Article. The contractor shall update the Master Table of Contents quarterly to reflect regulations that were added, amended or repealed during the previous calendar quarter, and distribute any revised pages, accompanied by instructions adequate to inform subscribers how to replace the updated pages.

#### **3.3.2. Division Level Table of Contents**

Each Division of the CCR shall be preceded by a Division Level Table of Contents for that Division listing the headings of each Chapter, Subchapter, Group and Subgroup where applicable, Article and Section. The contractor shall update the Division Level Tables of Contents quarterly to reflect regulations that were added, amended or repealed during the previous calendar quarter, and distribute any revised pages, accompanied by instructions adequate to inform subscribers how to replace the updated pages, except that if regulatory



material filed by OAL with the Secretary of State includes entire new chapters or entire new articles, the contractor shall distribute a revised Division level Table of Contents (or revised pages in the Division Level Table of Contents) when it publishes the new chapter or article.

#### **4. Master Index**

The contractor shall create and publish a Master Index to which the contractor may retain all intellectual property rights. The Master Index shall include a Table of Statutes to Regulations, listing all of the California statutes cited in the Authority and Reference notes following each section of the CCR. The Master Index shall be updated no less than annually.

The Master Index may, in the contractor's sole discretion, include appropriate research references, annotations or other editorial material to which the contractor may retain all intellectual property rights. The title page of the Master Index shall indicate that the Master Index has not been reviewed by the Office of Administrative Law and is not part of the Official California Code of Regulations. The contractor shall publish the Master Index no later than 180 days after the start date of the CCR publication contract.

The contractor may copyright the Master Index. If the contractor declines to obtain a copyright on its own behalf, the contractor shall, to the extent allowable by law, obtain a copyright in the name of OAL on behalf of the State of California. All expenses of obtaining such copyright, either on behalf of the contractor or OAL, shall be the responsibility of the contractor.

#### **5. Electronic CCR**

The contractor may publish the CCR electronically in addition to hardcopy. This is distinct from and does not change the contractor's obligations regarding the Internet CCR set forth in section 7 below.

#### **6. CCR Products**

In addition to selling full sets of the CCR in hardcopy and electronically, and licensing all or part of the CCR to other publishers, the contractor may, in its sole discretion, elect to additionally publish any segments or compilations of the CCR for sale as separate units, in any topic area or other grouping, and in any format.

#### **7. Internet CCR**

The contractor shall make available on the Internet and free to the public an electronic version of the CCR which is capable of accommodating a high number of simultaneous users, at minimum supporting the number of simultaneous users who visited the Internet CCR from July 1, 2019 to June 30, 2020. The Internet CCR shall meet the following minimum requirements:

- (a) Accessible to Persons with Disabilities: The contractor shall ensure that the Internet CCR complies with applicable state and federal requirements for accessibility by persons with disabilities. The contractor shall ensure that existing content of the

Internet CCR meets state and federal requirements in effect at the time of commencement of the contract and that new content delivered to the contractor meet state and federal accessibility requirements in effect at the time the content is delivered to the contractor.

- (b) **Content:** The Internet CCR shall accurately reflect the content of the Official CCR. The contractor shall update the Internet CCR no later than 5:00 p.m. Pacific time on the next business day following the date it issues the weekly CCR Supplement. The contractor may, after written notification and upon prior written approval by OAL, have an additional agreed upon number of days, not to exceed 7 days, to complete updates to the Internet CCR. In requesting such additional time, the contractor shall notify OAL at least 5 days in advance of the need for additional time, specify the amount of additional time needed and include an explanation of the reasons for the request, such as an unusually high volume of regulations delivered in the week at issue, intervening holidays, or information technology maintenance or upgrades. If content delivered to the contractor raises state or federal ADA accessibility issues that require additional information from OAL or another state agency, such as alternative text or approval of formatting changes, such content shall not be published in the Internet CCR until such information is provided and the content meets applicable accessibility standards. All other content shall be published in accordance with this section. The Internet CCR shall accurately reflect the date on which the online CCR was last updated.
- (c) **Format:** The Internet CCR shall include any necessary information, software, and technical support to make the complete CCR available, including graphics, tables, forms and any other material included in the Official CCR. The format shall be compatible with all Internet browser software and supported versions widely in use, including, but not limited, to Microsoft Edge, Internet Explorer, Mozilla Firefox, Apple Safari and Google Chrome. The format shall also be compatible with use on devices commonly in use, such as smart phones, tablets, laptops and personal computers. The use of browser plugins or additional software (such as Adobe Flash, Microsoft Silverlight etc.) to view the database content is discouraged.
- (d) **Agency List and Division Level Links:** The Internet CCR shall contain list of state agency names and addresses, each of which shall contain a permanent link (i.e. hard link that a user may save as a "favorite" or "bookmark" browser link) to the division level table of contents for that agency. This list shall be updated at least annually by the contractor, except that the contractor shall also update agency specific information upon notification by OAL of a change of information for an agency.
- (e) **Data Integrity and Availability:** The contractor shall make the Internet CCR available 24 hours a day, 7 days a week, excluding scheduled maintenance approved by OAL not to exceed 2 hours per week. In the event scheduled maintenance may or will require an Internet CCR outage of more than 2 hours, contractor will coordinate any such outage with OAL and provide OAL at least two weeks notice before the outage. Contractor will also post a conspicuous notice on the Internet CCR home page for at least two weeks immediately preceding and during the outage to inform users of the planned outage and anticipated duration. The maximum allowable outage during times of disaster shall not exceed 5 working days. The contractor shall take steps to protect the integrity and availability of the Internet CCR against the risk of attacks that

may cause nuisance, alter the data by unauthorized individuals, or significant interruptions of service. These steps shall include upgrading software and installing patches as often as necessary to address security risks; removal of unnecessary software applications that run with administrative privileges or that receive packets from the network; use of an external firewall; establishment of remote administration security; restricted server scripts; web server shields with packet filtering, and education of personnel working with the Internet CCR.

- (f) **Accuracy:** The contractor shall ensure that the Internet CCR accurately reflects the most recent weekly updated version of the Official CCR; that it is complete and contains all the material defined as part of the Official CCR; and that it is fit for publication on the Internet.
- (g) **User-Friendly:** Response time for a basic query must be comparable to response times for Internet legal research databases widely in use. The contractor shall ensure that users can view, print and search with reasonable ease of use. The contractor shall provide users with a universal search capability, including, but not limited to search by natural language, literal strings, and available use of Boolean operators. The contractor shall include a link to "FAQ" and/or "Help" on the home page to provide information to help users navigate the website. Linking commercial advertising is expressly prohibited without the prior written consent of the Director of OAL.
- (h) **User Support:** The contractor shall provide toll-free customer assistance during regular business hours. The contractor shall respond to customer service inquiries within two business days of receiving a voice message, written communication, or email.
- (i) **Privacy:** The contractor shall collect information adequate to report to OAL the number of visits to the website and length of session; however the contractor shall not collect personally identifiable information from any user's Internet session without the explicit, opt-in consent of the user. The contractor shall post a "privacy and conditions of use" page informing users about the collection and use of information regarding visits to the online CCR.
- (j) **Reports:** The contractor shall provide OAL with quarterly reports about usage of the Internet CCR during the prior calendar quarter. This report shall contain information about the number of users visiting the Internet CCR, including the number of visitors per week and average session length. The contractor shall also report the number and type of technical support queries for the Internet CCR, and provide a detailed explanation for any unanticipated interruption in service that exceeds one hour.
- (k) **Title 24 Explanatory Note:** The contractor shall list title 24 in the list of CCR titles in the Internet CCR, state that title 24 is published by the Building Standards Commission (BSC) and link the listing for title 24 to the BSC website at <http://www.bsc.ca.gov/default.htm>.

## 8. The California Regulatory Notice Register

The contractor shall publish the California Regulatory Notice Register (Notice Register) each Friday using material provided by OAL the previous week. The contractor may elect to receive the material in hardcopy or via electronic transmittal. The Notice Register shall be printed on 8½ by 11-inch pages, three-hole punched, in a format of comparable quality to

that in use in 2019. Text paper shall be 20 lb. standard weight with a minimum of 30% postconsumer recycled content. Text shall be printed in black; font size shall be no smaller than 10 point for text within paragraphs.

Potential elements of the Notice Register include, but are not limited to:

- (a) Notices of Proposed Regulatory Action
- (b) Summaries of approved regulations filed with the Secretary of State the previous week
- (c) Summaries of regulation decisions issued during the previous week and summaries of the reasons for OAL disapproval of a proposed regulation
- (d) Quarterly index of OAL regulation decisions
- (e) An agency's request for review of an OAL disapproval decision, OAL's response to the agency request for review, and the Governor's decision
- (f) Underground regulation petitions and underground regulation determinations issued pursuant to Government Code section 11340.5
- (g) General Public Interest Notices
- (h) Petition decisions pursuant to Government Code section 11340.7
- (i) Periodic indices of regulations approved and filed with the Secretary of State
- (j) OAL announcements
- (k) An Annual Rulemaking Calendar pursuant to Government Code section 11017.6.  
The contractor may distribute the Annual Rulemaking Calendar to subscribers on CD or other electronic format, but shall provide a print version upon request by any subscriber.

By 10:00 a.m. Pacific Time on every Friday, the contractor shall send a linked PDF copy of that day's issue of the Notice Register which fully and accurately reflects the print version of the Notice Register. (For purposes of this RFP, the term "linked PDF copy" means that each item listed in the online Table of Contents shall include a hyperlink so that clicking on that item in the Table of Contents takes the user to that notice in the text of the Notice Register.) The linked PDF copy of the Notice Register shall be sent by electronic mail to the person(s) designated by the Director of OAL to receive the linked PDF copy of the Notice Register. The linked PDF copy of the Notice Register is required to be published on OAL's website and therefore the linked PDF copy of the Notice Register shall meet all state and federal ADA accessibility requirements in effect at the time the Notice Register is provided to OAL.

## 9. Transmission of Material for Publication

OAL shall furnish to the contractor, at the contractor's expense, all regulations, notices and any other material designated for publication under the CCR publication contract. OAL shall deliver to the contractor, at the contractor's expense, a copy of approved regulations endorsed by the Secretary of State each day that OAL files regulations with the Secretary of State. The contractor's method for collection and delivery shall provide for routine delivery the next business day after OAL files approved regulations with the Secretary of State. OAL shall provide the contractor with approved notices each week via electronic mail or other mutually agreed upon method.

The contractor may elect to receive an unofficial advance copy of proposed regulations prior to review and action by OAL, to be transmitted to the contractor at the contractor's expense. The contractor shall understand that these unofficial advance copies of regulations may be revised before filing or may never be filed with the Secretary of State, and may therefore not become part of the Official CCR.

By 10:00 a.m. on the business day following the date OAL takes action on any proposed regulatory action, OAL shall inform the contractor of such action by sending, via electronic mail, a Daily Action Report containing the following information:

- (a) OAL File Number
- (b) Title affected
- (c) Agency
- (d) OAL Action (Approval/Disapproval/Withdrawn)
- (e) Date of filing with Secretary of State

## 10. Editorial Responsibilities and Accuracy

The contractor shall ensure that regulation text, as published, accurately reflects the final regulation text as filed with the Secretary of State. The contractor shall ensure that notice text, as published, accurately reflects the text of the notice provided by OAL. All editorial work, including but not limited to proofreading, copyreading, correction, data preparation, formatting, and typographical composition work for the CCR and Notice Register, shall be performed at the contractor's expense.

The contractor shall not alter the text of regulations, notices or any other materials furnished by OAL for publication, except as expressly directed or authorized by OAL. If, at any time during the CCR publication contract, OAL determines that the publisher's editorial work is unsatisfactory, OAL will advise the publisher in writing and give the publisher a reasonable opportunity to correct any deficiencies. OAL defines a satisfactory level of accuracy as zero percentage (0%) of error rate as compared to the final regulation text filed with the Secretary of State or as compared to the text of notices provided by OAL.

The text of regulations and all data in the Master Database shall be subject to inspection, revision, and correction by OAL. Questions regarding the text of regulations or notices shall be promptly called to the attention of OAL. Inferior, unprofessional, or unsatisfactory work shall be rejected and returned to the contractor for prompt correction at no additional cost to the state or CCR subscribers. OAL's inspection, revision, or acceptance of work shall not be considered a waiver of the contractor's duty to correct, at the contractor's own expense, errors or defects subsequently discovered.

The contractor shall advise the Director of OAL in advance, in writing, of any proposed changes in the method and manner of performing editorial work covered by the CCR publication contract. The Director of OAL, or designated representative, and the contractor's representative shall, on the request of either party or at reasonable intervals, meet and confer to foster communication and cooperation between OAL and the contractor about the parties' rights and responsibilities under the CCR publication contract.

## 11. Publications and Services for OAL

The contractor shall provide OAL during the term of the CCR publication contract with the following publications and products, free of charge:

- (a) Four (4) subscriptions to the Official CCR and CCR Supplement in hard copy;
- (b) Three (3) subscriptions to the Master Table of Contents, in hard copy;
- (c) Three (3) subscriptions to the Master Index, in hard copy;
- (d) One (1) subscription to Annotated California Codes;
- (e) Five (5) copies of each issue of the California Regulatory Notice Register;
- (f) One (1) complete replacement set of CCR binders annually;
- (g) 1000 copies annually of a softbound book containing selected statutes and regulations specified by OAL as relevant to California rulemaking law. The format and content of the book shall be substantially similar to the 2019 edition of "California Rulemaking Law under the Administrative Procedure Act."

Additionally, the contractor shall provide each employee of OAL, for the exclusive use by OAL, with free access to any online legal research database services provided by the contractor. The level of service provided shall include, at a minimum, access to cases and judicial materials, statutes and legislative materials, administrative law and regulations, analytical materials, and journals and law reviews for all states and the federal government; news and business materials available to basic national service subscribers, any other features available to subscribers that are reasonably relevant to OAL's duties, and to new online legal research database services created during the term of the CCR publication contract that are reasonably relevant to OAL's duties.

## 12. Publications for County Clerks and Depository Libraries

The contractor shall provide, free of charge, one (1) subscription of the hard copy version of the CCR (or, at the recipient's option, a subscription in an electronic format that is updated at least monthly, on CD ROM or other mutually agreeable electronic format to each of the fifty-eight (58) county clerks or their designees, pursuant to Government Code section 11343.5; and to each state depository library, pursuant to Government Code sections 14900-14912.

The contractor shall provide, free of charge, one (1) subscription of the hardcopy version of the Notice Register (or, at the recipient's option, a subscription in an electronic format) to state depository libraries, pursuant to Government Code sections 14900-14912.

## 13. Reports

The contractor shall provide OAL with periodic reports regarding the content of the Official CCR and the Notice Register. These reports are to be provided no less often than annually and shall include but are not limited to:

- (a) The number of regulation sections in existence at the end of the prior calendar year. This report shall specify the total number of active regulation sections and the total number of repealed regulation sections in each title, and in addition shall specify the total number of sections in all CCR titles combined;

- (b) A tally of the number of regulations adopted, amended or repealed during the prior calendar year. This report shall specify the number of files sent by OAL for publication and the number of regulation sections that were adopted, amended or repealed during the period covered.
- (c) A page count of the Official CCR for the prior calendar year. This report shall state the number of pages in each title and include the total number of pages for all titles.

**Exhibit B, Revenue Provisions****14. Annual License Fee and Royalty**

In exchange for the electronic delivery of the text of regulations and the state-created material to be published in the Official California Code of Regulations and the California Regulatory Notice Register and for being granted the exclusive rights to publish the Official California Code of Regulations and the California Regulatory Notice Register, the contractor agrees to pay an annual license fee of \$200,000.00 and a royalty of 15.00% on net revenues.

For purposes of this agreement, "net revenues" means all sales proceeds less returns, discounts refunded to the customer, and, if not charged separately but included in the sales price, sales taxes, transportation and handling, and in addition, all revenues received from licenses to third parties (including affiliated companies) without any reduction.

The contractor shall pay the annual license fee in advance, at quarterly intervals, beginning with the commencement of the CCR publication contract on January 1, 2021. No portion of the annual license fee shall be refundable during a quarter notwithstanding early termination of the contract.

The contractor shall pay the royalty at quarterly intervals. All royalties payable pursuant to this agreement shall accrue to the benefit of OAL, and be accounted for by the contractor, during each of the quarterly periods ending on March 31, June 30, September 30 and December 31 of each calendar year. The contractor shall pay OAL any and all royalty amounts due for each quarterly period within 90 days after the end of that quarterly period.

If the contractor provides academic institutions or governmental entities such as the courts with significantly discounted rates for its Internet legal research database because of their academic nature or the public benefit they provide, no royalties shall be paid by the contractor for CCR-related usage of the contractor's Internet legal research database by those customers. This exemption shall not apply to any academic institution or governmental entity whose subscription agreement is modified to require payments at rates comparable to those paid by commercial entities.

**15. Compensation Delivery Requirements**

Compensation shall be mailed or delivered to the following address:

Office of Administrative Law  
ATTN: Kenneth J. Pogue, Director  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

**16. Standard Budget Contingency Clause**

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no



liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the state of California shall have the option to either cancel this agreement with no liability occurring to the state, or offer an agreement amendment to the contractor to reflect the reduced amount.

**Exhibit C, State of California General Terms and Conditions**

The state of California General Terms and Conditions (GTC) are hereby incorporated by reference and made part of this agreement as if attached hereto. This document can be viewed at <https://www.dgs.ca.gov/-/media/Divisions/OLS/Resources/GTC-April-2017-FINALapril2017.pdf?la=en&hash=>.

## Exhibit D, Special Terms and Conditions

### 17. Compensation and Royalties

Refer to Exhibit B, Revenue Provisions.

### 18. Intellectual Property Rights

The Official CCR, Notice Register and the state created data within the Master Database, in all forms, are the sole and exclusive property of the state of California. Any copyrights in the Official CCR and Notice Register, excluding contractor's proprietary enhancements, shall be owned, noticed, and registered in the name of OAL on behalf of the state of California. In no event shall the Official CCR or Notice Register be considered a "joint work" as that term is defined in 17 U.S.C. section 101. Additional editorial enhancements, including but not limited to those described below, shall be the exclusive intellectual property of the contractor. The contractor agrees to deliver to OAL, at no cost to the state of California, all documents required for OAL to register or otherwise protect the state's intellectual property in the United States or in any other country and to recognize ownership in such works by the state of California. The contractor shall take no action which will infringe or abridge the rights of the state of California in any of the works which are the subject of this CCR publication contract.

The contractor shall not procure or claim any copyright or other intellectual property rights with respect to the Official CCR, the Notice Register or the Master Database, or in the Master Table of Contents the contractor develops pursuant to this CCR publication contract, or in any of the following material:

- Tables of contents for each Title and Division
- The hierarchical structure of the CCR (divisions, chapters, articles, etc.)
- The captions (e.g. Title 1, Section 6, "Submission of Regulatory Actions (Form 400)")
- The text of the regulations, including any appendices, tables, graphics, illustrations, charts, forms or other items that are part of regulatory material filed with the Secretary of State and designated by OAL for publication in the CCR
- Authority and Reference citations
- History Notes
- The Official California Code of Regulations Supplement

The state of California will own the data used to publish the California Code of Regulations and the California Regulatory Notice Register. Pursuant to section 2 of this contract, the contractor will provide to the state of California, upon contract termination at no additional cost, all data in the Master Database in an electronic format that preserves the content of the CCR for future publication.

The state of California expressly reserves the right to use the CCR, its captions, text, and related notations, etc., in any manner that the state so chooses.

The state grants the contractor the exclusive right to publish and use the Official CCR and Notice Register and/or provide the Official CCR and Notice Register to third parties in whatever form and by whatever means it desires, subject to the licensing and royalty

provisions of this contract. All versions of the CCR licensed shall accurately reflect the content of the Official CCR.

The contractor may add editorial enhancements which do not alter the substance of the CCR, CCR Supplement, or Notice Register, and may copyright the editorial enhancements. All expenses of obtaining copyright, either on behalf of the contractor or the state of California, will be the responsibility of the contractor, and copies of any documents pertaining to copyright must be provided to the Director of OAL. OAL and the state of California shall have a royalty-free, worldwide, nonexclusive, perpetual license, for use of all intellectual property rights in all editorial enhancements created by the contractor during the term of this contract. For the purposes of this provision, "use" shall include reproduction or disclosure by OAL or the state for informational purposes or as otherwise required by law, including but not limited to the Public Records Act.

If OAL terminates this CCR publication contract before the anticipated term due to the contractor's breach, default, or abandonment of the CCR and/or Notice Register publications, both OAL and any successor publisher of the CCR and/or Notice Register shall be held harmless for any infringement of the contractor's intellectual property rights in the editorial enhancements, including copyright, relating to action taken by OAL in good faith to facilitate continued publication and availability of the CCR and Notice Register. OAL and any successor publisher shall be held harmless for any such infringement even if the premature termination of the CCR publication contract by OAL is ultimately found to have been without cause. OAL and any successor publisher shall remove any material that infringes on contractor's intellectual property rights as soon as feasible after being notified by contractor of such infringement.

In continuance of its rights under the current contract, upon contract termination or expiration, the contractor may, in its sole discretion, continue using and publishing, in its entirety the CCR data in its possession at the time of termination or expiration, including the Master Index and Master Table of Contents in an unofficial capacity as the contractor deems fit. To facilitate this use, the contractor shall have a non-exclusive, royalty-free, worldwide, perpetual license to make, have made, sell, use, reproduce, modify, adapt, display, distribute, make other versions of and disclose the data in its possession at the time of termination or expiration, and to sublicense others to do these things.

**Pre-existing intellectual property:** In performing any services or providing any deliverables under this CCR publication contract, the contractor will not use any pre-existing intellectual property including, but not limited to, any trade secret, invention, work of authorship or protectable design that has already been conceived or developed by anyone before the contractor renders any services under this contract, unless the contractor has the right to use it for OAL's benefit. If the contractor is not the owner of such pre-existing intellectual property, the contractor will obtain from the owner any rights necessary to enable the contractor to comply with this agreement. If the contractor uses any pre-existing intellectual property in connection with this agreement, the contractor hereby grants to OAL a non-exclusive, royalty-free, worldwide perpetual license to make, have made, sell, use,

reproduce, modify, adapt, display, distribute, make other versions of and disclose the property and to sublicense others to do these things.

Intellectual property indemnification: The contractor will give OAL notice immediately if at any time the contractor knows or reasonably should know of any third party claim to any pre-existing intellectual property provided by the contractor to OAL pursuant to this agreement. The contractor will indemnify and hold harmless OAL from all liability arising from the contractor's use of such pre-existing intellectual property.

## **19. Damages**

### ***Actual Damages***

In the event that the contractor fails to satisfactorily complete or perform the activities it is obligated to perform under the CCR publication contract, the contractor shall be liable for the state's full cost in securing completion of any activities or services needed to publish the CCR and Notice Register and other publications covered by the CCR publication contract. The state shall not be liable for any of the contractor's costs, other than those specifically covered by this contract, in complying with the contract requirements.

## **20. Audits**

In addition to the audit provision contained in the state of California General Terms and Conditions, on written request by OAL, the contractor will allow the Bureau of State Audits, the State Controller or designee of OAL, or in the alternative, an independent certified public accountant who is mutually acceptable to the contractor and OAL to have access to, and to copy, during ordinary business hours and for as many days as required, the contractor's books and financial records as necessary to calculate the royalty for any quarter during the term of this CCR publication contract. If the contractor and OAL cannot agree on the selection of an independent certified public accountant, the contractor and OAL will each select a certified public accountant, and the two accountants will choose a third certified public accountant who will then review the contractor's books and records to determine the amount of the royalty.

The determination of the amount of royalties by the auditor will be final and binding on the contractor and OAL. If the auditor finds any discrepancy between the amount of royalty due and the amount of royalty paid for such quarter, the difference will be paid by the contractor to OAL, or refunded by OAL to the contractor, as the case may be, within 30 working days after written notice of the discrepancy is given to both parties. If the amount of the royalty paid for any quarter is less than 95% of the amount due, the contractor will pay all accounting costs. In all other instances, OAL will pay all accounting costs. The contractor will bear all other costs of access to its books and records.

The auditor will hold the contractor's financial information and trade secrets in confidence and will disclose to OAL only the amount of royalties due OAL and the factual basis for the determination of the amount(s) due.

Audits conducted under this provision shall be in accordance with generally accepted auditing standards.

## **21. Term; Termination**

### **21.1. Term**

The CCR publication contract shall begin January 1, 2021, and have a term of three years, with 2 optional 1-year extensions to be exercised upon mutual agreement of OAL and the contractor.

### **21.2. Failure to Perform**

OAL may terminate this CCR publication contract if the contractor fails to perform the covenants herein contained at the time and in the manner herein provided. In the event of termination, OAL may proceed with the work in any manner deemed proper by OAL. The cost to the state shall be added to any sum due from the contractor to OAL under this CCR publication contract.

Persistent failure to meet publication dates or persistent failure to take corrective actions specified by OAL shall constitute a material breach of the CCR Publication Contract. In the event the contractor fails to perform the CCR publication contract, or a substantial part thereof, the Director of OAL shall provide written notice of the failure and make a reasonable effort to resolve the failure with the contractor. If the contractor's failure is not resolved, OAL may, in its sole judgment reasonably exercised, terminate the contract, in whole or in substantial part, by presenting written notice of termination to the contractor. The notice shall specify the extent to which the contract is terminated and the date upon which such termination becomes effective. Upon termination, OAL will retain all legal remedies available to it, including damages for increased expense on behalf of all subscribers, for the remaining term of the contract.

### **21.3. Parties' Obligations Upon Termination**

If the contract is terminated for any reason other than by the expiration of the term specified in the contract or the term of any extension thereto, the contractor shall deliver or transmit to OAL, within 10 days after termination, the complete Master Database current as of the date of termination. The Master Database shall be provided to OAL in electronic form pursuant to Section 2 of this contract.

If the contract terminates by the expiration of the term specified in the contract or the term of any extension thereto, the contractor shall provide OAL with the Master Database in electronic form pursuant to Section 2 of this contract according to the following schedule: 1) 90 days prior to the anticipated expiration of the term; 2) 30 days prior to the anticipated expiration of the term; and 3) concurrently with the expiration of the term.

Upon termination of this contract for any reason, the contractor loses the right to publish the Official CCR. The contractor agrees, upon OAL's request, to provide to OAL within 10 days of termination, lists in mutually acceptable electronic form of the subscribers to all forms of

the publications covered by this contract, and of all entities granted a license to publish any of the publications covered by this contract. In addition, for a period of sixty (60) days after termination of this contract, the contractor agrees to cooperate with OAL and any successor publisher of the Official CCR to provide information necessary for the continued publication of the Official CCR.

## 22. Changes

If changes in California law oblige OAL to alter the publication services to be performed under this contract, or to alter the time allowed for performance of services under this contract, and such changes cause an increase in the costs to the contractor, or the time required for the contractor's performance of this contract, OAL and the contractor shall negotiate an equitable adjustment to the compensation, or time of performance, or both, and the contract shall be modified accordingly. Any such modification must be in writing and is subject to the approval of the Department of General Services before it becomes effective.

Any claim by the contractor for equitable adjustment under this provision must be asserted in writing to the director of OAL or designated representative not later than thirty (30) days after the date OAL notifies the contractor of a change in California law, or within such extension as OAL may grant in writing. OAL may, in its sole discretion, consider any such claim regardless of when asserted.

Pending any such equitable adjustment, the contractor shall diligently proceed with the contract as modified. Where the cost of property made excess or obsolete as a result of the change is included in the contractor's claim for equitable adjustment, OAL shall have the right to require the submission of supporting cost data and/or to inspect the contractor's pertinent books and records for the purpose of verifying the contractor's claim and determining the basis for entitlement to an equitable adjustment.

The contractor's claim for equitable adjustment shall be fully supported by factual information and shall separately identify all increases and decreases in costs. The claim shall be submitted by a senior official authorized to bind the contractor in a signed writing that contains the following certification statement: "I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief and that the amount requested to be changed accurately reflects the contract adjustment for which (insert contractor's name here) believes the state is liable."

## 23. Substitutions

If it becomes necessary for the contractor to substitute any subcontractor, or management, supervisory or key personnel, those substitutions must include replacements with equal or greater qualifications. The contractor shall notify OAL of any key personnel changes as soon as the contractor knows that the change has occurred or will occur. The contractor will take necessary measures to ensure that any staffing changes do not adversely impact OAL or the contractor's publication and related responsibilities under this contract.

## **24. Severability**

Should any provision of this contract be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions shall not be affected thereby.

## **25. Waiver/Non-Waiver**

Any waiver of the terms and conditions of the CCR publication contract must be in writing. Any single waiver does not imply any future waiver of any terms or conditions. Failure of either party to enforce any provision of this contract shall not constitute or be construed as a waiver of such provision or the right to enforce such provision.

## **26. Rights of State Agencies**

Nothing in this contract shall prevent the state of California or a California state agency from publishing, reproducing, or distributing its own regulations, except that no agency of the state of California may, during the term of this contract, authorize commercial publication of regulations unless the commercial publisher has obtained a license from the contractor.

## **27. Right of Inspection**

The director of OAL or designated representative, shall have a continuing right to inspect, at reasonable intervals, all manufacturing and editorial premises used in performance of the CCR publication contract, including premises occupied by the contractor's subcontractors, if any. The contractor shall provide for such right of inspection in any subcontractors' facilities by arrangements with subcontractors or agents. The contractor shall be responsible for all reasonable expenses relating to any meeting or inspection pursuant to this contract, including reasonable transportation, lodging, and related travel expenses of OAL personnel reasonably necessary to the purpose of any meeting or inspection.

Upon request by the Director of OAL or designated representative, the contractor shall provide one copy of any of its CCR or Notice Register products for inspection by OAL.

## **28. Subscription Lists**

Upon completion or termination of this contract, including premature termination due to a breach, default, abandonment or any other reason, the contractor shall provide a copy to OAL, or to a successor publisher designated by OAL, of each and every subscription list for all contractor's Official CCR products. The copy of each and every subscription list shall include all relevant information reasonably needed by a successor publisher to fulfill subscription obligations. This includes, but is not limited to, the names and addresses of subscribers, types and categories of subscriptions for all Official CCR products for each subscriber, and subscription cost information, including current payment status of all subscribers, and beginning and ending dates of each subscription.

## **29. Miscellaneous Provisions**

### **29.1. Short Title**

This contract shall be referred to by the parties as the "CCR Publication Contract."



### **29.2. Statutory Requirements**

The contractor shall ensure that the content and distribution of all CCR and Notice Register products published pursuant to this contract comply with applicable requirements of the Administrative Procedure Act, including, but not limited to, Government Code sections 11344 and 11344.1.

### **29.3. Cooperation**

Each party shall cooperate with the other party as is reasonably necessary to further the purposes of this contract and the other party's performance hereunder.

### **29.4. Electronic Submission Plan**

The contractor shall work with OAL to devise a format and/or method that will allow for the future electronic transmission of proposed regulation text and notices.

### **29.5. Marketing and Advertising Of CCR**

The contractor shall undertake reasonable efforts to market and advertise the CCR during the term of this contract. The contractor shall keep the Director of OAL advised informally as to the manner in which the CCR is marketed and advertised during the term of the contract. No advertisements shall be published in the Official CCR or in the Internet CCR except with express written permission of the Director of OAL.

## **30. Entire Agreement**

This document constitutes the entire agreement of the parties. However, RFP-CCR-2020 and the contractor's proposal shall be used to establish intent in resolving any ambiguities that may be contained herein.

## **31. Contract Administration**

Subject to the other party's continuing approval, each party shall assign overall responsibility for its performance of this agreement to a contract administrator who is competent in the management and performance of the party's obligations under this agreement. Each party's contract administrator shall be the primary contact for the other party with regard to matters related to this agreement.

The contract administrator for OAL is:

Kevin D. Hull, Senior Attorney  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
[Kevin.Hull@oal.ca.gov](mailto:Kevin.Hull@oal.ca.gov)  
Phone: 916-323-8916  
Fax: 916-323-6826

The contractor administrators for the contractor are:

**Contract Administrator  
(Contract-Related Issues)**

Anne Barnard, Senior Counsel  
Thomson Reuters  
610 Opperman Drive  
Eagan, MN 55123  
[anne.barnard@tr.com](mailto:anne.barnard@tr.com)  
Phone: 763.326.7037

**Contract Administrator  
(Editorial-Related Issues)**

Rachel Utter, Manager, Content Strategy & Editorial  
Thomson Reuters  
610 Opperman Drive  
Eagan, MN 55123  
[rachel.utter@tr.com](mailto:rachel.utter@tr.com)  
Phone: 763.326.5495

**Contract Administrator  
(Editorial-Related Issues)**

Shannon Petersen, Manager, Content Operations  
Thomson Reuters  
610 Opperman Drive  
Eagan, MN 55123  
[shannon.petersen@thomsonreuters.com](mailto:shannon.petersen@thomsonreuters.com)  
Phone: 763.326.5520

1 MATTHEW RODRIQUEZ  
Acting Attorney General of California  
2 MICHELLE M. MITCHELL  
Supervising Deputy Attorney General  
3 KEITH L. WURSTER  
Deputy Attorney General  
4 State Bar No. 198918  
LAURA A. RANDES-LITTLE  
5 Deputy Attorney General  
State Bar No. 232930  
6 1300 I Street, Suite 125  
P.O. Box 944255  
7 Sacramento, CA 94244-2550  
Telephone: (916) 210-6504  
8 E-mail: [Laura.RandlesLittle@doj.ca.gov](mailto:Laura.RandlesLittle@doj.ca.gov)  
*Attorneys for Respondent*  
9 *California Building Standards Commission*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SACRAMENTO

12 CIVIL DIVISION  
13

14 **PUBLIC.RESOURCE.ORG., INC.,**

15 Petitioner,

16 v.

17  
18 **CALIFORNIA OFFICE OF  
ADMINISTRATIVE LAW, and the  
19 CALIFORNIA BUILDING STANDARDS  
COMMISSION,**

20 Respondents.  
21

Case No. 34-2021-80003612

**RESPONDENT CALIFORNIA  
BUILDING STANDARDS  
COMMISSION'S ANSWER TO THE  
VERIFIED PETITION FOR  
PREEMPTORY WRIT OF MANDATE  
ORDERING COMPLIANCE WITH THE  
CALIFORNIA PUBLIC RECORDS ACT**

Dept: 27  
Judge: Steven M. Gevercer  
Trial Date: Not Set  
Action Filed: March 17, 2021

22 Respondent California Building and Standards Commission (BSC) hereby answers the  
23 Verified Petition for peremptory Writ of Mandate (Petition) of Petitioner Public Resource Org,  
24 Inc. Respondent BSC responds to the Petition by admitting, denying, averring and alleging as  
25 follows:  
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**ANSWER TO PETITIONER’S DESCRIPTION OF THE PARTIES**

5. Answering paragraph 5 of the Petition, Respondent BSC lacks sufficient knowledge to form a belief as to the truth of the allegations in said paragraph and on that basis denies each and every allegation contained in paragraph 5.

6. Answering paragraph 6 of the Petition, Respondent BSC lacks sufficient knowledge to form a belief as to the truth of the allegations in said paragraph and on that basis denies each and every allegation contained in paragraph 6.

7. Answering paragraph 7 of the Petition, Respondent BSC admits all allegations.

**ANSWER TO PETITIONER’S ALLEGATIONS REGARDING JURISDICTION AND VENUE**

8. Answering paragraph 8 of the Petition, Respondent BSC admits that this court has jurisdiction. Respondent BSC admits the statutes speak for themselves. Except as otherwise admitted or denied above, Respondent BSC denies each and every remaining allegation contained in paragraph 8.

9. Answering paragraph 9 of the Petition, Respondent BSC admits that venue is proper and Respondent BSC is a public agency that maintains an official office in Sacramento. Except as otherwise admitted or denied above, Respondent BSC denies each and every remaining allegation contained in paragraph 9.

**ANSWER TO PETITIONER’S DESCRIPTION OF FACTS**

10. Answering paragraph 10 of the Petition, Respondent BSC lacks sufficient knowledge to form a belief as to the truth of the allegations in said paragraph, including footnote 1, and on that basis denies each and every allegation contained in paragraph 10.

11. Answering paragraph 11 of the Petition, Respondent BSC lacks sufficient knowledge to form a belief as to the truth of the allegations in said paragraph and on that basis denies each and every allegation contained in paragraph 11.

12. Answering paragraph 12 of the Petition, Respondent BSC lacks sufficient knowledge to form a belief as to the truth of the allegations in said paragraph and on that basis denies each and every allegation contained in paragraph 12.

Document received by the CA 3rd District Court of Appeal.

1 13. Answering paragraph 13 of the Petition, Respondent BSC lacks sufficient knowledge  
2 to form a belief as to the truth of the allegations in said paragraph and on that basis denies each  
3 and every allegation contained in paragraph 13.

4 14. Answering paragraph 14 of the Petition, Respondent BSC lacks sufficient knowledge  
5 to form a belief as to the truth of the allegations in said paragraph and on that basis denies each  
6 and every allegation contained in paragraph 14.

7 15. Answering paragraph 15 of the Petition, Respondent BSC lacks sufficient knowledge  
8 to form a belief as to the truth of the allegations in said paragraph and on that basis denies each  
9 and every allegation contained in paragraph 15.

10 16. Answering paragraph 16 of the Petition, Respondent BSC lacks sufficient knowledge  
11 to form a belief as to the truth of the allegations in said paragraph and on that basis denies each  
12 and every allegation contained in paragraph 16. Except as otherwise admitted or denied above,  
13 Respondent BSC denies each and every remaining allegation contained in paragraph 16.

14 17. Answering paragraph 17 of the Petition, Respondent BSC lacks sufficient knowledge  
15 to form a belief as to the truth of the allegations in said paragraph and on that basis denies each  
16 and every allegation contained in paragraph 17. Except as otherwise admitted or denied above,  
17 Respondent BSC denies each and every remaining allegation contained in paragraph 17.

18 18. Answering paragraph 18 of the Petition, Respondent BSC lacks sufficient knowledge  
19 to form a belief as to the truth of the allegations in said paragraph and on that basis denies each  
20 and every allegation contained in paragraph 18.

21 19. Answering paragraph 19 of the Petition, Respondent BSC lacks sufficient knowledge  
22 to form a belief as to the truth of the allegations in said paragraph and on that basis denies each  
23 and every allegation contained in paragraph 19.

24 20. Answering paragraph 20 of the Petition, Respondent BSC denies each and every  
25 allegation contained in paragraph 20 including the allegations contained in footnote 2.

26 21. Answering paragraph 21 of the Petition, Respondent BSC admits it received a request  
27 for records from Petitioner dated December 29, 2020 which is attached as Exhibit F. Respondent  
28

1 BSC admits Exhibit F speaks for itself. Except as otherwise admitted or denied above,  
2 Respondent BSC denies each and every remaining allegation contained in paragraph 21.

3 22. Answering paragraph 22 of the Petition, Respondent BSC admits that it sent a  
4 communication to Petitioner on January 7, 2021 which is attached to the Petition as Exhibit G.  
5 Respondent BSC admits Exhibit G speaks for itself. Except as otherwise admitted or denied  
6 above, Respondent BSC denies each and every remaining allegation contained in paragraph 22.

7 23. Answering paragraph 23 of the Petition, Respondent BSC admits Exhibit G speaks  
8 for itself. Except as otherwise admitted or denied above, Respondent BSC denies each and every  
9 remaining allegation contained in paragraph 23.

10 24. Answering paragraph 24 of the Petition, Respondent BSC admits Exhibit G speaks  
11 for itself. Except as otherwise admitted or denied above, Respondent BSC denies each and every  
12 remaining allegation contained in paragraph 24.

13 25. Answering paragraph 25 of the Petition, Respondent BSC admits Exhibit G speaks  
14 for itself. Except as otherwise admitted or denied above, Respondent BSC denies each and every  
15 remaining allegation contained in paragraph 25.

16 26. Answering paragraph 26 of the Petition, Respondent BSC admits it received a letter  
17 from Petitioner dated January 29, 2021 that is attached as Exhibit H. Respondent BSC admits  
18 Exhibit H speaks for itself. Except as otherwise admitted or denied above, Respondent BSC  
19 denies each and every remaining allegation contained in paragraph 26.

20 27. Answering paragraph 27 of the Petition, Respondent BSC admits Exhibit H speaks  
21 for itself. Except as otherwise admitted or denied above, Respondent BSC denies each and every  
22 remaining allegation contained in paragraph 27.

23 28. Answering paragraph 28 of the Petition, Respondent BSC admits Exhibit H speaks  
24 for itself. Except as otherwise admitted or denied above, Respondent BSC denies each and every  
25 remaining allegation contained in paragraph 28.

26 29. Answering paragraph 29 of the Petition, Respondent BSC admits Exhibit H speaks  
27 for itself. Except as otherwise admitted or denied above, Respondent BSC denies each and every  
28 remaining allegation contained in paragraph 29.

1 30. Answering paragraph 30 of the Petition, Respondent BSC admits it received  
2 correspondence from Petitioner dated February 24, 2021 and sent correspondence to Petitioner on  
3 March 2, 2021 which are attached to the Petition as Exhibit I at pages numbered by Petitioner  
4 with BATES numbers 00045-00046 and 00045 respectively. Respondent BSC admits Exhibit I  
5 speaks for itself. Except as otherwise admitted or denied above, Respondent BSC denies each  
6 and every remaining allegation contained in paragraph.

7 **ANSWER TO PETITIONER'S OVERVIEW OF THE CALIFORNIA PUBLIC RECORDS**  
8 **ACT**

9 31. Answering paragraph 31 of the Petition, Respondent BSC admits the California  
10 Public Records Act was enacted in 1968 and is codified at Government Code sections 6250 *et*  
11 *seq.* Respondent BSC further admits the California Constitution addresses the public's access to  
12 public records. (Cal. Const., art. I, § 3.) Respondent BSC also admits the statute and the  
13 California Constitution speak for themselves. Except as otherwise admitted or denied above,  
14 Respondent BSC denies each and every remaining allegation contained in paragraph 31.

15 32. Answering paragraph 32 of the Petition, Respondent BSC admits that Government  
16 Code section 6253.9 speaks for itself. Except as otherwise admitted or denied above, Respondent  
17 BSC denies each and every remaining allegation contained in paragraph 32.

18 33. Answering paragraph 33 of the Petition, Respondent BSC admits that Government  
19 Code sections 6252 and 6253 speak for themselves. To the extent paragraph 33 contains  
20 argument and legal conclusions, Respondent BSC denies those allegations. Except as otherwise  
21 admitted or denied above, Respondent BSC denies each and every remaining allegation contained  
22 in paragraph 33.

23 34. Answering paragraph 34 of the Petition, paragraph 34 constitutes argument and legal  
24 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise  
25 admitted or denied above, Respondent BSC denies each and every remaining allegation contained  
26 in paragraph 34.

27 35. Answering paragraph 35 of the Petition, Respondent BSC admits that Government  
28 Code section 6252 speaks for itself. Respondent BSC further admits that the California Code of



1 Regulations speaks for itself. Except as otherwise admitted or denied above, Respondent BSC  
2 denies each and every remaining allegation contained in paragraph 35.

3 36. Answering paragraph 36 of the Petition, Respondent BSC admits there is a statutory  
4 framework governing the California Code of Regulations. Respondent BSC admits Government  
5 Code section 11342.4 and Health and Safety Code section 18930, subdivision (a), speak for  
6 themselves. Except as otherwise admitted or denied above, Respondent BSC denies each and  
7 every remaining allegation contained in paragraph 36.

8 37. Answering paragraph 37 of the Petition, paragraph 37 contains argument and legal  
9 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise  
10 admitted or denied above, Respondent BSC denies each and every remaining allegation contained  
11 in paragraph 37.

12 38. Answering paragraph 38 of the Petition, paragraph 38 contains argument and legal  
13 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise  
14 admitted or denied above, Respondent BSC denies each and every remaining allegation contained  
15 in paragraph 38 including the allegations contained in footnote 3.

16 39. Answering paragraph 39 of the Petition, Respondent BSC admits the language of  
17 Exhibits D and G speak for themselves. To the extent paragraph 39 constitutes Petitioner's legal  
18 argument and legal conclusion, Respondent BSC denies such allegations. Insofar as paragraph 39  
19 alleges material facts relating to Respondent OAL, Respondent BSC lacks knowledge to admit  
20 the allegations and on that basis denies all such allegations. Except as otherwise admitted or  
21 denied above, Respondent BSC denies each and every remaining allegation contained in  
22 paragraph 39.

23 40. Answering paragraph 40 of the Petition, paragraph 40 constitutes argument and legal  
24 conclusions and on that basis Respondent BSC denies such allegations. Except as otherwise  
25 admitted or denied above, Respondent BSC denies each and every remaining allegation contained  
26 in paragraph 40.

27 41. Answering paragraph 41 of the Petition, paragraph 41 constitutes argument and legal  
28 conclusions and on that basis Respondent BSC denies such allegations. Respondent BSC lacks

1 sufficient knowledge to form a belief as to the truth of the allegations in said paragraph and on  
2 that basis denies each and every allegation contained in paragraph 41. Except as otherwise  
3 admitted or denied above, Respondent BSC denies each and every remaining allegation contained  
4 in paragraph 41 including the allegations contained in footnote 4.

5 42. Answering paragraph 42 of the Petition, Respondent BSC admits Government Code  
6 section 6270 speaks for itself. Paragraph 42 contains Petitioner's argument and legal conclusions,  
7 and on such basis Respondent BSC denies such allegations. Except as otherwise admitted or  
8 denied above, Respondent BSC denies each and every remaining allegation contained in  
9 paragraph 42.

10 43. Answering paragraph 43 of the Petition, this paragraph contains argument and legal  
11 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise  
12 admitted or denied above, Respondent BSC denies each and every remaining allegation contained  
13 in paragraph 43.

14 44. Answering paragraph 44 of the Petition, Respondent BSC admits Exhibit G speaks  
15 for itself. Except as otherwise admitted or denied above, Respondent BSC denies each and every  
16 remaining allegation contained in paragraph 44.

17 45. Answering paragraph 45 of the Petition, paragraph 45 constitutes argument and legal  
18 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise  
19 admitted or denied above, Respondent BSC denies each and every remaining allegation contained  
20 in paragraph 45.

21 46. Answering paragraph 46 of the Petition, paragraph 46 constitutes argument and legal  
22 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise  
23 admitted or denied above, Respondent BSC denies each and every remaining allegation contained  
24 in paragraph 46.

25 47. Answering paragraph 47 of the Petition, paragraph 47 constitutes arguments and legal  
26 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise  
27 admitted or denied above, Respondent BSC denies each and every remaining allegation contained  
28 in paragraph 47.

1 48. Answering paragraph 48 of the Petition, paragraph 48 constitutes arguments and legal  
2 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise  
3 admitted or denied above, Respondent BSC denies each and every remaining allegation contained  
4 in paragraph 48.

5 49. Answering paragraph 49 of the Petition, Respondent BSC admits the California Code  
6 of Regulations is currently widely available in various formats. Respondent BSC admits that  
7 Exhibits D and G speak for themselves. Paragraph 49 contains arguments and legal conclusions,  
8 and on that basis Respondent BSC denies those allegations. Except as otherwise admitted or  
9 denied above, Respondent BSC denies each and every remaining allegation contained in  
10 paragraph 49.

11 50. Answering paragraph 50 of the Petition, Respondent BSC admits the regulations are  
12 published at the websites cited in paragraph 50. Respondent BSC further admits Exhibits D and  
13 G speak for themselves. Paragraph 50 contains argument and legal conclusions and on that basis  
14 Respondent BSC denies such allegations. To the extent this paragraph contains any allegations of  
15 material fact, Respondent BSC denies each and every such allegation including the allegations  
16 contained in footnote 5.

17 51. Answering paragraph 51 of the Petition, Respondent BSC admits that Exhibit G and  
18 Government Code section 6253.9 speak for themselves. Paragraph 51 contains argument and  
19 legal conclusions, and on that basis Respondent BSC denies such allegations. Except as  
20 otherwise admitted or denied above, Respondent BSC denies each and every remaining allegation  
21 contained in paragraph 51.

22 52. Answering paragraph 52 of the Petition, Respondent BSC admits that Exhibit D and  
23 Government Code section 6250 speak for themselves. Paragraph 52 contains argument and legal  
24 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise  
25 admitted or denied above, Respondent BSC denies each and every remaining allegation contained  
26 in paragraph 52.

27 53. Answering paragraph 53 of the Petition, Respondent BSC admits that Government  
28 Code sections 6254-6254.30 and 6255 speak for themselves. Paragraph 53 contains argument

1 and legal conclusions, and on that basis Respondent BSC denies such allegations. Except as  
2 otherwise admitted or denied above, Respondent BSC denies each and every remaining allegation  
3 contained in paragraph 53.

4 54. Answering paragraph 54 of the Petition, Respondent BSC admits Exhibits D, G and I  
5 speak for themselves. Paragraph 54 contains argument and legal conclusions, and on that basis  
6 Respondent BSC denies such allegations. Except as otherwise admitted or denied above,  
7 Respondent BSC denies each and every remaining allegation contained in paragraph 54.

8 **ANSWER TO PETITIONER'S OVERVIEW OF WRIT PROCEDURE**

9 55. Answering paragraph 55 of the Petition, Respondent BSC admits Government Code  
10 section 6259 speaks for itself. Paragraph 55 contains argument and legal conclusions and on that  
11 basis Respondent BSC denies such allegations. Except as otherwise admitted or denied above,  
12 Respondent BSC denies each and every remaining allegation contained in paragraph 55.

13 56. Answering paragraph 56 of the Petition, Respondent BSC admits Government Code  
14 section 6259 speaks for itself. Paragraph 56 contains argument and legal conclusions, and on that  
15 basis Respondent BSC denies such allegations. Except as otherwise admitted or denied above,  
16 Respondent BSC denies each and every remaining allegation contained in paragraph 56.

17 57. Answering paragraph 57 of the Petition, Respondent BSC admits Government Code  
18 section 6258 speaks for itself. Paragraph 57 contains argument and legal conclusions, and on that  
19 basis Respondent BSC denies such allegations. Except as otherwise admitted or denied above,  
20 Respondent BSC denies each and every remaining allegation contained in paragraph 57.

21 58. Answering paragraph 58 of the Petition, paragraph 58 contains argument and legal  
22 conclusions, and on that basis Respondent BSC denies such allegations. Except as otherwise  
23 admitted or denied above, Respondent BSC denies each and every remaining allegation contained  
24 in paragraph 58.

25 **ANSWER TO PETITIONER'S FIRST CAUSE OF ACTION**

26 59. Answering paragraph 59 of the Petition, Respondent BSC hereby incorporates by  
27 reference the admissions and denials contained in paragraphs 1-58 above, and except as expressly  
28

1 alleged or admitted in paragraphs 1 through 58, Respondent BSC denies each and every  
2 allegation.

3 60. Answering paragraph 60 of the Petition, paragraph 60 constitutes argument and legal  
4 conclusions, and on that basis Respondent BSC denies the allegations. To the extent the  
5 allegations pertain the actions of Respondent OAL, Respondent BSC lacks sufficient knowledge  
6 to admit any alleged act or failure to act on the part of Respondent OAL and on that basis denies  
7 such allegations.

8 **ANSWER TO PETITIONER'S SECOND CAUSE OF ACTION**

9 61. Answering paragraph 61 of the Petition, Respondent BSC hereby incorporates by  
10 reference the admissions and denials contained in paragraphs 1-58 above, and except as expressly  
11 alleged or admitted in paragraphs 1 through 58, Respondent BSC denies each and every  
12 allegation.

13 62. Answering paragraph 62 of the Petition, paragraph 62 constitutes argument and legal  
14 conclusions, and that basis Respondent BSC denies the allegations.

15 Respondent BSC denies that Petitioner is entitled to the relief requested set forth in the  
16 prayer for relief in paragraphs 63-65 of the Petition, or to any relief at all.

17 In addition, Respondent BSC asserts the following defenses based on information and  
18 belief.

19 **FIRST AFFIRMATIVE DEFENSE**

20 The Petition fails to allege facts sufficient to constitute a cause of action.

21 **SECOND AFFIRMATIVE DEFENSE**

22 Respondent BSC complied with all applicable laws at all relevant times including, but not  
23 limited to, Health and Safety Code sections 18917.3, 18928, 18928.1, 18935 *et seq.* and  
24 Government Code sections 6254, subdivision (k), and 6255.

25 **THIRD AFFIRMATIVE DEFENSE**

26 Respondent BSC has not knowingly or intentionally waived any exemption to disclosure,  
27 applicable defense or affirmative defense.

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**FOURTH AFFIRMATIVE DEFENSE**

The Petition fails to allege facts sufficient to state a claim for attorneys' fees.

**FIFTH AFFIRMATIVE DEFENSE**

Any responsive records not disclosed by Respondent BSC to Petitioner are exempt from disclosure under the Public Records Act.

**SIXTH AFFIRMATIVE DEFENSE**

Because much of the Petition is alleged in conclusory terms, all affirmative defense that may be applicable cannot be fully anticipated. Accordingly, Respondent BSC reserves the right to assert additional affirmative defenses if applicable.

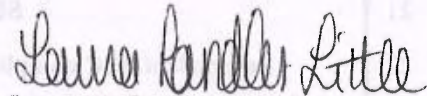
WHEREFORE, Respondent BSC prays for relief as follows:

1. Deny Petitioner's Petition for writ of mandate;
2. Deny Petitioner's request for attorney's fees and costs;
3. Enter judgement in favor of Respondent BSC;
4. Award Respondent BSC all costs of suit; and
5. Award Respondent BSC such further relief that the Court deems just and proper.

Dated: April 23, 2021

Respectfully Submitted,

MATTHEW RODRIQUEZ  
Acting Attorney General of California  
MICHELLE M. MITCHELL  
Supervising Deputy Attorney General



LAURA A. RANDES-LITTLE  
Deputy Attorney General  
KEITH L. WURSTER  
Deputy Attorney General  
*Attorneys for Respondent  
California Building Standards Commission*

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**DECLARATION OF SERVICE BY E-MAIL and U.S. Mail**

Case Name: **Public.Resource.Org., Inc. v. California Office of Administrative Law,  
California Building Standards Commission**  
No.: **34-2021-80003612**

I declare:

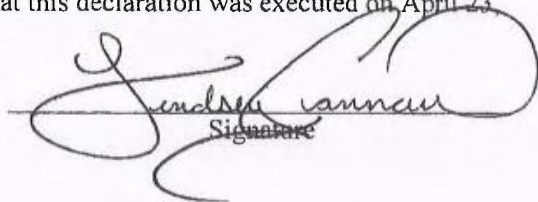
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On April 23, 2021, I served the attached **RESPONDENT CALIFORNIA BUILDING STANDARDS COMMISSION'S ANSWER TO THE VERIFIED PETITION FOR PREEMPTORY WRIT OF MANDATE ORDERING COMPLIANCE WITH THE CALIFORNIA PUBLIC RECORDS ACT** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Matthew Caplan  
Joseph D. Mornin  
Ryan O'Hollaren  
Cooley LLP - San Francisco  
101 California Street, 5th Floor  
San Francisco, CA 94111  
**E-mail Addresses:**  
[mcaplan@cooley.com](mailto:mcaplan@cooley.com)  
[jmornin@cooley.com](mailto:jmornin@cooley.com)  
[rohollaren@cooley.com](mailto:rohollaren@cooley.com)  
*Attorneys for Plaintiff Public.Resource.Org,  
Inc.*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 23, 2021, at Sacramento, California.

\_\_\_\_\_  
Lindsey Cannan  
Declarant

  
\_\_\_\_\_  
Signature

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Document received by the CA 3rd District Court of Appeal.

**DECLARATION OF SERVICE BY E-MAIL AND U.S. MAIL**

Case Name: Public Resource Org., Inc. v. California Office of Administrative Law,  
California Building Standards Commission  
No: 34-2021-00003612

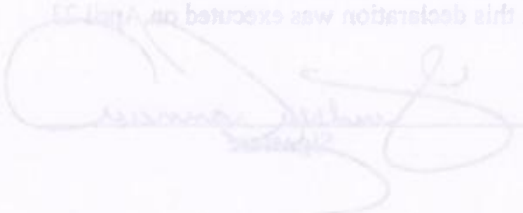
I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

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Matthew Caplan  
Joseph D. Momin  
Ryan O'Hollman  
Cookey LLP - San Francisco  
101 California Street, 5th Floor  
San Francisco, CA 94111  
E-mail Address:  
mcaplan@cookey.com  
jmomin@cookey.com  
rohollan@cookey.com  
Attorneys for Plaintiff Public Resource Org.  
Inc.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 23, 2021, at Sacramento, California.



Lindsey Caplan  
Declarant

DECLARATION  
3/20/2021 docx



1 MATTHEW RODRIQUEZ  
Acting Attorney General of California  
2 MICHELLE M. MITCHELL  
Supervising Deputy Attorney General  
3 KEITH L. WURSTER  
Deputy Attorney General  
4 State Bar No. 198918  
LAURA A. RANGLES-LITTLE  
5 Deputy Attorney General  
State Bar No. 232930  
6 1300 I Street, Suite 125  
P.O. Box 944255  
7 Sacramento, CA 94244-2550  
Telephone: (916) 210-6504  
8 E-mail: [Laura.RandlesLittle@doj.ca.gov](mailto:Laura.RandlesLittle@doj.ca.gov)  
*Attorneys for Respondent*  
9 *Office of Administrative Law*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SACRAMENTO  
12 CIVIL DIVISION  
13

14 **PUBLIC.RESOURCE.ORG, INC.,**  
15  
16 Petitioner,  
17  
18 v.  
19 **CALIFORNIA OFFICE OF**  
**ADMINISTRATIVE LAW, and the**  
**CALIFORNIA BUILDING STANDARDS**  
**COMMISSION,**  
20  
21 Respondents.

Case No. 34-2021-80003612  
**RESPONDENT CALIFORNIA OFFICE**  
**OF ADMINISTRATIVE LAW'S**  
**ANSWER TO THE VERIFIED**  
**PETITION FOR PREEMPTORY WRIT**  
**OF MANDATE ORDERING**  
**COMPLIANCE WITH THE**  
**CALIFORNIA PUBLIC RECORDS ACT**  
Dept: 27  
Judge: Steven M. Gevercer  
Trial Date: Not Set  
Action Filed: March 17, 2021

22  
23 Respondent California Office of Administrative Law ("OAL") hereby answers the Verified  
24 Petition for Peremptory Writ of Mandate ("Petition") of Petitioner Public Resource Org, Inc.  
25 Respondent OAL responds to the Petition by admitting, denying, averring and alleging as  
26 follows:  
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**ANSWER TO PETITIONER’S INTRODUCTORY ALLEGATIONS**

1. Answering paragraph 1 of the Petition, Respondent OAL admits the California Public Records Act is codified in Government Code sections 6250 *et seq.* Respondent OAL also admits the California Constitution addresses the public’s access to public records. (Cal. Const., art. I, § 3.) Respondent OAL admits that the referenced statutes and California Constitution speak for themselves. Except as otherwise admitted or denied above, Respondent OAL denies each and every remaining allegation contained in paragraph 1.

2. Answering paragraph 2 of the Petition, Respondent OAL admits it received a request for records under the Public Records Act from Petitioner sometime between December 2020 and February 2021. Respondent OAL denies that it refused the request and that its responses did not comply with the Public Records Act. To the extent this paragraph references correspondence between Petitioner and Respondent California Building Standards Commission (“BSC”), Respondent OAL lacks sufficient knowledge to form a belief as to the truth of such allegations and on that basis denies those allegations. Except as otherwise admitted or denied above, Respondent OAL denies each and every remaining allegation contained in paragraph 2.

3. Answering paragraph 3 of the Petition, the allegations in this paragraph constitute legal argument and conclusion, and on such basis Respondent OAL denies the allegations. To the extent the allegations pertain to actions of Respondent BSC, or what Respondent BSC possesses, Respondent OAL lacks sufficient knowledge to form a belief as to the truth of such allegations and on that basis denies those allegations. Except as otherwise admitted or denied above, Respondent OAL denies each and every remaining allegation contained in paragraph 3.

4. Answering paragraph 4 of the Petition, Respondent OAL denies that Petitioner is entitled to the relief requested, or to any relief at all. Except as otherwise admitted or denied above, Respondent OAL denies each and every remaining allegation contained in paragraph 4.

**ANSWER TO PETITIONER’S DESCRIPTION OF THE PARTIES**

5. Answering paragraph 5 of the Petition, Respondent OAL lacks sufficient knowledge to form a belief as to the truth of the allegations in said paragraph and on that basis denies each and every allegation contained in paragraph 5.

Document received by the CA 3rd District Court of Appeal.



1 speaks for itself. Respondent OAL further admits that the current contract between OAL and  
2 West at page 9 states in part:

3 The contractor shall maintain the Official California Code of Regulations (CCR) in an  
4 electronic database, which for purposes of this contract shall be referred to as the "Master  
5 Database." To ensure that all CCR products accurately reflect the Official CCR content, the  
6 Master Database must be the source for all hard copy text and electronic products as well as  
7 the source for the contents of the Internet CCR.

8 Except as otherwise admitted or denied above, Respondent OAL denies each and every remaining  
9 allegation contained in paragraph 10.

10 11. Answering paragraph 11 of the petition, Respondent OAL admits Exhibit B speaks  
11 for itself and that Exhibit B is not the currently operative contract. Except as otherwise admitted  
12 or denied above, Respondent OAL denies each and every remaining allegation contained in  
13 paragraph 11.

14 12. Answering paragraph 12 of the Petition, Respondent OAL admits West provides an  
15 online version of the California Code of Regulations to the public. Except as admitted or denied  
16 above, Respondent OAL lacks sufficient information to form a belief as to the truth of the  
17 additional allegations contained in said paragraph and on that basis denies each and every  
18 additional allegation contained in paragraph 12.

19 13. Answering paragraph 13 of the Petition, Respondent OAL admits it received a  
20 request for records on or about December 29, 2020 that is attached to the Petition as Exhibit C.  
21 Respondent OAL admits that Exhibit C speaks for itself. Except as otherwise admitted or denied  
22 above, Respondent OAL denies each and every remaining allegation contained in paragraph 13.

23 14. Answering paragraph 14 of the Petition, Respondent OAL admits that its responses to  
24 the request for records on January 8, 2021 and January 22, 2021 are attached to the Petition as  
25 Exhibit D at pages numbered by Petitioner with BATES numbers 00036-00037 and 00035-00036  
26 respectively. Respondent OAL admits Exhibit D speaks for itself. Except as otherwise admitted  
27 or denied above, Respondent OAL denies each and every remaining allegation contained in  
28 paragraph 14.

1 15. Answering paragraph 15 of the Petition, Respondent OAL admits that sometime after  
2 February 3, 2021 it received a letter from Petitioner. Respondent OAL admits that the letter dated  
3 February 3, 2021 speaks for itself. Except as otherwise admitted or denied above, Respondent  
4 OAL denies each and every remaining allegation contained in paragraph 15.

5 16. Answering paragraph 16 of the Petition, Respondent OAL admits Exhibit E speaks  
6 for itself. To the extent paragraph 16 contains argument and legal conclusions, Respondent OAL  
7 denies those allegations. Except as otherwise admitted or denied above, Respondent OAL denies  
8 each and every remaining allegation contained in paragraph 16.

9 17. Answering paragraph 17 of the Petition, Respondent OAL admits that Exhibit E  
10 speaks for itself. To the extent paragraph 17 contains argument and legal conclusions,  
11 Respondent OAL denies those allegations. Except as otherwise admitted or denied above,  
12 Respondent OAL denies each and every remaining allegation contained in paragraph 17.

13 18. Answering paragraph 18 of the Petition, Respondent OAL admits that it sent a  
14 communication to Petitioner on February 17, 2021 which is attached to the Petition as Exhibit D  
15 at pages numbered by Petitioner with BATES numbers 00033-00034. Respondent OAL further  
16 admits that Exhibit D speaks for itself. Except as otherwise admitted or denied above,  
17 Respondent OAL denies each and every remaining allegation contained in paragraph 18.

18 19. Answering paragraph 19 of the Petition, Respondent OAL admits that it received  
19 additional communications from Petitioner on or about February 19, 2021 and February 24, 2021  
20 which are attached to the Petition as Exhibit D at pages numbered by Petitioner with BATES  
21 numbers 00033 and 00032-00033 respectively. Respondent OAL admits it sent communications  
22 to Petitioner on February 26, 2021 and March 2, 2021 which are attached to the Petition as  
23 Exhibit D at pages numbered by Petitioner with BATES numbers 00031-00032 and 00031  
24 respectively. Respondent OAL further admits that Exhibit D speaks for itself. Except as  
25 otherwise admitted or denied above, Respondent OAL denies each and every remaining  
26 allegation contained in paragraph 19.

27 20. Answering paragraph 20 of the Petition, Respondent OAL lacks sufficient  
28 information to form a belief as to the truth of the allegations contained in said paragraph and on

1 that basis denies each and every allegation contained in paragraph 20 including the allegations  
2 contained in footnote 2.

3 21. Answering paragraph 21 of the Petition, Respondent OAL lacks sufficient  
4 information to form a belief as to the truth of the allegations contained in said paragraph and on  
5 that basis denies each and every allegation contained in paragraph 21.

6 22. Answering paragraph 22 of the Petition, Respondent OAL lacks sufficient  
7 information to form a belief as to the truth of the allegations contained in said paragraph and on  
8 that basis denies each and every allegation contained in paragraph 22.

9 23. Answering paragraph 23 of the Petition, Respondent OAL lacks sufficient  
10 information to form a belief as to the truth of the allegations contained in said paragraph and on  
11 that basis denies each and every allegation contained in paragraph 23.

12 24. Answering paragraph 24 of the Petition, Respondent OAL lacks sufficient  
13 information to form a belief as to the truth of the allegations contained in said paragraph and on  
14 that basis denies each and every allegation contained in paragraph 24.

15 25. Answering paragraph 25 of the Petition, Respondent OAL lacks sufficient  
16 information to form a belief as to the truth of the allegations contained in said paragraph and on  
17 that basis denies each and every allegation contained in paragraph 25.

18 26. Answering paragraph 26 of the Petition, Respondent OAL lacks sufficient  
19 information to form a belief as to the truth of the allegations contained in said paragraph and on  
20 that basis denies each and every allegation contained in paragraph 26.

21 27. Answering paragraph 27 of the Petition, Respondent OAL lacks sufficient  
22 information to form a belief as to the truth of the allegations contained in said paragraph and on  
23 that basis denies each and every allegation contained in paragraph 27.

24 28. Answering paragraph 28 of the Petition, Respondent OAL lacks sufficient  
25 information to form a belief as to the truth of the allegations contained in said paragraph and on  
26 that basis denies each and every allegation contained in paragraph 28.

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1           29. Answering paragraph 29 of the Petition, Respondent OAL lacks sufficient  
2 information to form a belief as to the truth of the allegations contained in said paragraph and on  
3 that basis denies each and every allegation contained in paragraph 29.

4           30. Answering paragraph 30 of the Petition, Respondent OAL lacks sufficient  
5 information to form a belief as to the truth of the allegations contained in said paragraph and on  
6 that basis denies each and every allegation contained in paragraph 30.

7 **ANSWER TO PETITIONER'S OVERVIEW OF THE CALIFORNIA PUBLIC RECORDS**

8 **ACT**

9           31. Answering paragraph 31 of the Petition, Respondent OAL admits the California  
10 Public Records Act was enacted in 1968 and is codified at Government Code sections 6250 *et*  
11 *seq.* Respondent OAL further admits the California Constitution addresses the public's access to  
12 public records. (Cal. Const., art. I, § 3.) Respondent OAL also admits the statute and the  
13 California Constitution speak for themselves. Except as otherwise admitted or denied above,  
14 Respondent OAL denies each and every remaining allegation contained in paragraph 31.

15           32. Answering paragraph 32 of the Petition, Respondent OAL admits that Government  
16 Code section 6253.9 speaks for itself. Except as otherwise admitted or denied above, Respondent  
17 OAL denies each and every remaining allegation contained in paragraph 32.

18           33. Answering paragraph 33 of the Petition, Respondent OAL admits that Government  
19 Code sections 6252 and 6253 speak for themselves. To the extent paragraph 33 contains  
20 argument and legal conclusions, Respondent OAL denies those allegations. Except as otherwise  
21 admitted or denied above, Respondent OAL denies each and every remaining allegation  
22 contained in paragraph 33.

23           34. Answering paragraph 34 of the Petition, paragraph 34 constitutes argument and legal  
24 conclusions, and on that basis Respondent OAL denies such allegations. Except as otherwise  
25 admitted or denied above, Respondent OAL denies each and every remaining allegation  
26 contained in paragraph 34.

27           35. Answering paragraph 35 of the Petition, Respondent OAL admits that Government  
28 Code section 6252 speaks for itself. Respondent OAL further admits that the California Code of

1 Regulations speaks for itself. Except as otherwise admitted or denied above, Respondent OAL  
2 denies each and every remaining allegation contained in paragraph 35.

3 36. Answering paragraph 36 of the Petition, Respondent OAL admits there is a statutory  
4 framework governing the California Code of Regulations. Respondent OAL admits Government  
5 Code section 11342.4 and Health and Safety Code section 18930, subdivision (a), speak for  
6 themselves. Except as otherwise admitted or denied above, Respondent OAL denies each and  
7 every remaining allegation contained in paragraph 36.

8 37. Answering paragraph 37 of the Petition, paragraph 37 contains argument and legal  
9 conclusions, and on that basis Respondent OAL denies such allegations. Except as otherwise  
10 admitted or denied above, Respondent OAL denies each and every remaining allegation  
11 contained in paragraph 37.

12 38. Answering paragraph 38 of the Petition, paragraph 38 contains argument and legal  
13 conclusions, and on that basis Respondent OAL denies such allegations. Except as otherwise  
14 admitted or denied above, Respondent OAL denies each and every remaining allegation  
15 contained in paragraph 38 including the allegations contained in footnote 3.

16 39. Answering paragraph 39 of the Petition, Respondent OAL admits the language of  
17 Exhibits D and G speak for themselves. To the extent paragraph 39 constitutes Petitioner's legal  
18 argument and legal conclusion, Respondent OAL denies such allegations. Insofar as paragraph  
19 39 alleges material facts relating to Respondent BSC, Respondent OAL lacks knowledge to admit  
20 the allegations and on that basis denies all such allegations. Except as otherwise admitted or  
21 denied above, Respondent OAL denies each and every remaining allegation contained in  
22 paragraph 39.

23 40. Answering paragraph 40 of the Petition, paragraph 40 constitutes argument and legal  
24 conclusions, and on that basis Respondent OAL denies such allegations. Except as otherwise  
25 admitted or denied above, Respondent OAL denies each and every remaining allegation  
26 contained in paragraph 40.

27 41. Answering paragraph 41 of the Petition, Respondent OAL admits that Exhibit B  
28 speaks for itself and that Exhibit B is not the currently operative contract. Paragraph 41 contains



1 argument and legal conclusions, and on such basis Respondent OAL denies such allegations.  
2 Except as otherwise admitted or denied above, Respondent OAL denies each and every remaining  
3 allegation contained in paragraph 41 including the allegations contained in footnote 4.

4 42. Answering paragraph 42 of the Petition, Respondent OAL admits Government Code  
5 section 6270 speaks for itself. Paragraph 42 contains Petitioner's argument and legal conclusions,  
6 and on such basis Respondent OAL denies such allegations. Except as otherwise admitted or  
7 denied above, Respondent OAL denies each and every remaining allegation contained in  
8 paragraph 42.

9 43. Answering paragraph 43 of the Petition, this paragraph contains argument and legal  
10 conclusions, and on that basis Respondent OAL denies such allegations. Except as otherwise  
11 admitted or denied above, Respondent OAL denies each and every remaining allegation  
12 contained in paragraph 43.

13 44. Answering paragraph 44 of the Petition, this paragraph constitutes Petitioner's  
14 arguments and legal conclusions, and on that basis Respondent OAL denies such allegations.  
15 Insofar as paragraph 44 alleges material facts relating to Respondent BSC, Respondent OAL  
16 lacks sufficient knowledge to admit the allegations and on that basis denies all such allegations.  
17 Except as otherwise admitted or denied above, Respondent OAL denies each and every remaining  
18 allegation contained in paragraph 44.

19 45. Answering paragraph 45 of the Petition, paragraph 45 constitutes arguments and legal  
20 conclusions, and on that basis Respondent OAL denies such allegations. Except as otherwise  
21 admitted or denied above, Respondent OAL denies each and every remaining allegation  
22 contained in paragraph 45.

23 46. Answering paragraph 46 of the Petition, paragraph 46 constitutes arguments and legal  
24 conclusions, and on that basis Respondent OAL denies such allegations. Except as otherwise  
25 admitted or denied above, Respondent OAL denies each and every remaining allegation  
26 contained in paragraph 46.

27 47. Answering paragraph 47 of the Petition, paragraph 47 constitutes arguments and legal  
28 conclusions, and on that basis Respondent OAL denies such allegations. Except as otherwise

1 admitted or denied above, Respondent OAL denies each and every remaining allegation  
2 contained in paragraph 47.

3 48. Answering paragraph 48 of the Petition, paragraph 48 constitutes arguments and legal  
4 conclusions and on that basis Respondent OAL denies such allegations. Except as otherwise  
5 admitted or denied above, Respondent OAL denies each and every remaining allegation  
6 contained in paragraph 48.

7 49. Answering paragraph 49 of the Petition, Respondent OAL admits the California Code  
8 of Regulations is currently widely available in various formats. Respondent OAL admits that  
9 Exhibits D and G speak for themselves. Paragraph 49 contains arguments and legal conclusions,  
10 and on that basis Respondent OAL denies those allegations. Except as otherwise admitted or  
11 denied above, Respondent OAL denies each and every remaining allegation contained in  
12 paragraph 49.

13 50. Answering paragraph 50 of the Petition, Respondent OAL admits the regulations are  
14 published at the websites cited in paragraph 50. Respondent OAL further admits Exhibits D and  
15 G speak for themselves. Paragraph 50 contains argument and legal conclusions, and on that basis  
16 Respondent OAL denies such allegations. Except as otherwise admitted or denied above,  
17 Respondent OAL denies each and every remaining allegation contained in paragraph 50 including  
18 the allegations in footnote 5.

19 51. Answering paragraph 51 of the Petition, Respondent OAL admits that Exhibit G and  
20 Government Code section 6253.9 speak for themselves. Paragraph 51 contains argument and  
21 legal conclusions, and on that basis Respondent OAL denies such allegations. Except as  
22 otherwise admitted or denied above, Respondent OAL denies each and every remaining  
23 allegation contained in paragraph 51.

24 52. Answering paragraph 52 of the Petition, Respondent OAL admits that Exhibit D and  
25 Government Code section 6250 speak for themselves. Paragraph 52 contains argument and legal  
26 conclusions, and on that basis Respondent OAL denies such allegations. Except as otherwise  
27 admitted or denied above, Respondent OAL denies each and every remaining allegation  
28 contained in paragraph 52.

1           53. Answering paragraph 53 of the Petition, Respondent OAL admits that Government  
2 Code sections 6254-6254.30 and 6255 speak for themselves. Paragraph 53 contains argument  
3 and legal conclusions, and on that basis Respondent OAL denies such allegations. Except as  
4 otherwise admitted or denied above, Respondent OAL denies each and every remaining  
5 allegation contained in paragraph 53.

6           54. Answering paragraph 54 of the Petition, Respondent OAL admits Exhibits D, G and I  
7 speak for themselves. Paragraph 54 contains argument and legal conclusions, and on that basis  
8 Respondent OAL denies such allegations. Except as otherwise admitted or denied above,  
9 Respondent OAL denies each and every remaining allegation contained in paragraph 54.

10                           **ANSWER TO PETITIONER’S OVERVIEW OF WRIT PROCEDURE**

11           55. Answering paragraph 55 of the Petition, Respondent OAL admits Government Code  
12 section 6259 speaks for itself. Paragraph 55 contains argument and legal conclusions, and on that  
13 basis Respondent OAL denies such allegations. Except as otherwise admitted or denied above,  
14 Respondent OAL denies each and every remaining allegation contained in paragraph 55.

15           56. Answering paragraph 56 of the Petition, Respondent OAL admits Government Code  
16 section 6259 speaks for itself. Paragraph 56 contains argument and legal conclusions, and on that  
17 basis Respondent OAL denies such allegations. Except as otherwise admitted or denied above,  
18 Respondent OAL denies each and every remaining allegation contained in paragraph 56.

19           57. Answering paragraph 57 of the Petition, Respondent OAL admits Government Code  
20 section 6258 speaks for itself. Paragraph 57 contains argument and legal conclusions, and on that  
21 basis Respondent OAL denies such allegations. Except as otherwise admitted or denied above,  
22 Respondent OAL denies each and every remaining allegation contained in paragraph 57.

23           58. Answering paragraph 58 of the Petition, paragraph 58 contains argument and legal  
24 conclusions, and on that basis Respondent OAL denies such allegations. Except as otherwise  
25 admitted or denied above, Respondent OAL denies each and every remaining allegation  
26 contained in paragraph 58.

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**FIRST AFFIRMATIVE DEFENSE**

The Petition fails to allege facts sufficient to constitute a cause of action against Respondent OAL.

**SECOND AFFIRMATIVE DEFENSE**

Respondent OAL complied with all applicable laws at all relevant times including, but not limited to, Government Code sections 11340 *et seq.* and Government Code sections 6254, subdivision (k), and 6255.

**THIRD AFFIRMATIVE DEFENSE**

Respondent OAL has not knowingly or intentionally waived any exemption to disclosure, applicable defense or affirmative defense.

**FOURTH AFFIRMATIVE DEFENSE**

The Petition fails to allege facts sufficient to state a claim for attorneys' fees.

**FIFTH AFFIRMATIVE DEFENSE**

Any responsive records not disclosed by Respondent OAL to Petitioner are exempt from disclosure under the Public Records Act.

**SIXTH AFFIRMATIVE DEFENSE**

Because much of the Petition is alleged in conclusory terms, all affirmative defenses that may be applicable cannot be fully anticipated. Accordingly, Respondent OAL reserves the right to assert additional affirmative defenses if applicable.

WHEREFORE, Respondent OAL prays for relief as follows:

1. Deny Petitioner's Petition for writ of mandate;
2. Deny Petitioner's request for attorney's fees and costs;
3. Enter judgement in favor of Respondent OAL;
4. Award Respondent OAL all costs of suit; and
5. Award Respondent OAL such further relief that the Court deems just and proper.

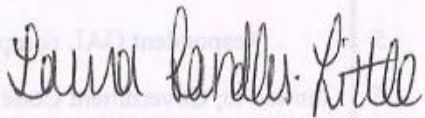
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Dated: April 23, 2021

Respectfully Submitted,

MATTHEW RODRIQUEZ  
Acting Attorney General of California  
MICHELLE M. MITCHELL  
Supervising Deputy Attorney General



LAURA A. RANDLES-LITTLE  
Deputy Attorney General  
KEITH L. WURSTER  
Deputy Attorney General  
*Attorneys for Respondent  
Office of Administrative Law*

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Document received by the CA 3rd District Court of Appeal.

**DECLARATION OF SERVICE BY E-MAIL and U.S. Mail**

Case Name: **Public.Resource.Org., Inc. v. California Office of Administrative Law,  
California Building Standards Commission**  
No.: **34-2021-80003612**

I declare:

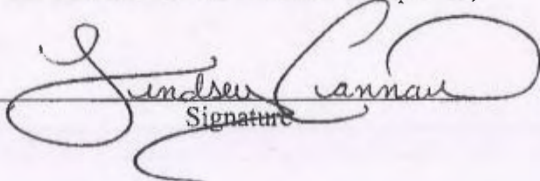
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On April 23, 2021, I served the attached **RESPONDENT CALIFORNIA OFFICE OF ADMINISTRATIVE LAW'S ANSWER TO THE VERIFIED PETITION FOR PREEMPTORY WRIT OF MANDATE ORDERING COMPLIANCE WITH THE CALIFORNIA PUBLIC RECORDS ACT** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Matthew Caplan  
Joseph D. Mornin  
Ryan O'Hollaren  
Cooley LLP - San Francisco  
101 California Street, 5th Floor  
San Francisco, CA 94111  
**E-mail Addresses:**  
[mcaplan@cooley.com](mailto:mcaplan@cooley.com)  
[jmornin@cooley.com](mailto:jmornin@cooley.com)  
[rohollaren@cooley.com](mailto:rohollaren@cooley.com)  
*Attorneys for Plaintiff Public.Resource.Org,  
Inc.*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 23, 2021, at Sacramento, California.

\_\_\_\_\_  
Lindsey Cannan  
Declarant

  
\_\_\_\_\_  
Signature

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Document received by the CA 3rd District Court of Appeal.

**STATE OF CALIFORNIA**  
**DEPARTMENT OF JUSTICE**  
Office of the Attorney General  
P.O. Box 944255  
Sacramento, California 94244-2550

---

**TO:**

**Matthew Caplain**  
**Joseph D. Mornin**  
**Ryan O'Hollaren**  
**Cooley LLP – San Francisco**  
**101 California Street, 5<sup>TH</sup> Floor**  
**San Francisco, CA 94111**

istrict Court of Appeal.

**00141**



1 COOLEY LLP  
2 MATTHEW D. CAPLAN (260388)  
3 (mcaplan@cooley.com)  
4 JOSEPH D. MORNIN (307766)  
5 (jmornin@cooley.com)  
6 RYAN O'HOLLAREN (316478)  
7 (rohollaren@cooley.com)  
8 3 Embarcadero Center, 20<sup>th</sup> floor  
9 San Francisco, CA 94111-4004  
10 Telephone: +1 415 693 2000  
11 Facsimile: +1 415 693 2222

12 Attorneys for Petitioner  
13 PUBLIC.RESOURCE.ORG, INC.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF SACRAMENTO

16 PUBLIC.RESOURCE.ORG, INC.,

17 Petitioners,

18 v.

19 CALIFORNIA OFFICE OF  
20 ADMINISTRATIVE LAW, and the  
21 CALIFORNIA BUILDING STANDARDS  
22 COMMISSION

23 Respondents.

Case No. 34-2021-80003612

**PUBLIC.RESOURCE.ORG, INC.'S OPENING  
BRIEF IN SUPPORT OF PETITION FOR WRIT  
OF MANDATE**

Date: December 17, 2021  
Time: 10:00 a.m.  
Dept: 27  
Hon. Steven M. Gevercer

1 **I. INTRODUCTION**

2 Petitioner Public.Resource.Org (“Public Resource”) submitted requests under the  
3 California Public Records Act (“CPRA”) to the California Office of Administrative Law  
4 (“OAL”) and Building Standards Commission (“BSC”) seeking disclosure of a complete  
5 electronic copy of the California Code of Regulations (“CCR”). OAL and BSC denied Public  
6 Resource’s request for multiple reasons, but they have not carried and cannot carry their burden  
7 of identifying a statutory exemption that justifies nondisclosure.

8 In addition, two private organizations—National Fire Protection Association, Inc.  
9 (“NFPA”) and International Code Council, Inc. (“ICC”)—have intervened in this case to block  
10 disclosure on the grounds that they own copyrights in parts of California’s laws. But no  
11 California law authorizes any entity to own the law by asserting copyright over it. Nor could it, as  
12 the government edicts doctrine holds that the law cannot be copyrighted, even when it  
13 incorporates portions of works authored or published by private parties.

14 Because OAL and BSC have failed to comply with their obligations under the CPRA,  
15 Public Resource filed this petition seeking a writ of mandate commanding them to disclose the  
16 CCR in response to Public Resource’s CPRA requests. *See* Verified Pet’n for Writ of Mandate,  
17 filed Mar. 17, 2021 (“Pet’n”), at 7–13. The Court should order them to produce electronic copies  
18 of the CCR in response to Public Resource’s CPRA requests.

19 **II. BACKGROUND**

20 **A. Parties**

21 Public Resource is a California nonprofit that aims to improve public access to  
22 government records and primary legal materials. *See generally* Pet’n at 7–13; *see also*  
23 <https://www.youtube.com/watch?v=2tOJdGaMvVw> (explaining Public Resource’s mission).

24 OAL oversees the publication and distribution of the CCR. *Id.* at 8–9. Its purpose is to  
25 “ensure that agency regulations are clear, necessary, legally valid, and available to the public.”<sup>1</sup>

26 BSC administers California’s building code, coordinates and manages the model code  
27 adoption process, reviews and approves building standards, and publishes the California Building

28 <sup>1</sup> <https://oal.ca.gov/about-the-office-of-administrative-law/>.

1 Standards Code as Title 24 of the CCR. *Id.* at 7, 11.

2 NFPA and ICC are private organizations that coordinate the development of technical  
3 standards, which they provide to government entities for incorporation into law. Pet’n at 11; *see*  
4 *also* Mot. to Intervene, filed August 27, 2021, at 4–5. Elements of some of the model codes they  
5 claim to own have been adopted as California law in Title 24 of the CCR. Pet’n at 11.

6 **B. Facts**

7 In December 2020, Public Resource submitted CPRA requests to OAL and BSC seeking  
8 complete electronic copies of the CCR in a structured, machine-readable format. *Id.* at 9–13. Both  
9 agencies refused on several grounds. OAL responded that it does not have a structured, machine  
10 readable version of the CCR, and that it has an outdated version on a CD-ROM, but each section  
11 would need to be individually extracted and copied. *Id.* at 10. BSC responded that print editions  
12 of Title 24 are available for inspection at certain public libraries; that it can be purchased in whole  
13 or part from certain private entities; and that BSC “does not have the publishing rights to Title 24  
14 and therefore cannot provide free copies to the public” because “Title 24 is based on and includes  
15 model codes produced by the publishing entities, and they then publish California’s codes,  
16 retaining copyright protections.” *Id.* at 12–13. Public Resource responded with letters explaining  
17 why OAL and BSC had not provided lawful reasons for refusing to disclose the CCR under the  
18 CPRA. *Id.* at 9–13. After OAL and BSC continued to refuse, Public Resource filed its petition  
19 with the Court seeking a writ commanding OAL and BSC to respond to its CPRA requests.

20 In May 2021, NFPA and ICC sought to intervene to prevent disclosure of the CCR based  
21 on the claim that they own copyrights in parts of California’s laws and that disclosure would  
22 infringe their exclusive rights. The Court granted their motion to intervene on August 27, 2021.

23 **III. ARGUMENT**

24 **A. The CPRA requires disclosure of public records.**

25 The California Constitution states that the “people have the right of access to information  
26 concerning the conduct of the people’s business, and, therefore, . . . the writings of public  
27 officials and agencies shall be open to public scrutiny.” Cal. Const. Art. I § 3(b)(1). The CPRA  
28 protects this “fundamental and necessary” right by giving the people a means of enforcing it. Cal.

1 Gov't Code § 6250; *see also* *Cty. of Santa Clara v. Super. Ct.*, 170 Cal. App. 4th 1301, 1335  
2 (2009) (the CPRA is designed to “increase[e] freedom of information by giving members of the  
3 public access to information in the possession of public agencies”); *CBS, Inc. v. Block*, 42 Cal. 3d  
4 646, 651–52 (1986) (“Implicit in the democratic process is the notion that government should be  
5 accountable for its actions. In order to verify accountability, individuals must have access to  
6 government files.”).

7 An agency must disclose records in response to a CPRA request if (1) the records “qualify  
8 as ‘public records’” within the meaning of § 6252(e); and (2) the records are “in the possession of  
9 the agency.” *Anderson-Barker v. Super. Ct.*, 31 Cal. App. 5th 528, 538 (2019). All public records  
10 are subject to disclosure unless the legislature has expressly provided to the contrary. Cal. Gov't  
11 Code § 6253(b). An agency must disclose public records unless the record falls under one of the  
12 exemptions listed in the statute. *Id.* Cal. Gov't Code § 6255; *Citizens for A Better Env't v. Dep't*  
13 *of Food & Agric.*, 171 Cal. App. 3d 704, 711 (1985) (“Grounds to deny disclosure of information  
14 ‘must be found, if at all, among the specific exceptions to the general policy that are enumerated  
15 in the Act.’” (quoting *State of Cal. v. Super. Ct.*, 43 Cal. App. 3d 778, 783 (1974))). The agency  
16 “opposing disclosure bears the burden of proving that an exemption applies.” *Cty. of Santa Clara*,  
17 170 Cal. App. 4th at 1321 (citing *Bd. of Trs. of Cal. State Univ. v Super. Ct.*, 132 Cal. App. 4th  
18 889, 896 (2005)); *see also* *L.A. Unified Sch. Dist. v. Super. Ct.*, 228 Cal. App. 4th 222, 239  
19 (2014).

20 Public records must be provided by the agency in “any electronic format in which it holds  
21 the information” and any format “used by the agency to create copies for its own use or for  
22 provision to other agencies.” Cal. Gov't Code § 6253.9(a)(1)–(2).

23 The California Constitution directs that any applicable statute or authority “shall be  
24 broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the  
25 right of access.” Cal. Const. Art. I § 3(b)(2); *L.A. Cty. Bd. Of Supervisors v. Super. Ct.*, 2 Cal. 5th  
26 282, 290–91 (2016). The general policy of disclosure “can only be accomplished by narrow  
27 construction of the statutory exemptions.” *Fairley v. Super. Ct.*, 66 Cal. App. 4th 1414, 1419–20  
28 (1998).

1           **B.     The CCR is a public record.**

2           OAL and BSC have not disputed that the CCR is a “public record,” which the CPRA  
3 defines as “any writing containing information relating to the conduct of the public’s business  
4 prepared, owned, used, or retained by any state or local agency regardless of physical form or  
5 characteristics.” Cal. Gov’t Code § 6252(e). The CCR is a body of law regulating a vast range of  
6 public and private conduct in California, and accordingly, there is no doubt that it “relate[s] to the  
7 conduct of the public’s business.” *See Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498,  
8 1507 (2020) (“Every citizen is presumed to know the law, and it needs no argument to show . . .  
9 that all should have free access to its contents.” (internal quotations omitted)).

10           Additionally, California has mandated the creation and maintenance of the CCR. Cal.  
11 Gov’t Code § 11342.4 (“[OAL] shall adopt, amend, or repeal regulations for the purpose of  
12 carrying out the provisions of this chapter.”); Cal. Health & Safety Code § 18930(a) (“Any  
13 building standard adopted or proposed by state agencies shall be submitted to, and approved or  
14 adopted by, the California Building Standards Commission prior to codification.”). This fact  
15 independently qualifies the CCR as a public record. *League of Cal. Cities v. Super. Ct.*, 241 Cal.  
16 App. 4th 976, 987 (2015) (“Any record required by law to be kept by an officer, or which he  
17 keeps as necessary or convenient to the discharge of his official duty, is a public record.”).

18           **C.     OAL and BSC possess the CCR.**

19           As Public Resource explained in its Petition, OAL and BSC possess the entirety of the  
20 CCR. Pet’n at 15–16. BSC has not denied possession, and OAL’s statement that it “does not have  
21 a copy of a CCR Master Database” (*id.* at 15 & Ex. D at 31) is contrary to California law.

22           OAL has contracted with West Publishing Corporation (“West”) to publish a copy of the  
23 CCR, but OAL maintains possession of its contents. Under that contract, West is tasked with  
24 maintaining “the Official California Code of Regulations (CCR) in an electronic database” called  
25 “the ‘Master Database.’” Pet’n at 8; Notice of Supplemental Auth. in Support of Petition for Writ  
26 of Mandate (“Notice”), Ex. J at 52. West must “update the Master Database as soon as feasible  
27 after OAL provides the contractor with regulations that have been endorsed by the Secretary of  
28 State, preferably within 15 days but in no event longer than 30 days after OAL delivers the

1 regulation text.” Pet’n at 15; Notice, Ex. J at 52. The contract says that West “shall not alter the  
2 text of regulations, notices of any other materials furnished by OAL for publication, except as  
3 expressly directed or authorized by OAL.” *Id.* at 59. OAL has the right to “inspect[], revis[e] and  
4 correct[]” the CCR Master Database and dictate revisions to West. *Id.* And the contract states that  
5 OAL maintains all rights to the Master Database, notwithstanding the fact that West publishes a  
6 copy of it. *Id.* at 65.

7 For purposes of the CPRA, California courts define “possession” to “mean both actual and  
8 constructive possession.” *Bd. of Pilot Comm’rs v. Super. Ct.*, 218 Cal. App. 4th 577, 598 (2013).  
9 Specifically, “an agency has constructive possession of records if it has the right to control the  
10 records, either directly or through another person.” *Consol. Irrigation Dist. v. Super. Ct.*, 205 Cal.  
11 App. 4th 697, 710 (2012).

12 OAL indisputably “has the right to control” the CCR Master Database. That right is  
13 explicitly spelled out in its contract with West. Not only does OAL claim to reserve all  
14 intellectual property rights in the CCR Master Database, but it has the exclusive contractual rights  
15 to inspect, amend, and revise its contents. Pet’n at 15–16; Notice, Ex. J at 52, 59, 65. OAL  
16 therefore has constructive possession of the CCR Master Database under California law.

17 Indeed, the California legislature has explicitly prohibited agencies from avoiding CPRA  
18 obligations by outsourcing publication to third parties. Cal. Gov’t Code § 6270(a) states:  
19 “Notwithstanding any other provision of law, no state or local agency shall sell, exchange,  
20 furnish, or otherwise provide a public record subject to disclosure pursuant to this chapter to a  
21 private entity in a manner that prevents a state or local agency from providing the record directly  
22 pursuant to this chapter.” Thus, OAL cannot escape its CPRA obligations by asserting that the  
23 CCR is in the possession of a private party. *See City of San Jose v. Super. Ct.*, 2 Cal. 5th 608,  
24 623–24 (2017) (“The statute’s clear purpose is to prevent an agency from evading its disclosure  
25 duty by transferring custody of a record to a private holder and then arguing the record falls  
26 outside CPRA because it is no longer in the agency’s possession. . . . It simply prohibits agencies  
27 from attempting to evade CPRA by transferring public records to an intermediary not bound by  
28 the Act’s disclosure requirements.”).

1           **D. OAL and BSC have not complied with the CPRA.**

2           OAL and BSC have provided no documents in response to Public Resource’s CPRA  
3 request. Pet’n at 9–13. Instead, they point to the availability of (1) hard copies at certain public  
4 libraries and (2) various online versions available from third parties that carry strict limits on their  
5 access and use. Pet’n Ex. D at 35 & Ex. G. As Public Resource explained in its Petition (*see* Pet’n  
6 at 18–20), neither response satisfies the agencies’ obligations under the CPRA.

7           First, paper copies are insufficient. The CPRA is clear that “any agency that has  
8 information that constitutes an identifiable public record not exempt from disclosure pursuant to  
9 this chapter that is in an electronic format shall make that information available in an electronic  
10 format when requested by any person.” Cal. Gov’t Code § 6253.9(a).

11           Second, the online versions cited by OAL and BSC are not “publicly available” under  
12 California law. These resources are subject to an array of technological and legal restrictions that  
13 prevent users from engaging in a variety of lawful activity, including text-searching, copying and  
14 pasting, or distributing any of those provisions of the CCR. Pet’n at 20. These “end user  
15 restrictions” “are incompatible with the purposes and operation of the CPRA.” *Cty. of Santa*  
16 *Clara*, 170 Cal. App. 4th at 1335. Public records must be provided by the agency in “any  
17 electronic format in which it holds the information” and any format “used by the agency to create  
18 copies for its own use or for provision to other agencies.” Cal. Gov’t Code § 6253.9(a)(1)–(2).  
19 BSC and OAL cannot avoid this obligation by pointing to highly restricted versions on third-party  
20 websites; they must comply with the statute and provide the records in the formats they  
21 themselves possess.

22           **E. No statutory exemption permits OAL or BSC to withhold the CCR.**

23           As explained above, an agency must disclose public records unless the record falls under  
24 one of the exemptions listed in the CPRA. Cal. Gov’t Code § 6255; *CBS*, 42 Cal. 3d at 651–52.  
25 OAL and BSC have not cited a single exemption to justify withholding the CCR in response to  
26 Public Resource’s CPRA requests. Accordingly, they have failed to carry their burden, and the  
27 Court should compel them to disclose the CCR. *See Cty. of Santa Clara*, 170 Cal. App. 4th at  
28 1321 (the agency “opposing disclosure bears the burden of proving that an exemption applies”).

1           The intervenors, NFPA and ICC, cite two exemptions in their answer—Cal. Gov’t Code  
2 §§ 6254(k) and 6255(a)—but neither exemption justifies withholding the CCR. Section 6254(k)  
3 exempts records where disclosure is “exempted or prohibited pursuant to federal or state law,  
4 including, but not limited to, provisions of the Evidence Code relating to privilege.” And Section  
5 6255(a) provides a catch-all exemption that applies when “the public interest served by not  
6 disclosing the record clearly outweighs the public interest served by disclosure of the record.”

7           NFPA and ICC appear to argue that both exemptions apply because NFPA and ICC claim  
8 copyrights in certain model codes, and elements of those model codes have been incorporated  
9 into California law in Title 24 of the CCR. Answer at 11 (“Federal copyright law prohibits  
10 Respondents from disclosing Intervenors’ Copyrighted Works in the manner requested.”).  
11 Similarly, in its response to Public Resource’s CPRA request, BSC stated that it cannot disclose  
12 Title 24 because it contains copyrighted material (although BSC did not identify a statutory  
13 exemption that would justify nondisclosure). Pet’n Ex. G.

14           Copyright is not a basis for nondisclosure here. Under the government edicts doctrine, the  
15 CCR cannot be copyrighted at all, and therefore no entity owns copyrights in California’s laws.  
16 *Georgia*, 140 S. Ct. at 1508 (copyright does not vest in the law and legal materials issued in the  
17 name of the state). Title 1 of the CCR states that materials incorporated by reference carry the  
18 same weight as regulations in the code itself. Cal. Code. Regs Title 1 § 20(e) (“Where a  
19 regulation which incorporates a document by reference is approved by OAL and filed with the  
20 Secretary of State, the document so incorporated shall be deemed to be a regulation subject to all  
21 provisions of the APA.”). Thus, materials incorporated by reference in the CCR *are* the law, and  
22 under the government edicts doctrine, “no one can own the law.” *Georgia*, 140 S. Ct. at 1507.

23           Numerous courts have held that codified laws are unambiguously in the public domain,  
24 even when they incorporate elements of model codes authored by private entities. *See, e.g., Am.*  
25 *Soc’y for Testing & Materials v. Public.Resource.Org, Inc.*, 896 F.3d 437, 451 (D.C. Cir. 2018)  
26 (“the express text of the law falls plainly outside the realm of copyright protection”); *Veeck v. S.*  
27 *Bldg. Code Cong. Int’l, Inc.*, 293 F.3d 791, 793 (5th Cir. 2002) (en banc) (when model codes  
28 have been “adopted by a legislative body and become ‘the law,’ . . . the model codes enter the



1 public domain and are not subject to the copyright holder’s exclusive prerogatives”); *Building*  
2 *Officials & Code Adm’rs v. Code Tech., Inc.*, 628 F.2d 730, 734 (1st Cir. 1980) (“The citizens are  
3 the authors of the law, and therefore its owners, regardless of who actually drafts the provisions,  
4 because the law derives its authority from the consent of the public, expressed through the  
5 democratic process.”); *Int’l Code Council, Inc. v. UpCodes, Inc.*, No. 17 Civ. 6261 (VM), 2020  
6 WL 2750636, at \*7 (S.D.N.Y. May 27, 2020) (explaining that “a private party cannot exercise its  
7 copyrights to restrict the public’s access to the law” and concluding that a plaintiff “cannot claim  
8 actionable infringement based only on Defendants’ accurate posting of the [plaintiff’s codes] as  
9 [a]dopted, which are essentially enacted state and local laws”).

10 Moreover, even if California’s laws could be copyrighted (and they cannot), “[s]tate law  
11 determines whether [an agency] may claim copyright in [its] office’s creations.” *Cty. of Santa*  
12 *Clara*, 170 Cal. App. 4th at 1331; *see also City of Inglewood v. Teixeira*, No. CV-15-01815-  
13 MWF (MRWx), 2015 U.S. Dist. LEXIS 114539, at \*7–8 (C.D. Cal. Aug. 20, 2015) (“[W]hether  
14 state and local governments can claim copyright protection is governed by state law.”). Thus,  
15 when an agency asserts copyright as the basis for refusing to disclose records in response to a  
16 CPRA request, courts assess whether California law explicitly allows the agency to obtain and  
17 assert copyrights in the records in question. *See, e.g., Cty. of Santa Clara*, 170 Cal. App. 4th at  
18 1333 (because no “express authorization to secure copyrights” existed for GIS data, the county  
19 could not assert copyright protection as a basis for nondisclosure); *City of Inglewood*, 2015 U.S.  
20 Dist. LEXIS 114539, at \*8–9 (because the city could identify “no affirmative grant of authority  
21 that permits it to obtain and assert a copyright for the City Council Videos,” the court held that  
22 the city could not withhold the videos on copyright grounds); *Cty. of Santa Clara*, 170 Cal. App.  
23 4th at 1335 (holding that the CPRA’s mandate to provide public records “overrides a government  
24 agency’s ability to claim a copyright in its work unless the legislature has expressly authorized a  
25 public records exemption”). Here, the legislature has not permitted any entity to hold copyrights  
26 in the CCR.

27 Accordingly, BSC and OAL cannot assert copyright as a basis for nondisclosure. Because  
28 no statutory exemption permits OAL and BSC to withhold the CCR, the Court should compel

1 them to respond to Public Resource’s CPRA request.

2 **IV. CONCLUSION**

3 Public Resource respectfully requests that the Court issue a writ of mandate commanding  
4 OAL and BSC to disclose a structured, machine-readable version of the CCR in response to  
5 Public Resource’s CPRA requests.

6  
7 Dated: November 2, 2021

COOLEY LLP

8

9

By: /s/ Matthew D. Caplan  
Matthew D. Caplan

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*Attorneys for Petitioner*  
Public.Resource.Org, Inc.

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28

1 COOLEY LLP  
2 MATTHEW D. CAPLAN (260388)  
3 (mcaplan@cooley.com)  
4 JOSEPH D. MORNIN (307766)  
5 (jmornin@cooley.com)  
6 RYAN O'HOLLAREN (316478)  
7 (rohollaren@cooley.com)  
8 3 Embarcadero Center, 20<sup>th</sup> floor  
9 San Francisco, CA 94111-4004  
10 Telephone: +1 415 693 2000  
11 Facsimile: +1 415 693 2222

12 Attorneys for Petitioner  
13 PUBLIC.RESOURCE.ORG, INC.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF SACRAMENTO

16 PUBLIC.RESOURCE.ORG, INC.,

17 Petitioners,

18 v.

19 CALIFORNIA OFFICE OF  
20 ADMINISTRATIVE LAW, and the  
21 CALIFORNIA BUILDING STANDARDS  
22 COMMISSION,

23 Respondents.

Case No. 34-2021-80003612

*Assigned for all purposes to  
Judge Steven M. Gevercer, Department 27*

**NOTICE OF LODGING OF ADMINISTRATIVE  
RECORD**

Date: December 17, 2021

Time: 10:00 a.m.

Dept: 27

Hon. Steven M. Gevercer

Petition filed: March 17, 2021

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TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT Petitioner Public.Resource.Org, Inc. hereby lodges with the Court the following Administrative Record materials.

Dated: November 2, 2021

COOLEY LLP

By: /s/ Matthew D. Caplan  
Matthew D. Caplan

*Attorneys for Petitioner*  
Public.Resource.Org, Inc.

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**Index of Administrative Record Exhibits**

<b>Exhibit</b>	<b>Pages</b>	<b>Description</b>
A	1	2010 California Code of Regulations and California Notice of Register Publication Contract
B	2-29	2016-2020 OAL/West CCR Agreement
C	30	Letter from Public.Resource.Org to Office of Administrative Law requesting a copy of Titles 1-5, 7-23 and 25-28 of the California Code of Regulations, dated December 29, 2020
D	31-38	Email thread between Public.Resource.Org to Office of Administrative regarding copies of Titles 1-5, 7-23 and 25-28 of the California Code of Regulations
E	39-40	Response Letter from Public.Resource.Org to Office of Administrative Law requesting a copy of Titles 1-5, 7-23 and 25-28 of the California Code of Regulations, dated February 3, 2021
F	41	Letter from Public.Resource.Org to Building Standards Commission requesting a copy of Title 24 the California Code of Regulations, dated December 29, 2020
G	42	Letter from California Building Standards Commission to Carl Malamud regarding Public Records Act request, dated January 7, 2021
H	43-44	Response Letter from Public.Resource.Org to California Building Standards Commission responding to January 7, 2021 letter, dated January 29, 2021.
I	45-46	Email from Mia Marvelli to Carl Malamud re PRA response, dated March 2, 2021.
J	47-73	Current OAL/West CCR Agreement

259174809

Document received by the CA 3rd District Court of Appeal.

# Exhibit A

Document received by the CA 3rd District Court of Appeal.

## 2020 California Code of Regulations and California Regulatory Notice Register Publication Contract

The Office of Administrative Law (OAL) is responsible for compiling and publishing the Official California Code of Regulations (CCR) and the California Regulatory Notice Register (Notice Register), both in hard copy and online. The current contract for publication of the CCR and Notice Register ends on December 31, 2020. OAL is in the process of soliciting proposals for the publication of the CCR and Notice Register. Information, documents, and status updates on this process can be found below. For inquiries or to request information about process, including being added to the notification list regarding this process, please email [CCRcontract@OAL.ca.gov](mailto:CCRcontract@OAL.ca.gov).

**October 29, 2020**

### NOTICE OF INTENT TO AWARD CONTRACT

RFP – CCR – 2020

for the

Publication of the Official California Code of Regulations and the California Regulatory Notice Register

To Whom it may Concern:

Pursuant to the process established by the Request for Proposals issued July 17, 2020 and the Addendum No. 1 issued October 1, 2020 by the Office of Administrative Law (OAL), notice is hereby given that on November 9, 2020, OAL intends to award the publication contract for the Official California Code of Regulations and California Regulatory Notice Register to the contractor named below:

West Publishing Corporation d/b/a West, a Thomson Reuters business

A proposer, prior to the award of the contract, may protest the Notice of Intent to Award on the grounds that OAL failed to follow the procedures specified in California Public Contracting Code, sections 10344 and/or 10345(b). After filing a protest, the protestant has five (5) calendar days to file a detailed written statement of the protest grounds if the original protest did not contain the complete grounds for the protest. (PCC §§ 10345(a)3, 10345(b)(2).) These documents must be submitted to the following addresses by the appropriate deadlines:

Office of Administrative Law, Attn: Kevin D. Hull, Senior Attorney; 300 Capitol Mall, Suite 1250; Sacramento, CA 95814; Fax (916) 323-3826; Email [CCRContract@oal.ca.gov](mailto:CCRContract@oal.ca.gov).

Department of General Services, Office of Legal Services, Attn: Protest Coordinator; 707 Third Street, 7th Floor, Suite 7-330; West Sacramento, CA 95605; Fax (916) 376-5088; Email: [OLSProtests@dgs.ca.gov](mailto:OLSProtests@dgs.ca.gov).

Any questions or comments regarding this matter should be directed to Kevin D. Hull at (916) 323-8916 or [CCRContract@oal.ca.gov](mailto:CCRContract@oal.ca.gov).

Sincerely,

/s/

Kenneth J. Pogue  
Director

**October 1, 2020:** Please take note that on October 1, 2020, OAL issued Addendum No. 1 to RFP-CCR-2020 which is incorporated into RFP-CCR-2020. This addendum consists of the following items: Notice of Addendum; Exhibit 11, Exhibit 12, RFP-CCR-2020 Addendum No. 1 dated 10-1-2020. Copies of these documents are available upon request from the contact person listed below. The following is a summary of the changes made to the original RFP.

- Adding of Exhibit 11: This is a copy of the current CCR publication contract for 2016 through 2020.
- Adding of Exhibit 12: Exhibit 12 consists of questions submitted by potential bidders and OAL's responses.
- RFP Page 10, Section 2.8.4: The .5 point designated for the Electronic CCR has been deleted and added to the points allotted for Publications for County Clerks and Libraries.
- RFP Section 3.2.9, page 21: Electronic CCR – This section relating to the Electronic CCR has been modified to make publication of the Electronic CCR permissive.
- RFP Section 3.7: has been modified to remove the requirement to provide OAL with "One (1) subscription to the CD-Rom version of the CCR;"
- RFP Section 3.8, page 28: This section has been modified regarding requirements to provide clerks and county libraries copies of the CCR and Notice Register in electronic format.
- RFP Section 3.10, page 29: Exhibits 11 and 12 have been added to the list of exhibits.
- RFP Page 46: Section 5 relating to the Electronic CCR has been modified to make publication of the CCR in electronic format permissive.
- RFP Page 51: Section 11 of the proposed contract has been modified to remove requirement 11(d) to provide OAL with "One (1) subscription to the CD-Rom version of the CCR;"
- RFP Page 51: Section 12 regarding publications for County Clerks and Depository Libraries has been modified regarding providing clerks and county libraries copies of the CCR and Notice Register in electronic format.
- RFP Page 57: The following language in Section 18 in Exhibit D, Special Terms and Conditions of the proposed contract has been removed: "If the contractor declines to obtain a copyright in the editorial enhancements on its own behalf, the contractor shall obtain a copyright in the name of OAL on behalf of the state of California."
- RFP Page 60-61: Section 23 of the proposed contract has been modified relating to substitutions of contractors.

Given that the changes included in this Addendum are primarily informative in nature and because any substantive changes are minor or make the RFP less restrictive, OAL is **not** extending the current submission deadline of October 15, 2020.

- Request for Proposals for Publication of the Official California Code of Regulations and the California Regulatory Notice Register
- Exhibit 1 – Example Reports to Publisher;
- Exhibit 2 – Example Text Showing Underline and Strike through;
- Exhibit 3 – Example CCR Supplement;
- Exhibit 4 – Example History Notes;
- Exhibit 5 – Example Notice Register – Number 9-Z-February 28, 2020;
- Exhibit 6 – Internet CCR Usage Summaries;
- Exhibit 7 – 2016-2019 Licensing and Royalty Payments;
- Exhibit 8 – GTC April 2017
- Exhibit 9 – STD204;
- Exhibit 10 – CCC 042017.

Requests for the above-referenced documents, as well as any questions regarding the Request for Proposal should be directed to the contact person below.

Kevin D. Hull, Senior Attorney  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
PH: (916) 323-8916  
Fax: (916) 323-6826  
E-mail at [CCRcontract@oal.ca.gov](mailto:CCRcontract@oal.ca.gov)

**July 17, 2020:** Please take note that on July 17, 2020, OAL issued the Request for Proposals for Publication of the Official California Code of Regulations and the California Regulatory Notice Register (RFP-CCR-2020). RFP-CCR-2020 is advertised on the California CSCR (Event ID: 0000017004) and consists of the following documents:

- Request for Proposals for Publication of the Official California Code of Regulations and the California Regulatory Notice Register
- Exhibit 1 – Example Reports to Publisher;
- Exhibit 2 – Example Text Showing Underline and Strike through;
- Exhibit 3 – Example CCR Supplement;
- Exhibit 4 – Example History Notes;
- Exhibit 5 – Example Notice Register – Number 9-Z-February 28, 2020;
- Exhibit 6 – Internet CCR Usage Summaries;
- Exhibit 7 – 2016-2019 Licensing and Royalty Payments;
- Exhibit 8 – GTC April 2017
- Exhibit 9 – STD204;
- Exhibit 10 – CCC 042017.

Requests for the above-referenced documents, as well as any questions regarding the Request for Proposal should be directed to the contact person below.

Kevin D. Hull, Senior Attorney  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
PH: (916) 323-8916  
Fax: (916) 323-6826  
E-mail at [CCRcontract@oal.ca.gov](mailto:CCRcontract@oal.ca.gov)

**July 17, 2020:** Notice of OAL's issuance of RFP-CCR-2020 was published in the General Information portion of the California Regulatory Notice Register on July 17, 2020. Please note that this notice erroneously states that the RFP was issued on July 13, 2020. The actual issuance date is July 17, 2020.

**May 8, 2020:** OAL is now issuing a Request for Information, inviting all interested persons to provide information or suggestions that may assist OAL in contracting for the future publication of the CCR and Notice Register. The deadline to respond is June 15, 2020. This Request for Information is available upon request by emailing [CCRcontract@OAL.ca.gov](mailto:CCRcontract@OAL.ca.gov) or can be downloaded at [Request for Information OAL 2020](#).

### Contact OAL

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814-4339

Phone: (916) 323-6225  
CALNET: (916) 473-6225  
Fax: (916) 323-6826  
Email: [staff@oal.ca.gov](mailto:staff@oal.ca.gov)

Reference Attorney  
Voicemail Line: (916) 323-6815  
Email: [staff@oal.ca.gov](mailto:staff@oal.ca.gov)

If you wish to receive notice of proposed rulemakings by OAL, send an email to [staff@oal.ca.gov](mailto:staff@oal.ca.gov) and request to be put on OAL's mailing list.

### Related Links

- [CCR Title 24, Building Standards Code](#)
- [Legislative Information](#)
- [DSS Manual of Policies & Procedures](#)
- [California State Agency Index](#)

# Exhibit B

Document received by the CA 3rd District Court of Appeal.



ORIGINAL

COPY

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES  
STANDARD AGREEMENT - AMENDMENT

STD 213A (Rev. 10/2019)

<input type="checkbox"/> CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED	PAGES	AGREEMENT NUMBER OAL CCR CONTRACT 2015	AMENDMENT NUMBER 2	Purchasing Authority Number OAL-7910
--	-------	---	-----------------------	---

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY NAME

Office of Administrative Law

CONTRACTOR NAME

West Publishing Corporation

2. The term of this Agreement is:

START DATE

January 1, 2016

THROUGH END DATE

December 31, 2020

3. The maximum amount of this Agreement after this Amendment is:

Revenue contract - \$350,000 annual license fee plus 8.1% royalty payment.

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

Pursuant to section 2.1 of the OAL CCR CONTRACT 2015, the parties agree to extend the contract by 1 year beginning 1/1/2020 and ending 12/31/2020. This is the second of two optional extensions provided for in Section 21.1 of the original contract.

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

West Publishing Corporation

CONTRACTOR BUSINESS ADDRESS

610 Opperman Drive

CITY

Eagan

STATE

MN

ZIP

55123

PRINTED NAME OF PERSON SIGNING

Donna H. Gies

TITLE

Assistant General Counsel

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

11-22-2019

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Office of Administrative Law

CONTRACTING AGENCY ADDRESS

300 Capitol Mall, Suite 1250

CITY

Sacramento

STATE

CA

ZIP

95814

PRINTED NAME OF PERSON SIGNING

Kenneth J. Pogue

TITLE

Director

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

12-2-19

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (if Applicable)

**APPROVED**

**DEC 10 2019**

OFFICE OF LEGAL SERVICES  
DEPT. OF GENERAL SERVICES

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001

00159

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Exhibit B - 000003

STATE OF CALIFORNIA  
**STANDARD AGREEMENT AMENDMENT**  
 STD. 218 A (Rev 6/03)

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED \_\_\_\_\_ Pages

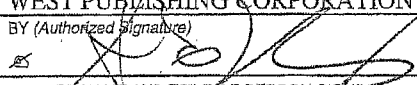
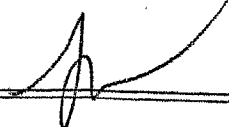
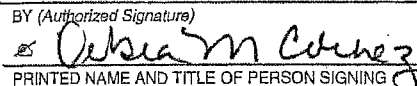
AGREEMENT NUMBER	AMENDMENT NUMBER
<b>OAL CCR CONTRACT 2015</b>	<b>1</b>
REGISTRATION NUMBER	

ORIGINAL

- This Agreement is entered into between the State Agency and Contractor named below:  
 STATE AGENCY'S NAME  
**OFFICE OF ADMINISTRATIVE LAW**  
 CONTRACTOR'S NAME  
**WEST PUBLISHING CORPORATION**
- The term of this Agreement is 1/1/2016 through 12/31/2019
- The maximum amount of this Agreement after this amendment is: \$Revenue contract - \$350,000 annual license fee plus 8.1% royalty payment.
- The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:  
 Pursuant to section 21.1 of the OAL CCR CONTRACT 2015, the parties mutually agree to extend the contract by one year beginning January 1, 2019 and ending December 31, 2019. This is the first of two optional extensions provided for in Section 21.1 of the contract.

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

<b>CONTRACTOR</b>		CALIFORNIA Department of General Services Use Only  <div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>APPROVED</b>   <b>NOV 30 2018</b>           OFFICE OF LEGAL SERVICES          DEPT. OF GENERAL SERVICES       </div>
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) <b>WEST PUBLISHING CORPORATION</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>11/15/18</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Alejandro Medrano, Manager, Government Customer Contracts</b>		
ADDRESS <b>610 Opperman Drive, Eagan, MN 55123</b>		<input type="checkbox"/> Exempt per:  
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME <b>OFFICE OF ADMINISTRATIVE LAW</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>11-19-2018</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>DEBRA M. CORNEZ, Director</b>		
ADDRESS <b>300 Capitol Mall, Suite 1250, Sacramento, CA 95814</b>		

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**Exhibit B - 000004**



STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
 STD 213 (Rev 06/03)

AGREEMENT NUMBER <b>OAL CCR CONTRACT 2015</b>
REGISTRATION NUMBER




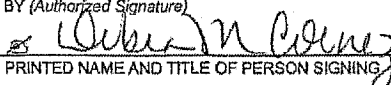
- This Agreement is entered into between the State Agency and the Contractor named below:
 

STATE AGENCY'S NAME <b>OFFICE OF ADMINISTRATIVE LAW</b>
CONTRACTOR'S NAME <b>WEST PUBLISHING CORPORATION</b>
- The term of this Agreement is: 1/1/2016 through 12/31/2018
- The maximum amount of this Agreement is: \$ [Revenue Contract: \$350,000 Annual License Fee + 8.1% Royalty paid to OAL]
- The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.
 

Exhibit A – Scope of Work	9 page(s)
Exhibit B – Budget Detail and Payment Provisions	2 page(s)
Exhibit C* – General Terms and Conditions	1
Check mark one item below as Exhibit D:	
<input checked="" type="checkbox"/> Exhibit - D Special Terms and Conditions (Attached hereto as part of this agreement)	8 page(s)
<input type="checkbox"/> Exhibit - D* Special Terms and Conditions	
Exhibit E – Additional Provisions	page(s)

Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at [www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx](http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx)

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

<b>CONTRACTOR</b>		California Department of General Services Use Only  <div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>APPROVED</b>  <b>SEP 29 2015</b>  <small>OFFICE OF LEGAL SERVICES DEPT. OF GENERAL SERVICES</small> </div>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) <b>West Publishing Corporation</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>9/16/2015</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>John S. Nelson, Director, Procurement and Proposal Management</b>		
ADDRESS <b>610 Opperman Drive, Eagan MN 55123</b>		<input type="checkbox"/> Exempt per: 
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME <b>Office of Administrative Law</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>9-9-2015</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Debra M. Comez, Director</b>		
ADDRESS <b>300 Capitol Mall, Suite 1250, Sacramento, CA 95814</b>		

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## **Exhibit A, Scope of Work/Required Publication Services**

### **1. Costs**

All costs incurred by the contractor in its performance of this contract are the responsibility of the contractor and shall not be charged to the state of California.

### **2. Master Database**

The contractor shall maintain the Official California Code of Regulations (CCR) in an electronic database, which for purposes of this contract shall be referred to as the "Master Database." To ensure that all CCR products accurately reflect the Official CCR content, the Master Database must be the source for all hard copy text and electronic products as well as the source for the contents of the Internet CCR.

Prompt and accurate updating of the CCR Master Database is a key component of the CCR publication contract. The contractor shall update the Master Database as soon as feasible after OAL provides the contractor with regulations that have been endorsed by the Secretary of State, preferably within 15 days but in no event longer than 30 days after OAL delivers the regulation text. The text of regulations and all other items in the Master Database shall be subject to inspection, revision, and correction by OAL. The contractor shall take immediate action to make any corrections specified by OAL.

The contractor shall maintain the Master Database in a secure environment and shall establish an Availability and Operational Recovery Plan to protect the integrity and availability of the Master Database against the risk of attacks that may cause nuisance, significant interruptions of service or unauthorized changes to the Master Database content. At a minimum, the contractor's Availability and Operational Recovery Plan shall include upgrading software and installing software patches and updates as often as necessary to address security risks; removal of unnecessary software applications that run with administrative privileges or that receive packets from the network; use of an external firewall; establishment of remote administration security; restricted server scripts; web server shields with packet filtering, and education of personnel working with the Master Database.

The CCR Master Database shall consist of material not subject to any claims of ownership or copyright, except those of OAL on behalf of the state of California. The CCR Master Database shall include tables of contents, headings and captions, regulation text including all charts, graphs, tables, illustrations, forms etc. designated by OAL for publication, authority and reference citations, and history notes.

Upon completion or termination of the contract, the contractor shall provide OAL with a useable electronic database containing the data from the Master Database. The data must be provided in a standard (free from any proprietary formatting or codes) portable and easily processed or converted format such as XML or a relational database capable of extraction via standard SQL queries. The contractor shall be responsible for all costs associated with transferring the data to OAL in a usable form upon completion or termination of the CCR publication contract.



### 3. California Code of Regulations

#### 3.1. Official California Code of Regulations

The contractor shall publish the Official CCR on 8½ by 11 inch pages, loose leaf, in a form which assures that pages can be easily inserted into standard three-ring binders. Text paper shall be 20 lb. standard weight with a minimum of 30% postconsumer recycled content. Regulation text shall be printed in black, with font size no smaller than that used in the Official CCR in 2014. The format of the Official CCR is subject to OAL approval prior to initial publication. The contractor must submit any future format changes to the Director of OAL for approval prior to implementing any changes. The contractor may offer binders for sale to subscribers but shall not require any subscriber to purchase binders.

The contractor shall accurately and legibly print regulations as filed with the Secretary of State, including all charts, graphs, tables, illustrations, notes, graphics, etc. Each volume of the Official CCR shall contain the following:

- (a) Title Page;
- (b) A page listing hierarchy for that title with a nomenclature cross-reference for the pre-1990 hierarchy;
- (c) Table of contents for that title listing the headings of each Division, Chapter, Subchapter, Group and Subgroup where applicable, and Article;
- (d) Division level table of contents preceding each division within a title;
- (e) Complete text of regulations, including all narrative text, forms, appendices, prefaces, footnotes, endnotes, tables, formulas, graphics, illustrations or other regulatory material designated by OAL for publication;
- (f) Authority and reference citations for each section;
- (g) History notes for each section;
- (h) The Register number and publication date of the last revision on each page to reflect the last date any item on that page was affected by a regulatory action;
- (i) Such other materials as OAL may direct to be published.

In addition to the items listed above, the Official CCR may, in the contractor's sole discretion, also include annotations, appropriate research references, or other editorial material created by the contractor, to which the contractor may retain all intellectual property rights.

#### 3.2. CCR Supplement ("Register")

The contractor shall compile the regulations filed during each calendar week, and use this compilation to update the CCR by publishing the weekly California Code of Regulations (CCR) Supplement. Using the underline (or italics) and strikeout in regulation text to discern changes to the existing text of the CCR, the publisher shall integrate newly adopted, amended or repealed regulations into the CCR and publish the resulting regulatory changes in the CCR Supplement.

The contractor shall number the CCR Supplement by week and year (e.g. Register 2014, No. 42 contains regulations filed with the Secretary of State during the 42nd week of 2014);

and shall publish the weekly CCR Supplement preferably within 15 days but in no event longer than 30 days after OAL sends regulation text for publication.

For sections that are being repealed, the contractor shall add the word (Repealed) to the heading for the repealed section. If other repealed section(s) appear on a page being revised in that issue of the CCR Supplement, and the heading of the other repealed section(s) are missing the word (Repealed), the contractor shall add (Repealed) to that heading.

The Supplement shall match the format requirements stated above for the Official CCR. The CCR Supplement shall be distributed to subscribers accompanied by information adequate to inform subscribers how to replace the updated pages of the Official CCR. The contractor shall distribute the CCR Supplement on a timely basis to subscribers for all full sets, subscribers to individual title(s) or subscribers to any other product iteration offered by the publisher that are affected by the weekly updates.

### **3.3. CCR Tables of Contents**

#### **3.3.1. Master Table of Contents**

The contractor shall publish a Master Table of Contents with a complete listing by heading of all regulations in all titles (excluding Title 24) by Title, Division, Chapter, Subchapter, Group and Subgroup where applicable, and Article. The contractor shall update the Master Table of Contents quarterly to reflect regulations that were added, amended or repealed during the previous calendar quarter, and distribute any revised pages, accompanied by instructions adequate to inform subscribers how to replace the updated pages.

#### **3.3.2. Division Level Table of Contents**

Each Division of the CCR shall be preceded by a Division Level Table of Contents for that Division listing the headings of each Chapter, Subchapter, Group and Subgroup where applicable, Article and Section. The contractor shall update the Division Level Tables of Contents quarterly to reflect regulations that were added, amended or repealed during the previous calendar quarter, and distribute any revised pages, accompanied by instructions adequate to inform subscribers how to replace the updated pages, except that if regulatory material filed by OAL with the Secretary of State includes entire new chapters or entire new articles, the contractor shall distribute a revised Division level Table of Contents (or revised pages in the Division Level Table of Contents) when it publishes the new chapter or article.

### **4. Master Index**

The contractor shall create and publish a Master Index to which the contractor may retain all intellectual property rights. The Master Index shall include a Table of Statutes to Regulations, listing all of the California statutes cited in the Authority and Reference notes following each section of the CCR. The Master Index shall be updated no less than annually.

The Master Index may, in the contractor's sole discretion, include appropriate research references, annotations or other editorial material to which the contractor may retain all

intellectual property rights. The title page of the Master Index shall indicate that the Master Index has not been reviewed by the Office of Administrative Law and is not part of the Official California Code of Regulations. The contractor shall publish the Master Index no later than 180 days after the start date of the CCR publication contract.

The contractor may copyright the Master Index. If the contractor declines to obtain a copyright on its own behalf, the contractor shall obtain a copyright in the name of OAL on behalf of the State of California. All expenses of obtaining such copyright, either on behalf of the contractor or OAL, shall be the responsibility of the contractor.

## 5. Electronic CCR

The contractor shall publish the CCR on CD-ROM, or other successor technology as may otherwise be agreed to by OAL and the contractor, monthly at a minimum. The Electronic CCR shall contain all elements of the Official CCR and shall accurately reflect the complete contents of the Official CCR. The Electronic CCR may, in the contractor's sole discretion, also include other appropriate research references, annotations or other editorial material to which the contractor may retain all intellectual property rights.

## 6. CCR Products

In addition to selling full sets of the CCR in hardcopy and CD-ROM, and licensing all or part of the CCR to other publishers, the contractor may, in its sole discretion, elect to additionally publish any segments or compilations of the CCR for sale as separate units, in any topic area or other grouping, and in any format.

## 7. Internet CCR

The contractor shall make available on the Internet and free to the public an electronic version of the CCR which is capable of accommodating a high number of simultaneous users, at minimum supporting the number of simultaneous users who visited the Internet CCR in 2014. The Internet CCR shall meet the following minimum requirements:

- (a) Accessible to Persons with Disabilities: The contractor shall ensure that the Internet CCR complies with applicable state and federal requirements for accessibility by persons with disabilities.
- (b) Content: The Internet CCR shall accurately reflect the content of the Official CCR. The contractor shall update the Internet CCR no later than 5:00 p.m. Pacific time on the next business day following the date it issues the weekly CCR Supplement. The Internet CCR shall accurately reflect the date on which the online CCR was last updated.
- (c) Format: The Internet CCR shall include any necessary information, software, and technical support to make the complete CCR available, including graphics, tables, forms and any other material included in the Official CCR. The format shall be compatible with all Internet browser software and supported versions widely in use, including, but not limited, to Internet Explorer, Mozilla Firefox, Apple Safari and Google Chrome. The use of browser plugins or additional software (such as Adobe Flash, Microsoft Silverlight etc.) to view the database content is discouraged.

- (d) Agency List and Division Level Links: The Internet CCR shall contain list of state agency names and addresses, each of which shall contain a permanent link (i.e. hard link that a user may save as a "favorite" or "bookmark" browser link) to the division level table of contents for that agency.
- (e) Data Integrity and Availability: The contractor shall make the Internet CCR available 24 hours a day, 7 days a week, excluding scheduled maintenance approved by OAL not to exceed 2 hours per week. The maximum allowable outage during times of disaster shall not exceed 5 working days. The contractor shall take steps to protect the integrity and availability of the Internet CCR against the risk of attacks that may cause nuisance, alter the data by unauthorized individuals, or significant interruptions of service. These steps shall include upgrading software and installing patches as often as necessary to address security risks; removal of unnecessary software applications that run with administrative privileges or that receive packets from the network; use of an external firewall; establishment of remote administration security; restricted server scripts; web server shields with packet filtering, and education of personnel working with the Internet CCR.
- (f) Accuracy: The contractor shall ensure that the Internet CCR accurately reflects the most recent weekly updated version of the Official CCR; that it is complete and contains all the material defined as part of the Official CCR; and that it is fit for publication on the Internet.
- (g) User-Friendly: Response time for a basic query must be comparable to response times for Internet legal research databases widely in use. The contractor shall ensure that users can view, print and search with reasonable ease of use. The contractor shall provide users with a universal search capability, including, but not limited to search by natural language, literal strings, and available use of Boolean operators. The contractor shall include a link to "FAQ" and/or "Help" on the home page to provide information to help users navigate the website. Linking commercial advertising is expressly prohibited without the prior written consent of the Director of OAL.
- (h) User Support: The contractor shall provide toll-free customer assistance during regular business hours. The contractor shall respond to customer service inquiries within two business days of receiving a voice message, written communication, or email.
- (i) Privacy: The contractor shall collect information adequate to report to OAL the number of visits to the website and length of session; however the contractor shall not collect personally identifiable information from any user's Internet session without the explicit, opt-in consent of the user. The contractor shall post a "privacy and conditions of use" page informing users about the collection and use of information regarding visits to the online CCR.
- (j) Reports: The contractor shall provide OAL with quarterly reports about usage of the Internet CCR during the prior calendar quarter. This report shall contain information about the number of users visiting the Internet CCR, including the number of visitors per week and average session length. The contractor shall also report the number and type of technical support queries for the Internet CCR, and provide a detailed explanation for any unanticipated interruption in service that exceeds one hour.

- (k) Title 24 Explanatory Note: The contractor shall list title 24 in the list of CCR titles in the Internet CCR, state that title 24 is published by the Building Standards Commission (BSC) and link the listing for title 24 to the BSC website at <http://www.bsc.ca.gov/default.htm>.

## 8. The California Regulatory Notice Register

The contractor shall publish the California Regulatory Notice Register (Notice Register) each Friday using material provided by OAL the previous week. The contractor may elect to receive the material in hardcopy or via electronic mail. The Notice Register shall be printed on 8½ by 11 inch pages, three-hole punched, in a format of comparable quality to that in use in 2014. Text paper shall be 20 lb. standard weight with a minimum of 30% postconsumer recycled content. Text shall be printed in black; font size shall be no smaller than 10 point for text within paragraphs.

Potential elements of the Notice Register include, but are not limited to:

- (a) Notices of Proposed Regulatory Action
- (b) Summaries of approved regulations filed with the Secretary of State the previous week
- (c) Summaries of regulation decisions issued during the previous week and summaries of the reasons for OAL disapproval of a proposed regulation
- (d) Quarterly index of OAL regulation decisions
- (e) An agency's request for review of an OAL disapproval decision, OAL's response to the agency request for review, and the Governor's decision
- (f) Underground regulation petitions and underground regulation determinations issued pursuant to Government Code section 11340.5
- (g) General Public Interest Notices
- (h) Petition decisions pursuant to Government Code section 11340.7
- (i) Periodic indices of regulations approved and filed with the Secretary of State
- (j) OAL announcements
- (k) An Annual Rulemaking Calendar pursuant to Government Code section 11017.6.  
The contractor may distribute the Annual Rulemaking Calendar to subscribers on CD or other electronic format, but shall provide a print version upon request by any subscriber.

By 10:00 a.m. Pacific Time on every Friday, the contractor shall send a linked PDF copy of that day's issue of the Notice Register which fully and accurately reflects the print version of the Notice Register. (For purposes of this RFP, the term "linked PDF copy" means that each item listed in the online Table of Contents shall include a hyperlink so that clicking on that item in the Table of Contents takes the user to that notice in the text of the Notice Register.) The linked PDF copy of the Notice Register shall be sent by electronic mail to the person(s) designated by the Director of OAL to receive the linked PDF copy of the Notice Register.

## 9. Transmission of Material for Publication

OAL shall furnish to the contractor, at the contractor's expense, all regulations, notices and any other material designated for publication under the CCR publication contract. OAL shall deliver to the contractor, at the contractor's expense, a copy of approved regulations

endorsed by the Secretary of State each day that OAL files regulations with the Secretary of State. The contractor's method for collection and delivery shall provide for routine delivery the next business day after OAL files approved regulations with the Secretary of State. OAL shall provide the contractor with approved notices once each week via electronic mail.

The contractor may elect to receive an unofficial advance copy of proposed regulations prior to review and action by OAL, to be transmitted to the contractor at the contractor's expense. The contractor shall understand that these unofficial advance copies of regulations may be revised before filing or may never be filed with the Secretary of State, and may therefore not become part of the Official CCR.

By 10:00 a.m. on the business day following the date OAL takes action on any proposed regulatory action, OAL shall inform the contractor of such action by sending, via electronic mail, a Daily Action Report containing the following information:

- (a) OAL File Number
- (b) Title affected
- (c) Agency
- (d) OAL Action (Approval/Disapproval/Withdrawn)
- (e) Date of filing with Secretary of State

## **10. Editorial Responsibilities and Accuracy**

The contractor shall ensure that regulation text, as published, accurately reflects the final regulation text as filed with the Secretary of State. The contractor shall ensure that notice text, as published, accurately reflects the text of the notice provided by OAL. All editorial work, including but not limited to proofreading, copyreading, correction, data preparation, formatting, and typographical composition work for the CCR and Notice Register, shall be performed at the contractor's expense.

The contractor shall not alter the text of regulations, notices or any other materials furnished by OAL for publication, except as expressly directed or authorized by OAL. If, at any time during the CCR publication contract, OAL determines that the publisher's editorial work is unsatisfactory, OAL will advise the publisher in writing and give the publisher a reasonable opportunity to correct any deficiencies. OAL defines a satisfactory level of accuracy as zero percentage (0%) of error rate as compared to the final regulation text filed with the Secretary of State or as compared to the text of notices provided by OAL.

The text of regulations and all data in the Master Database shall be subject to inspection, revision, and correction by OAL. Questions regarding the text of regulations or notices shall be promptly called to the attention of OAL. Inferior, unprofessional, or unsatisfactory work shall be rejected and returned to the contractor for prompt correction at no additional cost to the state or CCR subscribers. OAL's inspection, revision, or acceptance of work shall not be considered a waiver of the contractor's duty to correct, at the contractor's own expense, errors or defects subsequently discovered.

The contractor shall advise the Director of OAL in advance, in writing, of any proposed changes in the method and manner of performing editorial work covered by the CCR

publication contract. The Director of OAL, or designated representative, and the contractor's representative shall, on the request of either party or at reasonable intervals, meet and confer to foster communication and cooperation between OAL and the contractor about the parties' rights and responsibilities under the CCR publication contract.

## 11. Publications and Services for OAL

The contractor shall provide OAL during the term of the CCR publication contract with the following publications and products, free of charge:

- (a) Four (4) subscriptions to the Official CCR and CCR Supplement in hard copy;
- (b) Three (3) subscriptions to the Master Table of Contents, in hard copy;
- (c) Three (3) subscriptions to the Master Index, in hard copy;
- (d) One (1) subscription to the CD-Rom version of the CCR;
- (e) One (1) subscription to Annotated California Codes;
- (f) Five (5) copies of each issue of the California Regulatory Notice Register;
- (g) One (1) complete replacement set of CCR binders annually;
- (h) 1000 copies annually of a softbound book containing selected statutes and regulations specified by OAL as relevant to California rulemaking law. The format and content of the book shall be substantially similar to the 2014 edition of "California Rulemaking Law under the Administrative Procedure Act."

Additionally, the contractor shall provide each employee of OAL, for the exclusive use by OAL, with free access to any online legal research database services provided by the contractor. The level of service provided shall include, at a minimum, access to cases and judicial materials, statutes and legislative materials, administrative law and regulations, analytical materials, and journals and law reviews for all states and the federal government; news and business materials available to basic national service subscribers, any other features available to subscribers that are reasonably relevant to OAL's duties, and to new online legal research database services created during the term of the CCR publication contract that are reasonably relevant to OAL's duties.

## 12. Publications for County Clerks and Depository Libraries

The contractor shall provide, free of charge, one (1) subscription of the hard copy version of the CCR (or, at the recipient's option, subscription to CD-ROM or other mutually agreeable electronic format) to each of the fifty-eight (58) county clerks or their designees, pursuant to Government Code section 11343.5; and to each state depository library, pursuant to Government Code sections 14900-14912.

The contractor shall provide, free of charge, one (1) subscription of the hardcopy version of the Notice Register (or, at the recipient's option, subscription to CD-ROM or other mutually agreeable electronic format) to state depository libraries, pursuant to Government Code sections 14900-14912.

### 13. Reports

The contractor shall provide OAL with periodic reports regarding the content of the Official CCR and the Notice Register. These reports are to be provided no less often than annually and shall include but are not limited to:

- (a) The number of regulation sections in existence at the end of the prior calendar year. This report shall specify the total number of active regulation sections and the total number of repealed regulation sections in each title, and in addition shall specify the total number of sections in all CCR titles combined;
- (b) A tally of the number of regulations adopted, amended or repealed during the prior calendar year. This report shall specify the number of files sent by OAL for publication and the number of regulation sections that were adopted, amended or repealed during the period covered.
- (c) A page count of the Official CCR for the prior calendar year. This report shall state the number of pages in each title and include the total number of pages for all titles.



## Exhibit B, Revenue Provisions

### 14. Annual License Fee and Royalty

In exchange for being granted the exclusive rights to publish the Official California Code of Regulations and the California Regulatory Notice Register, the contractor agrees to pay an annual license fee of \$350,000.00 and a royalty of 8.1% on net revenues.

For purposes of this agreement, "net revenues" means all sales proceeds less returns, discounts refunded to the customer, and, if not charged separately but included in the sales price, sales taxes, transportation and handling, and in addition, all revenues received from licenses to third parties (including affiliated companies) without any reduction.

The contractor shall pay the annual license fee in advance, at quarterly intervals, beginning with the commencement of the CCR publication contract on January 1, 2016. No portion of the annual license fee shall be refundable during a quarter notwithstanding early termination of the contract.

The contractor shall pay the royalty at quarterly intervals. All royalties payable pursuant to this agreement shall accrue to the benefit of OAL, and be accounted for by the contractor, during each of the quarterly periods ending on March 31, June 30, September 30 and December 31 of each calendar year. The contractor shall pay OAL any and all royalty amounts due for each quarterly period within 90 days after the end of that quarterly period.

If the contractor provides academic institutions or governmental entities such as the courts with significantly discounted rates for its Internet legal research database because of their academic nature or the public benefit they provide, no royalties shall be paid by the contractor for CCR-related usage of the contractor's Internet legal research database by those customers. This exemption shall not apply to any academic institution or governmental entity whose subscription agreement is modified to require payments at rates comparable to those paid by commercial entities.

### 15. Compensation Delivery Requirements

Compensation shall be mailed or delivered to the following address:

Office of Administrative Law  
ATTN: Debra Comez, Director  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

### 16. Standard Budget Contingency Clause

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the state of California shall have the option to either cancel this agreement with no liability occurring to the state, or offer an agreement amendment to the contractor to reflect the reduced amount.

**Exhibit C, State of California General Terms and Conditions**

The state of California General Terms and Conditions (GTC-610) are hereby incorporated by reference and made part of this agreement as if attached hereto. This document can be viewed at <http://www.dgs.ca.gov/pd/Resources/FormsResourcesLibrary.aspx>.

**Exhibit D, Special Terms and Conditions**

**17. Compensation and Royalties**

Refer to Exhibit B, Revenue Provisions.

**18. Intellectual Property Rights**

The Official CCR, Notice Register and the Master Database, in all forms, are the sole and exclusive property of the state of California. The copyrights in the Official CCR, Notice Register and the Master Database shall be owned, noticed, and registered in the name of OAL on behalf of the state of California. In no event shall the Official CCR, Notice Register or Master Database be considered a "joint work" as that term is defined in 17 U.S.C. section 101. Except as to editorial enhancements described below, all rights in all copyrightable works prepared by the contractor, either individually or jointly with others, in connection with, or related to, the services performed by the contractor for OAL or the state of California shall belong exclusively to the state of California and shall constitute "works made for hire." The contractor agrees to execute, acknowledge and deliver to OAL, at no cost to the state of California, all documents required to register or otherwise protect such works in the United States or in any other country and to recognize ownership in such works by the state of California, its assignees or designees. The contractor shall take no action which will infringe or abridge the rights of the state of California in any of the works which are the subject of this CCR publication contract.

The contractor shall not procure or claim any copyright or other intellectual property rights with respect to the Official CCR, the Notice Register or the Master Database, or in the Master Table of Contents the contractor develops pursuant to this CCR publication contract, or in any of the following material:

- Tables of contents for each Title and Division
- The hierarchical structure of the CCR (divisions, chapters, articles, etc.)
- The captions (e.g. Title 1, Section 6, "Submission of Regulatory Actions (Form 400)")
- The text of the regulations, including any appendices, tables, graphics, illustrations, charts, forms or other items that are part of regulatory material filed with the Secretary of State and designated by OAL for publication in the CCR
- Authority and Reference citations
- History Notes
- The Official California Code of Regulations Supplement

The state of California will own the data used to publish the California Code of Regulations and the California Regulatory Notice Register. Pursuant to section 2 of this contract, the contractor will provide to the state of California, upon contract termination at no additional cost, all data in the Master Database in an electronic format that preserves the content of the CCR for future publication.

The state of California expressly reserves the right to use the CCR, its captions, text, and related notations, etc., in any manner that the state so chooses.

The state grants the contractor the exclusive right to publish and use the Official CCR and Notice Register and/or provide the Official CCR and Notice Register to third parties in whatever form and by whatever means it desires, subject to the licensing and royalty provisions of this contract. All versions of the CCR licensed shall accurately reflect the content of the Official CCR.

The contractor may add editorial enhancements which do not alter the substance of the CCR, CCR Supplement, or Notice Register, and may copyright the editorial enhancements. All expenses of obtaining copyright, either on behalf of the contractor or the state of California, will be the responsibility of the contractor, and copies of any documents pertaining to copyright must be provided to the Director of OAL. If the contractor declines to obtain a copyright in the editorial enhancements on its own behalf, the contractor shall obtain a copyright in the name of OAL on behalf of the state of California. OAL and the state of California shall have a royalty-free, worldwide, nonexclusive, perpetual license, for use of all intellectual property rights in all editorial enhancements created by the contractor during the term of this contract: For the purposes of this provision, "use" shall include reproduction or disclosure by OAL or the state for informational purposes or as otherwise required by law, including but not limited to the Public Records Act.

If OAL terminates this CCR publication contract before the anticipated term due to the contractor's breach, default, or abandonment of the CCR and/or Notice Register publications, both OAL and any successor publisher of the CCR and/or Notice Register shall be held harmless for any infringement of the contractor's intellectual property rights in the editorial enhancements, including copyright, relating to action taken by OAL in good faith to facilitate continued publication and availability of the CCR and Notice Register. OAL and any successor publisher shall be held harmless for any such infringement even if the premature termination of the CCR publication contract by OAL is ultimately found to have been without cause.

In continuance of its rights under the current contract, upon contract termination or expiration, the contractor may, in its sole discretion, continue using and publishing, in its entirety the CCR data in its possession at the time of termination or expiration, including the Master Index and Master Table of Contents in an unofficial capacity as the contractor deems fit. To facilitate this use, the contractor shall have a non-exclusive, royalty-free, worldwide, perpetual license to make, have made, sell, use, reproduce, modify, adapt, display, distribute, make other versions of and disclose the data in its possession at the time of termination or expiration, and to sublicense others to do these things.

**Pre-existing intellectual property:** In performing any services or providing any deliverables under this CCR publication contract, the contractor will not use any pre-existing intellectual property including, but not limited to, any trade secret, invention, work of authorship or protectable design that has already been conceived or developed by anyone before the contractor renders any services under this contract, unless the contractor has the right to use it for OAL's benefit. If the contractor is not the owner of such pre-existing intellectual property, the contractor will obtain from the owner any rights necessary to enable the contractor to comply with this agreement. If the contractor uses any pre-existing intellectual

property in connection with this agreement, the contractor hereby grants to OAL a non-exclusive, royalty-free, worldwide perpetual license to make, have made, sell, use, reproduce, modify, adapt, display, distribute, make other versions of and disclose the property and to sublicense others to do these things.

Intellectual property indemnification: The contractor will give OAL notice immediately if at any time the contractor knows or reasonably should know of any third party claim to any pre-existing intellectual property provided by the contractor to OAL pursuant to this agreement. The contractor will indemnify and hold harmless OAL from all liability arising from the contractor's use of such pre-existing intellectual property.

## **19. Damages**

### **19.1. Actual Damages**

In the event that the contractor fails to satisfactorily complete or perform the activities it is obligated to perform under the CCR publication contract, the contractor shall be liable for the state's full cost in securing completion of any activities or services needed to publish the CCR and Notice Register and other publications covered by the CCR publication contract. The state shall not be liable for any of the contractor's costs, other than those specifically covered by this contract, in complying with the contract requirements.

### **19.2. Liquidated Damages**

Time is of the essence in the CCR publication contract. It is OAL's intent to have hard copy, electronic and Internet publishing services performed in such a way that the system is kept completely and continuously up-to-date. Delays in publication, inaccurate publication, or a failure by the contractor to cooperate with OAL, will result in damages to the state of California and the public that would be difficult to accurately assess, and for that reason, the CCR publication contract provides for liquidated damages in the amount of \$15,000 for each day of delayed publication of any publication covered by the CCR publication contract, or for each day the contractor fails in a material way to perform its obligations under the contract. The contractor shall pay the state of California for such failures at the sole discretion of the state according to this section.

The purpose of liquidated damages is to ensure adherence to the requirements in the contract. No punitive intention is inherent. OAL will provide written notification to the contractor of each failure to meet a performance requirement. If the failure is not resolved to the satisfaction of OAL within a reasonable warning/correction time period specified by OAL, liquidated damages may be imposed retroactively to the date of failure to perform.

From January 1, 2016 through February 28, 2016, a "grace period" will be in effect during which time the contractor shall perfect its update and production processes for publication of the Official CCR, online CCR and Notice Register. During this period, liquidated damages will not be imposed.

## 20. Audits

In addition to the audit provision contained in the state of California General Terms and Conditions, on written request by OAL, the contractor will allow the Bureau of State Audits, the State Controller or designee of OAL, or in the alternative, an independent certified public accountant who is mutually acceptable to the contractor and OAL to have access to, and to copy, during ordinary business hours and for as many days as required, the contractor's books and financial records as necessary to calculate the royalty for any quarter during the term of this CCR publication contract. If the contractor and OAL cannot agree on the selection of an independent certified public accountant, the contractor and OAL will each select a certified public accountant, and the two accountants will choose a third certified public accountant who will then review the contractor's books and records to determine the amount of the royalty.

The determination of the amount of royalties by the auditor will be final and binding on the contractor and OAL. If the auditor finds any discrepancy between the amount of royalty due and the amount of royalty paid for such quarter, the difference will be paid by the contractor to OAL, or refunded by OAL to the contractor, as the case may be, within 30 working days after written notice of the discrepancy is given to both parties. If the amount of the royalty paid for any quarter is less than 95% of the amount due, the contractor will pay all accounting costs. In all other instances, OAL will pay all accounting costs. The contractor will bear all other costs of access to its books and records.

The auditor will hold the contractor's financial information and trade secrets in confidence and will disclose to OAL only the amount of royalties due OAL and the factual basis for the determination of the amount(s) due.

Audits conducted under this provision shall be in accordance with generally accepted auditing standards.

## 21. Term; Termination

### 21.1. Term

The CCR publication contract shall begin January 1, 2016, and have a term of three years, with 2 optional 1-year extensions to be exercised upon mutual agreement of OAL and the contractor.

### 21.2. Failure to Perform

OAL may terminate this CCR publication contract if the contractor fails to perform the covenants herein contained at the time and in the manner herein provided. In the event of termination, OAL may proceed with the work in any manner deemed proper by OAL. The cost to the state shall be added to any sum due from the contractor to OAL under this CCR publication contract.

Persistent failure to meet publication dates or persistent failure to take corrective actions specified by OAL shall constitute a material breach of the CCR Publication Contract. In the

event the contractor fails to perform the CCR publication contract, or a substantial part thereof, the Director of OAL shall provide written notice of the failure and make a reasonable effort to resolve the failure with the contractor. If the contractor's failure is not resolved, OAL may, in its sole judgment reasonably exercised, terminate the contract, in whole or in substantial part, by presenting written notice of termination to the contractor. The notice shall specify the extent to which the contract is terminated and the date upon which such termination becomes effective. Upon termination, OAL will retain all legal remedies available to it, including damages for increased expense on behalf of all subscribers, for the remaining term of the contract.

### **21.3. Parties' Obligations Upon Termination**

If the contract is terminated for any reason other than by the expiration of the term specified in the contract or the term of any extension thereto, the contractor shall deliver or transmit to OAL, within 10 days after termination, the complete Master Database current as of the date of termination. The Master Database shall be provided to OAL in electronic form pursuant to Section 2 of this contract.

If the contract terminates by the expiration of the term specified in the contract or the term of any extension thereto, the contractor shall provide OAL with the Master Database in electronic form pursuant to Section 2 of this contract according to the following schedule: 1) 90 days prior to the anticipated expiration of the term; 2) 30 days prior to the anticipated expiration of the term; and 3) concurrently with the expiration of the term.

Upon termination of this contract for any reason, the contractor loses the right to publish the Official CCR. The contractor agrees, upon OAL's request, to provide to OAL within 10 days of termination, lists in mutually acceptable electronic form of the subscribers to all forms of the publications covered by this contract, and of all entities granted a license to publish any of the publications covered by this contract. In addition, for a period of sixty (60) days after termination of this contract, the contractor agrees to cooperate with OAL and any successor publisher of the Official CCR to provide information necessary for the continued publication of the Official CCR.

## **22. Changes**

If changes in California law oblige OAL to alter the publication services to be performed under this contract, or to alter the time allowed for performance of services under this contract, and such changes cause an increase in the costs to the contractor, or the time required for the contractor's performance of this contract, OAL and the contractor shall negotiate an equitable adjustment to the compensation, or time of performance, or both, and the contract shall be modified accordingly. Any such modification must be in writing and is subject to the approval of the Department of General Services before it becomes effective.

Any claim by the contractor for equitable adjustment under this provision must be asserted in writing to the director of OAL or designated representative not later than thirty (30) days after the date OAL notifies the contractor of a change in California law, or within such



extension as OAL may grant in writing. OAL may, in its sole discretion, consider any such claim regardless of when asserted.

Pending any such equitable adjustment, the contractor shall diligently proceed with the contract as modified. Where the cost of property made excess or obsolete as a result of the change is included in the contractor's claim for equitable adjustment, OAL shall have the right to require the submission of supporting cost data and/or to inspect the contractor's pertinent books and records for the purpose of verifying the contractor's claim and determining the basis for entitlement to an equitable adjustment.

The contractor's claim for equitable adjustment shall be fully supported by factual information and shall separately identify all increases and decreases in costs. The claim shall be submitted by a senior official authorized to bind the contractor in a signed writing that contains the following certification statement: "I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief and that the amount requested to be changed accurately reflects the contract adjustment for which (insert contractor's name here) believes the state is liable."

### **23. Substitutions**

If it becomes necessary for the contractor to substitute any subcontractor, or management, supervisory or key personnel, those substitutions must include replacements with equal or greater qualifications. The contractor shall provide OAL with detailed justification documenting the necessity for the substitutions. No substitute subcontractor(s) or personnel are authorized to begin work until the contractor has received written approval from OAL. OAL reserves the right to reject any proposed subcontractor or personnel at any time.

### **24. Severability**

Should any provision of this contract be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions shall not be affected thereby.

### **25. Waiver/Non-Waiver**

Any waiver of the terms and conditions of the CCR publication contract must be in writing. Any single waiver does not imply any future waiver of any terms or conditions. Failure of either party to enforce any provision of this contract shall not constitute or be construed as a waiver of such provision or the right to enforce such provision.

### **26. Rights of State Agencies**

Nothing in this contract shall prevent the state of California or a California state agency from publishing, reproducing, or distributing its own regulations, except that no agency of the state of California may, during the term of this contract, authorize commercial publication of regulations unless the commercial publisher has obtained a license from the contractor.

## **27. Right of Inspection**

The director of OAL or designated representative, shall have a continuing right to inspect, at reasonable intervals, all manufacturing and editorial premises used in performance of the CCR publication contract, including premises occupied by the contractor's subcontractors, if any. The contractor shall provide for such right of inspection in any subcontractors' facilities by arrangements with subcontractors or agents. The contractor shall be responsible for all reasonable expenses relating to any meeting or inspection pursuant to this contract, including reasonable transportation, lodging, and related travel expenses of OAL personnel reasonably necessary to the purpose of any meeting or inspection.

Upon request by the Director of OAL or designated representative, the contractor shall provide one copy of any of its CCR or Notice Register products for inspection by OAL.

## **28. Subscription Lists**

Upon completion or termination of this contract, including premature termination due to a breach, default, abandonment or any other reason, the contractor shall provide a copy to OAL, or to a successor publisher designated by OAL, of each and every subscription list for all contractor's Official CCR products. The copy of each and every subscription list shall include all relevant information reasonably needed by a successor publisher to fulfill subscription obligations. This includes, but is not limited to, the names and addresses of subscribers, types and categories of subscriptions for all Official CCR products for each subscriber, and subscription cost information, including current payment status of all subscribers, and beginning and ending dates of each subscription.

## **29. Miscellaneous Provisions**

### **29.1. Short Title**

This contract shall be referred to by the parties as the "CCR Publication Contract."

### **29.2. Statutory Requirements**

The contractor shall ensure that the content and distribution of all CCR and Notice Register products published pursuant to this contract comply with applicable requirements of the Administrative Procedures Act, including, but not limited to, Government Code sections 11344 and 11344.1.

### **29.3. Cooperation**

Each party shall cooperate with the other party as is reasonably necessary to further the purposes of this contract and the other party's performance hereunder.

### **29.4. Electronic Submission Plan**

The contractor shall work with OAL to devise a format and/or method that will allow for the future electronic transmission of proposed regulation text and notices.

**29.5. Marketing and Advertising Of CCR**

The contractor shall undertake reasonable efforts to market and advertise the CCR during the term of this contract. The contractor shall keep the Director of OAL advised informally as to the manner in which the CCR is marketed and advertised during the term of the contract. No advertisements shall be published in the Official CCR or in the Internet CCR except with express written permission of the Director of OAL.

**30. Entire Agreement**

This document constitutes the entire agreement of the parties. However, RFP-CCR-2015 and the contractor's proposal shall be used to establish intent in resolving any ambiguities that may be contained herein.

**31. Contract Administration**

Subject to the other party's continuing approval, each party shall assign overall responsibility for its performance of this agreement to a contract administrator who is competent in the management and performance of the party's obligations under this agreement. Each party's contract administrator shall be the primary contact for the other party with regard to matters related to this agreement.

The contract administrator for OAL is:

Kevin D. Hull, Senior Attorney  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
[Kevin.Hull@oal.ca.gov](mailto:Kevin.Hull@oal.ca.gov)  
Phone: 916-323-8916  
Fax: 916-323-6826

The contractor administrator for the contractor is: (for contract-related issues)

~~John S. Nelson~~ Kris Wendorff  
~~Director, Procurement and Proposal Management~~, Contracts Counsel  
Office of General Counsel  
Thomson Reuters  
610 Opperman Drive  
Eagan, MN 55123  
Phone: 651-687-~~XXXX~~ 4391  
Fax: 651-687-5686  
~~XXXXXXXXXXXXXXXXXXXX~~ kris.wendorff@thomsonreuters.com  
thomsonreuters.com

*JSN*  
*ome*

Project Administrators (for day-to-day project or account issues):

William McKay, Business Manager  
Thomson Reuters  
50 California Street  
San Francisco, CA 94111  
Phone: 415.344.5193  
Fax: 415.344.3906  
[william.mckay@thomsonreuters.com](mailto:william.mckay@thomsonreuters.com)

Stefan Vasiliou, Managing Editor  
Thomson Reuters  
50 California Street  
San Francisco, CA 94111  
Phone: 415.344.3937  
Fax: 415.344.3906  
[stefan.vasiliou@thomsonreuters.com](mailto:stefan.vasiliou@thomsonreuters.com)

*JSN*  
*ome*

Document received by the CA 3rd District Court of Appeal.



# Exhibit C

Document received by the CA 3rd District Court of Appeal.



**PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation**

**Open Source “America’s Operating System”**

“It’s Not Just A Good Idea—It’s The Law!”

December 29, 2020

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814-4339

Re: California Public Records Act Request (via email to staff@oal.ca.gov)

Dear Office of Administrative Law:

Under the California Public Records Act (Government Code § 6250 et seq.) and Article I, § 3(b) of the California Constitution, I write to request a copy of Titles 1-5, 7-23, and 25-28 of the California Code of Regulations.

The contents of these Titles are public records under Government Code § 6252(e) (“Public records’ includes any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”).

Please provide these records in all formats in your possession, including (but not limited to) structured, machine-readable digital formats, such as XML or PDF files. Under Government Code § 6250(a)(1), you must provide these records in “any electronic format in which [you] hold[] the information.” Additionally, Government Code § 6250(a)(2) directs you to “provide a copy of an electronic record in the format requested if the requested format is one that has been used by [you] to create copies for [your] own use or for provision to other agencies.” Thus, you must provide copies of these records in all formats that you hold, use, or provide to other agencies.

If you determine that any material is exempt from disclosure, please specify the exemption within 10 days, as required by Government Code § 6253.1(c). If you believe that an exemption is discretionary, please state why you are withholding the information. If, for any reason, you refuse to disclose any part of these records, Government Code § 6255 requires you to explain why.

Please provide a determination on this request within 10 days, as required by Government Code § 6253(c).

If needed, please contact me at (707) 385-1617 or carl@media.org. Please notify me of any duplication costs exceeding \$100 before you duplicate the records so that I may decide which records I want copied.

Sincerely,

DocuSigned by:  
*Carl Malamud*  
E80A36AECAF6462...

Carl Malamud  
Public.Resource.Org, Inc.

cc: Matthew Caplan, Cooley LLP  
Joseph D. Mornin, Cooley LLP  
Ryan T. O’Hollaren, Cooley LLP  
David Halperin, Of Counsel, Public Resource

Document received by the CA 3rd District Court of Appeal.

# Exhibit D

Document received by the CA 3rd District Court of Appeal.

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**From:** Escobar, Steven@OAL <Steven.Escobar@oal.ca.gov>  
**Sent:** Tuesday, March 2, 2021 3:55 PM  
**To:** 'Carl Malamud'  
**Cc:** 'David Halperin'; Caplan, Matt; Mornin, Joe; O'Hollaren, Ryan T.  
**Subject:** RE: California Public Records Act request to the Office of Administrative Law

[External]

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Dear Mr. Malamud,

In our prior responses on January 22, 2021, February 17, and February 26, 2021, OAL identified the electronic formats in which OAL has the CCR and identified options for making it available to you. On February 24, 2021, you subsequently requested a copy of "a CCR Master Database." OAL responds to this request as follows:

OAL does not have a copy of a CCR Master Database.

OAL does not have the CCR in any other electronic format other than that previously identified and, therefore, OAL considers our response to your Public Records Act request complete. Please let us know if you are interested in any of the formats previously identified so that we can work with you to coordinate inspection or copying.

Sincerely,

**Steven Escobar**  
Senior Attorney  
Office of Administrative Law  
Phone: (916) 324-6948  
Fax: (916) 323-6826  
E-Mail: [steven.escobar@oal.ca.gov](mailto:steven.escobar@oal.ca.gov)

---

**From:** Escobar, Steven@OAL  
**Sent:** Friday, February 26, 2021 9:56 AM  
**To:** 'Carl Malamud' <carl@media.org>  
**Cc:** David Halperin <davidhalperindc@gmail.com>; Caplan, Matt <mcaplan@cooley.com>; Mornin, Joe <jmornin@cooley.com>; O'Hollaren, Ryan T. <rohollaren@cooley.com>  
**Subject:** RE: California Public Records Act request to the Office of Administrative Law

Dear Mr. Malamud,

Thank you for your email dated February 19, 2021, which was in response to OAL's email response dated February 17, 2021. In your February 19, 2021 email, you raised several additional questions. Below, those questions are restated along with OAL's responses to each question immediately following.

1. When you say you will provide us the contents of CD-ROM, I wasn't sure what that means. Will you send us a CD or DVD? Will you extract the .rtf files and graphics files



and send them to us? Or, could we come to your office with a laptop to use your CDs there and extract the files ourselves? Or, perhaps you were going to print out the documents?

OAL will make the contents of the CD ROM available in whichever manner you choose, so long as OAL has the capability to do so. Please note that OAL cannot directly copy the entire disc, therefore, copying the contents of the CD ROM by OAL, whether copying and pasting into a separate file or printing each section, will take a considerable amount of time for which OAL will need to be compensated consistent with the PRA. It may be most efficient and cost effective if you come to OAL's office and use your computers to extract the desired content yourselves.

2. My discussions with your vendor about purchasing the electronic files was that they no longer sell the CD-ROM product. I believe that means that any CCR you allow us to inspect will be considerably out of date. Do you happen to know the most recent date of the CD-ROMs you do have?

As stated in OAL's prior response, the most recent CD ROM that OAL has is current through October 16, 2020.

3. When you say you do not have an electronic copy, how does the company posting the CCR online get the CCR and its updates? Does the company get the files directly from the agencies? Or does the company read the Register and then make the updates?

Final regulatory changes that are approved by OAL for publication in the CCR are in hard copy. Each day that regulations are approved by OAL for publication, Thomson Reuters sends a courier to OAL to pick up hard copies of those regulations. OAL does not provide the regulatory changes to Thomson Reuters in electronic format nor does Thomson Reuters get the official changes directly from the rulemaking agencies.

4. If OAL doesn't have an electronic copy, are you aware of other agencies in the government that do have it?

OAL does not know whether any other state agencies have electronic copies of the official CCR in their possession.

Once again, please let us know if you have any questions or how you would like to proceed. We also received your subsequent request of February 24, 2021 and will be responding to that request separately.

Sincerely,

**Steven Escobar**

Senior Attorney

Office of Administrative Law

Phone: (916) 324-6948

Fax: (916) 323-6826

E-Mail: [steven.escobar@oal.ca.gov](mailto:steven.escobar@oal.ca.gov)

---

**From:** Carl Malamud <[carl@media.org](mailto:carl@media.org)>

**Sent:** Wednesday, February 24, 2021 9:59 AM

**To:** Escobar, Steven@OAL <[Steven.Escobar@oal.ca.gov](mailto:Steven.Escobar@oal.ca.gov)>

**Cc:** David Halperin <[davidhalperindc@gmail.com](mailto:davidhalperindc@gmail.com)>; Caplan, Matt <[mcaplan@cooley.com](mailto:mcaplan@cooley.com)>; Mornin, Joe <[jmornin@cooley.com](mailto:jmornin@cooley.com)>; O'Hollaren, Ryan T. <[rohollaren@cooley.com](mailto:rohollaren@cooley.com)>

**Subject:** Re: California Public Records Act request to the Office of Administrative Law

Dear Mr. Escobar -

I was just checking in to see if you had received my messages with a few quick questions. As you know from my previous letter, we were hoping get an answer by this Friday. Understood you may be busy!

There is one thing that puzzles me however. I know you are offering inspection of the CD-ROMs, but those are out-of-date. But, my understanding of how this all works is the CCR is stored in a CCR Master Database, which is current. That certainly is an electronic record and would suit our purposes just fine. Can't you just make us a copy of that? Looking forward to hearing from you soon!

With best regards,  
Carl Malamud

On Fri, Feb 19, 2021 at 1:06 PM Carl Malamud <[carl@media.org](mailto:carl@media.org)> wrote:

Dear Mr. Escobar -

Thank you for your email of February 17. I'm familiar with the CD-ROM product, which I subscribed to in 2012 and 2013. We were translating the CCR into HTML files and making them available for people to read on the Internet. I stopped my subscription because I couldn't afford the cost. One of the goals of Public Resource is to make the regulations of all 50 states available in a common format to allow people to access the documents if they are visually impaired, to allow people to compare changes in regulations across time, to allow people to similar regulations in different states, and of course to download in bulk all the state regulations to build other sites.

My understanding of the CD-ROM product, at least in 2012, was that I could extract an "rtf" word processing file for each title. In addition, I was able to get "tif" images for graphics included in the CCR. My experience was that the rtf format was very rudimentary, I seem to remember the CD came with terms of use, and it was terribly difficult to map the graphic files to the rtf word processing files once they were out of the proprietary interface.

I did have a few quick questions for you.

1. When you say you will provide us the contents of CD-ROM, I wasn't sure what that means. Will you send us a CD or DVD? Will you extract the .rtf files and graphics files and send them to us? Or, could we come to your office with a laptop to use your CDs there and extract the files ourselves? Or, perhaps you were going to print out the documents?
2. My discussions with your vendor about purchasing the electronic files was that they no longer sell the CD-ROM product. I believe that means that any CCR you allow us to inspect will be considerably out of date. Do you happen to know the most recent date of the CD-ROMs you do have?
3. When you say you do not have an electronic copy, how does the company posting the CCR online get the CCR and its updates? Does the company get the files directly from the agencies? Or does the company read the Register and then make the updates?
4. If OAL doesn't have an electronic copy, are you aware of other agencies in the government that do have it?

Thanks very much for your time. If you prefer a zoom call or phone call, we could do that. Email works fine for me however if that is convenient!

With best regards,

Carl

On Wed, Feb 17, 2021 at 5:58 PM Escobar, Steven@OAL <[Steven.Escobar@oal.ca.gov](mailto:Steven.Escobar@oal.ca.gov)> wrote:

Dear Mr. Malamud:

On December 29, 2020, you emailed the Office of Administrative Law ("OAL") Reference Attorney, in which you requested copies of Titles 1 through 5, 7 through 23, and 25 through 28 of the California Code of Regulations (the "CCR"). Specifically, you requested that OAL "provide these records in all formats in [our] possession, including (but not limited to) structured, machine-readable digital formats, such as XML or PDF files." On January 8, 2021, OAL notified you that we would respond within the additional 14-days pursuant to

Government Code section 6253, subdivision (c). OAL subsequently responded (see below) on January 22, 2021, which included guidance as to the formats in which OAL holds the CCR and sought further clarification of what records you were interested in receiving. On February 3, 2021, you clarified that you were seeking all electronic versions of the referenced titles. We therefore respond as follows:

As OAL mentioned in its January 22, 2021, response, in addition to the hard copy and online version of the CCR, OAL has historical versions of the requested titles. These historical versions are contained on CD ROM and constitute the only electronic format in which OAL holds the information. The most recent version OAL has is dated November 2020 and is current through October 16, 2020. OAL no longer receives the CCR on CD ROM and this CD ROM is the last one OAL expects to receive. OAL also has various prior versions of the CCR on CD ROM. Based on OAL's examination of the November 2020 CD ROM, the regulatory content of the CD ROM is the same as that which is available online, however, it is current only through October 16, 2020, whereas the online version is updated weekly. Please note that upon OAL's review of this CD ROM, it is OAL's understanding that the contents of the CD ROM cannot be copied in whole and transferred to another storage device. It is OAL's understanding that in order to copy or produce the regulatory content of the CD ROM, each section would need to be manually extracted and copied from the CD ROM individually.

Other than the CD ROMs discussed above, OAL does not have the requested CCR titles in the electronic format(s) requested, including in a structured, machine-readable XML or PDF file. OAL staff uses the on-line version and the hard copy CCR. If you would like the contents of any of the CD ROMs, please let us know so that we can coordinate inspection or copying in accordance with the Public Records Act.

Please let us know if you have any questions or how you would like to proceed.

Sincerely,

**Steven Escobar**

Senior Attorney

Office of Administrative Law

Phone: (916) 324-6948

Fax: (916) 323-6826

E-Mail: [steven.escobar@oal.ca.gov](mailto:steven.escobar@oal.ca.gov)

---

**From:** Carl Malamud <[carl@media.org](mailto:carl@media.org)>

**Sent:** Wednesday, February 3, 2021 12:07 PM

**To:** Escobar, Steven@OAL <[Steven.Escobar@oal.ca.gov](mailto:Steven.Escobar@oal.ca.gov)>

**Cc:** David Halperin <[davidhalperindc@gmail.com](mailto:davidhalperindc@gmail.com)>; Caplan, Matt <[mcaplan@cooley.com](mailto:mcaplan@cooley.com)>; Mornin, Joe

<[jmornin@cooley.com](mailto:jmornin@cooley.com)>; O'Hollaren, Ryan T. <[rohollaren@cooley.com](mailto:rohollaren@cooley.com)>

**Subject:** Re: California Public Records Act request to the Office of Administrative Law

Dear Mr. Escobar -

Please find attached a letter in response to your January 22 electronic mail.

Please don't hesitate to contact me if you have any questions.

With best regards,

Carl Malamud

On Fri, Jan 22, 2021 at 11:34 AM Escobar, Steven@OAL <[Steven.Escobar@oal.ca.gov](mailto:Steven.Escobar@oal.ca.gov)> wrote:

Dear Mr. Malamud:

This is in response to the e-mail you sent to the Office of Administrative Law ("OAL") Reference Attorney on December 29, 2020, in which you requested copies of Titles 1 through 5, 7 through 23, and 25 through 28 of the California Code of Regulations (the "CCR"). Specifically, you requested that OAL "provide these records in all formats in [our] possession, including (but not limited to) structured, machine-readable digital formats, such as XML or PDF files." On January 8, 2021, we responded to your request and invoked the 14-day extension to respond pursuant to Government Code section 6253, subdivision (c). Our follow-up response is below.

The most up-to-date version of the CCR Titles you request are available online at <https://govt.westlaw.com/calregs/Index>. We also have the Titles you request in hard copy, which are considered the "official version" of the CCR. They comprise 38 volumes plus the Master Index. We can provide a paper copy of these records at a cost of \$0.20 per page. If you desire an electronic copy, we can also scan each page of the print version of the CCR into PDF files and provide those files to you. However, scanning each page of the print version of the CCR into PDF would be very time consuming and include additional costs, as there are over 29,000 pages in the print version of the CCR when you include the Master Index. OAL estimates that it would take approximately two to four weeks for one of our office technicians to scan this number of pages, and the cost of the office technician's time would need to be paid by you. If you choose to have OAL scan each page of the print version of the CCR into PDF files, please inform us of your request, as we will only begin scanning pages upon your specific request and payment of fees.

In addition, we also have historical versions of the CCR that we retain but that are not as up-to-date as those that you will find in the on-line version. All past versions are a snapshot in time of what was published during a particular period. We anticipate that you are looking for the most recent version of what is published, and therefore, suggest the online version. If this is not what you are seeking, please clarify what additional records you are looking for and we will let you know if we have them.

Document received by the CA 3rd District Court of Appeal.

If you need help searching the online CCR, please contact the OAL Reference Attorney at [staff@oal.ca.gov](mailto:staff@oal.ca.gov), or the Thomson Reuters technical support, which is on the same contact page as provided above.

Please let us know if we can be of further assistance.

Sincerely,

**Steven Escobar**

Senior Attorney

Office of Administrative Law

Phone: (916) 324-6948

Fax: (916) 323-6826

E-Mail: [steven.escobar@oal.ca.gov](mailto:steven.escobar@oal.ca.gov)

---

**From:** Carl Malamud <[carl@media.org](mailto:carl@media.org)>

**Sent:** Friday, January 8, 2021 5:26 PM

**To:** Escobar, Steven@OAL <[Steven.Escobar@oal.ca.gov](mailto:Steven.Escobar@oal.ca.gov)>

**Cc:** David Halperin <[davidhalperindc@gmail.com](mailto:davidhalperindc@gmail.com)>; Caplan, Matt <[mcaplan@cooley.com](mailto:mcaplan@cooley.com)>; Mornin, Joe <[jmornin@cooley.com](mailto:jmornin@cooley.com)>; O'Hollaren, Ryan T. <[rohollaren@cooley.com](mailto:rohollaren@cooley.com)>

**Subject:** Re: California Public Records Act request to the Office of Administrative Law

Dear Mr. Escobar:

Thank you for your note. We are happy to wait until January 22 for your response.

Best regards,

Carl Malamud

On Fri, Jan 8, 2021 at 5:20 PM Escobar, Steven@OAL <[Steven.Escobar@oal.ca.gov](mailto:Steven.Escobar@oal.ca.gov)> wrote:

Dear Mr. Malamud:

This is in response to the e-mail you sent to the Office of Administrative Law ("OAL") Reference Attorney on December 29, 2020, in which you requested copies of Titles 1 through 5, 7 through 23, and 25 through 28 of the California Code of Regulations (the "CCR"). Specifically, you requested that OAL "provide these records in all formats in [our] possession, including (but not limited to) structured, machine-readable digital formats, such as XML or PDF files" (your "CPRA Request").

Agencies are permitted to extend the date for responding to a public records request for fourteen days beyond the original 10-day deadline under specified circumstances. (Govt. Code, § 6253, subd. (c).) Your request was received by this office on December

29, 2020 and the initial deadline of our response therefor is January 8, 2021. Fourteen days beyond this date is January 22, 2021.

In this instance, an extension is needed as OAL needs to search for, collect, and appropriately examine a voluminous amount records, and consult with various individuals within OAL to respond to your CPRA request. We will provide a further response on or before January 22, 2021.

Sincerely,

**Steven Escobar**

Senior Attorney

Office of Administrative Law

Phone: (916) 324-6948

Fax: (916) 323-6826

E-Mail: [steven.escobar@oal.ca.gov](mailto:steven.escobar@oal.ca.gov)

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**From:** Escobar, Steven@OAL

**Sent:** Friday, January 1, 2021 6:49 PM

**To:** 'Carl Malamud' <[carl@media.org](mailto:carl@media.org)>

**Cc:** David Halperin <[davidhalperindc@gmail.com](mailto:davidhalperindc@gmail.com)>; Caplan, Matt <[mcaplan@cooley.com](mailto:mcaplan@cooley.com)>; Mornin, Joe <[jmornin@cooley.com](mailto:jmornin@cooley.com)>; O'Hollaren, Ryan T. <[rohollaren@cooley.com](mailto:rohollaren@cooley.com)>

**Subject:** RE: California Public Records Act request to the Office of Administrative Law

Hi Carl,

This e-mail is to acknowledge receipt of your request.

Sincerely,

**Steven Escobar**

Senior Attorney

Office of Administrative Law

Phone: (916) 324-6948

Document received by the CA 3rd District Court of Appeal.

Fax: (916) 323-6826

E-Mail: [steven.escobar@oal.ca.gov](mailto:steven.escobar@oal.ca.gov)

---

**From:** Carl Malamud <[carl@media.org](mailto:carl@media.org)>

**Sent:** Tuesday, December 29, 2020 12:00 PM

**To:** OAL Reference Attorney <[OALReferenceAttorney@oal.ca.gov](mailto:OALReferenceAttorney@oal.ca.gov)>

**Cc:** David Halperin <[davidhalperindc@gmail.com](mailto:davidhalperindc@gmail.com)>; Caplan, Matt <[mcaplan@cooley.com](mailto:mcaplan@cooley.com)>; Mornin, Joe <[jmornin@cooley.com](mailto:jmornin@cooley.com)>; O'Hollaren, Ryan T. <[rohollaren@cooley.com](mailto:rohollaren@cooley.com)>

**Subject:** California Public Records Act request to the Office of Administrative Law

Dear Sir/Madam -

Please find attached a California Public Records Act request to the Office of Administrative Law. I would appreciate it if you would acknowledge receipt.

With best regards,

Carl Malamud, President

[Public.Resource.Org](http://Public.Resource.Org), Inc.

Document received by the CA 3rd District Court of Appeal.

# Exhibit E

Document received by the CA 3rd District Court of Appeal.





**PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation**

**Open Source “America’s Operating System”**

“It’s Not Just A Good Idea—It’s The Law!”

February 3, 2021

Steven Escobar  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA  
95814-4339  
[steven.escobar@oal.ca.gov](mailto:steven.escobar@oal.ca.gov)

Re: California Public Records Act Request

Dear Mr. Escobar:

I write in response to your [January 22, 2021 email response](#) to my California Public Records Act (“PRA”) request for electronic copies of Titles 1 through 5, 7 through 23, and 25 through 28 of the California Code of Regulations (the “CCR”).

We understand from your response that you possess the documents and information that we’ve requested, but that you are refusing to produce them. In so doing, the PRA places the burden on you to prove that disclosure is not warranted – either through a statutory exemption, or based on the public interest. *Becerra v. Superior Court*, 44 Cal. App. 5th 897, 914 (2020), review denied (May 13, 2020); *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal.4th 59, 70 (2014); *County of Los Angeles v. Superior Court*, 211 Cal.App.4th 57, 63 (2012); § 6255. Your letter did neither.

Instead, your letter ignores the PRA and offers to provide paper copies or scanned PDFs of paper copies. Neither option satisfies your duties under the PRA.

First, your letter states that the CCR is available online at <https://govt.westlaw.com/calregs/Index>. This does not satisfy your duty to provide electronic copies in every electronic format (1) in which you hold the information or (2) that you use to create copies for your own use or to provide to other agencies. *Cal. Gov. Code §§ 6253.9(a)(1)* (“The agency shall make the information available in any electronic format in which it holds the information.”), (a)(2) (“Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.”). When a request is made, “the agency may charge the cost to construct a record,” but it must produce a compliant electronic copy to the requestor. *Cty. of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1336 (2009). Your letter identifies no authority to the contrary. And indeed, none exists.

Moreover, the CCR version on the website you provided is not “publicly available” within the meaning of the PRA. This version is not “publicly available” because it imposes “end user restrictions” that “are incompatible with the purposes and operation of the CPRA.” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1334. For instance, it is constrained by terms of use that restrict users’ activity (<https://legal.thomsonreuters.com/en/legal-notices/terms-of-use>) a privacy policy governing the use of personal information (<https://www.thomsonreuters.com/en/privacy-statement.html>), and a cookie policy requiring users to enable first-party and third-party cookies to access the CCR (<https://www.thomsonreuters.com/en/privacy-statement.html#cookies>).

Second, paper copies and scanned PDFs are insufficient. The PRA clearly states that you must produce electronic copies in the electronic format (1) in which you hold the information or (2) that you use to create copies for your own use or to provide to other agencies. *Cal. Gov. Code §§ 6253.9(a)(1)-(2)*. Your letter does not state that you only possess paper copies of the CCR. Nor does your letter state that you do not possess copies in the file types that I requested:

“structured, machine-readable digital formats, such as XML or PDF files.” To be sure, a scanned PDF of a paper document is not a “structured, machine-readable digital format.” Thus, your response is inconsistent with your obligations to provide the information in an electronic format in which you hold it (or which you use to provide the CCR to other agencies) and fails to respond to my request for the information in a structured, machine-readable format. If your office possesses other electronic formats of the CCR—which I am convinced that you do—then the PRA mandates that you disclose those records to me in each of those electronic formats.

Please provide copies of Titles 1 through 5, 7 through 23, and 25 through 28 in every electronic format in your possession—including (without limitation) structured, machine-readable formats, such as XML files—by February 17. If you withhold any materials, please identify them and state the basis for your decision to withhold them, as required by Government Code § 6253(c). In the event we do not satisfactorily resolve this issue by February 26, I will authorize my attorneys to initiate writ proceedings to challenge the OAL’s refusal to provide me with these public records.

With best regards,

DocuSigned by:  
*Carl Malamud*  
E80A36AECAF6462...  
Carl Malamud, President  
Public Resource



cc: Matthew Caplan, Cooley LLP  
Joseph D. Mornin, Cooley LLP  
Ryan T. O’Hollaren, Cooley LLP  
David Halperin, Of Counsel, Public Resource

Document received by the CA 3rd District Court of Appeal.

# Exhibit F

Document received by the CA 3rd District Court of Appeal.



**PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation**

**Open Source "America's Operating System"**

**"It's Not Just A Good Idea—It's The Law!"**

December 29, 2020

Office of Public Affairs  
Department of General Services  
707 3rd Street, 8th Floor  
West Sacramento, CA 95605

Re: California Public Records Act Request (via email to DGSPublicAffairs@dgs.ca.gov)

Dear Office of Public Affairs:

Under the California Public Records Act (Government Code § 6250 et seq.) and Article I, § 3(b) of the California Constitution, I write to request a copy of Title 24 of the California Code of Regulations.

The contents of Title 24 are public records under Government Code § 6252(e) ("Public records' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.").

Please provide these records in all formats in your possession, including (but not limited to) structured, machine-readable digital formats, such as XML or PDF files. Under Government Code § 6250(a)(1), you must provide these records in "any electronic format in which [you] hold[] the information." Additionally, Government Code § 6250(a)(2) directs you to "provide a copy of an electronic record in the format requested if the requested format is one that has been used by [you] to create copies for [your] own use or for provision to other agencies." Thus, you must provide copies of these records in all formats that you hold, use, or provide to other agencies.

If you determine that any material is exempt from disclosure, please specify the exemption within 10 days, as required by Government Code § 6253.1(c). If you believe that an exemption is discretionary, please state why you are withholding the information. If, for any reason, you refuse to disclose any part of these records, Government Code § 6255 requires you to explain why.

Please provide a determination on this request within 10 days, as required by Government Code § 6253(c).

If needed, please contact me at (707) 385-1617 or carl@media.org. Please notify me of any duplication costs exceeding \$100 before you duplicate the records so that I may decide which records I want copied.

Sincerely,

DocuSigned by:  
*Carl Malamud*  
E80A36AECAF6462...

Carl Malamud  
Public.Resource.Org, Inc.

cc: Matthew Caplan, Cooley LLP  
Joseph D. Mornin, Cooley LLP  
Ryan T. O'Hollaren, Cooley LLP  
David Halperin, Of Counsel, Public Resource

Document received by the CA 3rd District Court of Appeal.

# Exhibit G

Document received by the CA 3rd District Court of Appeal.

January 7, 2021

VIA EMAIL  
Mr. Carl Malamud  
carl@media.org

Dear Mr. Malamud:

The California Building Standards Commission (CBSC) received your Public Records Act request (enclosed) on December 29, 2020 for records on file at our office.

Upon review of your PRA request it appears you are requesting a free copy of the 2019 California Building Standards Code (Title 24, California Code of Regulations).

The 2019 Title 24 is available for public inspection at the CBSC office pursuant to Health and Safety Code Section 18942. Additionally, most [state document depository libraries](#) have a set available, or your local city or county building or planning department may have a printed copy of Title 24 available for public viewing and/or copying. Title 24 may also be viewed online free of charge via the [CBSC](#) website. Individual parts or a full set of Title 24 may be purchased from the [International Code Council](#), [International Association of Plumbing and Mechanical Officials](#) (Parts 4 & 5) or the [National Fire Protection Association](#) (Part 3).

CBSC does not have the publishing rights to Title 24 and therefore cannot provide free copies to the public. This is because Title 24 is based on and includes model codes produced by the publishing entities, and they then publish California's codes, retaining copyright protections. Please contact the publisher(s) of the code books (linked above) to obtain a complete copy.

If you have any questions or need further information you may contact me by telephone at (916) 263-0916 or by email at [cbsc@dgs.ca.gov](mailto:cbsc@dgs.ca.gov).

Sincerely,



Michael Nearman, Deputy Executive Director  
California Building Standards Commission

Enclosure: December 29, 2020 PRA request email

cc: CBSC Chron File  
Department of General Services—Office of Public Affairs  
Department of General Services—Office of Legal Services

**Exhibit G - 000042**

# Exhibit H

Document received by the CA 3rd District Court of Appeal.



**PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation**

**Open Source “America’s Operating System”**

“It’s Not Just A Good Idea—It’s The Law!”

January 29, 2021

Michael Nearman  
Deputy Executive Director  
California Building Standards Commission  
2525 Natomas Park Drive, Suite 130  
West Sacramento, CA 95833  
[michael.Nearman@dgs.ca.gov](mailto:michael.Nearman@dgs.ca.gov)

Re: California Public Records Act Request

Dear Mr. Nearman:

I write in response to your [January 7, 2021](#) letter in response to my California Public Records Act (“PRA”) request for electronic copies of Title 24 of the California Code of Regulations.

We understand from your response that you possess the documents and information that we’ve requested, but that you are refusing to produce them. In so doing, the PRA places the burden on you to prove that disclosure is not warranted – either through a statutory exemption, or based on the public interest. *Becerra v. Superior Court*, 44 Cal. App. 5th 897, 914 (2020), review denied (May 13, 2020); *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal.4th 59, 70 (2014); *County of Los Angeles v. Superior Court*, 211 Cal.App.4th 57, 63 (2012); § 6255. Your letter did neither. Nowhere in the PRA – or any other California law, for that matter – are private interests, such as those of publishers, favored over California’s constitutional right to publicly access the law of the land. Here, Title 24 of the California Code of Regulations is unambiguously a public record subject to disclosure, and no exemption or public interest applies. The justifications for withholding listed in your letter are insufficient, and inconsistent with both the text and spirit of the PRA and applicable law.

First, you state that print editions of Title 24 are available for inspection at certain locations, and can be purchased (in whole or part) from private organizations. This does not satisfy your duty to provide electronic copies upon request under the PRA. See Cal. Gov. Code § 6253.9(a) (“any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person”). Nowhere does the PRA say that making rival versions of the records available at select libraries and state buildings exempts the agency from complying with PRA requests. When a request is made, “the agency may charge the cost to construct a record,” but it must produce a compliant electronic copy to the requestor. *Cty. of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1336 (2009). You letter identifies no authority to the contrary. And indeed, none exists.

Second, you state that Title 24 can be viewed on the Building Standards Commission (“BSC”) website. This does not satisfy your duty to provide electronic copies in every electronic format (1) in which you hold the information or (2) that you use to create copies for your own use or to provide to other agencies. Id. §§ 6253.9(a)(1) (“The agency shall make the information available in any electronic format in which it holds the information.”), (a)(2) (“Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.”).

Moreover, the version of Title 24 on the BSC website is not “publicly available” within the meaning of the PRA. You provided a link to <https://www.dgs.ca.gov/BSC/Codes>, which directs visitors to view Title 24 on the proprietary website of International Code Council, Inc. at <https://codes.iccsafe.org/>. This version is not “publicly available” because it imposes severe “end user restrictions” that “are incompatible with the purposes and operation of the CPRA.” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1334. For instance, the “Basic” access level only provides read-only



access in a proprietary format. For further access and functionality—such as the ability to copy, paste, print, and search—a reader must buy a subscription, priced between \$216 and \$865 per year. Such licensing schemes and end user agreements have been squarely rejected by the California Court of Appeal. Id. at 1334.

Third, you state that “CBSC does not have the publishing rights to Title 24 and therefore cannot provide free copies to the public” because “Title 24 is based on and includes model codes produced by the publishing entities, and they then publish California’s codes, retaining copyright protections.” This is not a valid basis to withhold materials in response to a PRA request. As noted above, an agency “shall make the information available in any electronic format in which it holds the information.” [Cal. Gov. Code § 6253.9\(a\)\(1\)](#). Any refusal to provide public records on the basis of copyright protection must be supported by express statutory authority. *Cty. of Santa Clara*, 170 Cal. App. 4th at 1333 (because no “express authorization to secure copyrights” existed for GIS data, the county could not assert copyright protection as a basis for nondisclosure); *City of Inglewood v. Teixeira*, No. CV-15-01815-MWF (MRWx), 2015 U.S. Dist. LEXIS 114539, at \*8-9 (C.D. Cal. Aug. 20, 2015) (because the city could identify “no affirmative grant of authority that permits it to obtain and assert a copyright for the City Council Videos,” the court held that the city could not withhold the videos on copyright grounds).

Your letter points to no authority to support the notion that any alleged copyright interest in Title 24, even if valid, would prevent BSC from producing such records in response to the PRA request. This is because none exists. In fact, the California Court of Appeal has held that assertions of copyright protections over public records were inconsistent with the PRA: “The same persuasive reasoning applies to the interplay between copyright law and California’s public records law, with the result that unrestricted disclosure is required. Doing so effectuates the purpose of the statute, which is ‘increasing freedom of information by giving members of the public access to information in the possession of public agencies.’” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1335 (citing *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871, 876 (Fla. Dist. Ct. App. 2004)).

Please provide copies of Title 24 in every electronic format in your possession—including (without limitation) structured, machine-readable formats, such as XML files—by February 12. If you withhold any materials, please identify them and state the basis for your decision to withhold them, as required by Government Code § 6253(c).

In the event we do not satisfactorily resolve this issue by February 26, I will authorize my attorneys to initiate writ proceedings to challenge the BSC’s refusal to provide me with these public records.

With best regards,

DocuSigned by:  
*Carl Malamud*  
E80A36AECAF6462...  
Carl Malamud, President  
Public Resource



- cc: Matthew Caplan, Cooley LLP
- Joseph D. Mornin, Cooley LLP
- Ryan T. O’Hollaren, Cooley LLP
- David Halperin, Of Counsel, Public Resource

Document received by the CA 3rd District Court of Appeal.

# Exhibit I

Document received by the CA 3rd District Court of Appeal.

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**From:** Marvelli, Mia@DGS <Mia.Marvelli@dgs.ca.gov>  
**Sent:** Tuesday, March 2, 2021 4:11 PM  
**To:** carl@media.org  
**Cc:** Mills, Laura@DGS; Nearman, Michael@DGS; DGS Public Affairs@DGS; davidhalperindc@gmail.com; Caplan, Matt; Mornin, Joe; O'Hollaren, Ryan T.  
**Subject:** FW: Response to December 29, 2020 Public Records Act Request  
**Attachments:** PRA-10-20 Response-01-07-21.pdf

[External]

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Dear Mr. Malamud,

BSC stands by its original response letter and there will be no additional response.

Sincerely,

**Mia Marvelli**, Executive Director  
she/her  
*California Building Standards Commission*  
[dgs.ca.gov/BSC](https://dgs.ca.gov/BSC)  
916-263-0916

---

**From:** Carl Malamud <[carl@media.org](mailto:carl@media.org)>  
**Sent:** Wednesday, February 24, 2021 10:45 AM  
**To:** Mills, Laura@DGS <[Laura.Mills@dgs.ca.gov](mailto:Laura.Mills@dgs.ca.gov)>  
**Cc:** Nearman, Michael@DGS <[Michael.Nearman@dgs.ca.gov](mailto:Michael.Nearman@dgs.ca.gov)>; DGS Public Affairs@DGS <[DGSPublicAffairs@dgs.ca.gov](mailto:DGSPublicAffairs@dgs.ca.gov)>; David Halperin <[davidhalperindc@gmail.com](mailto:davidhalperindc@gmail.com)>; Caplan, Matt <[mcaplan@cooley.com](mailto:mcaplan@cooley.com)>; Mornin, Joe <[jmornin@cooley.com](mailto:jmornin@cooley.com)>; O'Hollaren, Ryan T. <[rohollaren@cooley.com](mailto:rohollaren@cooley.com)>  
**Subject:** Re: Response to December 29, 2020 Public Records Act Request

**CAUTION:** This email originated from a NON-State email address. Do not click links or open attachments unless you are certain of the sender's authenticity.

Dear Mr. Nearman and Ms. Mill -

I had not received any response to my letter of January 29, 2021. I was wondering if we should be expecting one from you? We had requested a response by February 12 with the hope that we could resolve these issues by February 26, which is this Friday.

Would you mind letting me know if you plan on responding? The letter is at the following address in case it was lost in the shuffle:

<https://law.resource.org/pub/us/cfr/regulations.gov/foia/bsc.ca.gov.20210129.pdf>

With best regards,

Carl Malamud

On Fri, Jan 29, 2021 at 1:16 PM Carl Malamud <[carl@media.org](mailto:carl@media.org)> wrote:

Dear Mr. Nearman and Ms. Mills -

Please find attached a reply to your letter of January 7, 2021.

Best regards,

Carl Malamud

On Thu, Jan 7, 2021 at 2:50 PM Mills, Laura@DGS <[Laura.Mills@dgs.ca.gov](mailto:Laura.Mills@dgs.ca.gov)> wrote:

Dear Mr. Malamud:

Please find attached CBSC's response letter to your request of December 29, 2020.

Best regards,

*Laura Mills, AGPA*

Department of General Services  
California Building Standards Commission  
2525 Natomas Park Drive, Suite 130  
Sacramento, CA 95833  
Office (916) 263-0916  
Direct (916) 263-1330  
Email [laura.mills@dgs.ca.gov](mailto:laura.mills@dgs.ca.gov)  
Website [www.dgs.ca.gov/bsc](http://www.dgs.ca.gov/bsc)



*CONFIDENTIALITY NOTICE: This message, together with any attachments, is intended only for the use of the individual or entity to which it is addressed. It may contain information that is confidential and prohibited from disclosure. If you are not the intended recipient, you are hereby notified that any dissemination or copying of this message or any attachment is strictly prohibited. If you have received this message in error, please notify the original sender immediately by telephone or by return e-mail and delete this message, along with any attachments, from your computer. Thank you.*

# Exhibit J

Document received by the CA 3rd District Court of Appeal.

SCO ID: 7910-OALCCR2020

STATE OF CALIFORNIA  
**AGREEMENT SUMMARY**  
 STD 215 (Rev. 04/2020)

AGREEMENT NUMBER <b>OAL-CCR-2020</b>	AMENDMENT NUMBER
---	------------------

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED

1. CONTRACTOR'S NAME West Publishing Corporation, a Thomson Reuters business		2. FEDERAL I.D. NUMBER 41-1426973
3. AGENCY TRANSMITTING AGREEMENT Office of Administrative Law	4. DIVISION, BUREAU, OR OTHER UNIT	5. AGENCY BILLING CODE 010385
6a. CONTRACT ANALYST NAME Kevin Hull, Senior Attorney	6b. EMAIL kevin.hull@oal.ca.gov	6c. PHONE NUMBER (916) 323-8916
7. HAS YOUR AGENCY CONTRACTED FOR THESE SERVICES BEFORE? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (If Yes, enter prior Contractor Name and Agreement Number) PRIOR CONTRACTOR NAME: West Publishing Corporation PRIOR AGREEMENT NUMBER: OAL CCR Contract 2015		

8. BRIEF DESCRIPTION OF SERVICES  
 Legal Publishing Services – publication of California Code of Regulations & California Regulatory Notice Register (print & online).

9. AGREEMENT OUTLINE (Include reason for Agreement: Identify specific problem, administrative requirement, program need or other circumstances making the Agreement necessary; Include special or unusual terms and conditions.)

Administrative Requirement: Gov. Code § 11344 requires OAL to provide for the official compilation, printing and publication of state regulations in the California Code of Regulations (CCR) and to update the CCR weekly. Gov. Code § 11344.1 requires OAL to provide for the weekly publication of the California Regulatory Notice Register (CRNR). OAL is required to provide free internet access to the CCR and CRNR.

Revenue Agreement: Pursuant to SAM 8609, intellectual property is intangible property. Pursuant to SAM 8615 intangible property includes copyrights. OAL asserts a copyright in the CCR and CRNR. The contractor compensates the state for being granted the exclusive publication rights to the CCR and CRNR.

Special Terms and Conditions: See Exhibit D for special terms and conditions regarding ownership of IP rights, damages, audit provisions, special obligations upon termination of contract (transfer of data & subscription lists).

10. PAYMENT TERMS (More than one may apply)

Monthly Flat Rate       Quarterly       One-Time Payment       Progress Payment  
 Itemized Invoice       Withhold \_\_\_\_\_ %       Advanced Payment Not To Exceed \_\_\_\_\_ or \_\_\_\_\_ %  
 Reimbursement / Revenue  
 Other (Explain)

11. PROJECTED EXPENDITURES

FUND TITLE	ITEM	FISCAL YEAR	CHAPTER	STATUTE	PROJECTED EXPENDITURES
NA - Revenue Agreement					
OBJECT CODE	AGREEMENT TOTAL				

SCO ID: 7910-OAL-CCR2020

STATE OF CALIFORNIA  
**AGREEMENT SUMMARY**  
 STD 215 (Rev. 04/2020)

AGREEMENT NUMBER <b>OAL-CCR-2020</b>	AMENDMENT NUMBER
---	------------------

OPTIONAL USE	AMOUNT ENCUMBERED BY THIS DOCUMENT \$0.00
	PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT \$0.00

I certify upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above. TOTAL AMOUNT ENCUMBERED TO DATE \$0.00

ACCOUNTING OFFICER'S SIGNATURE 	ACCOUNTING OFFICER'S NAME (Print or Type) Belinda Lindstrom	DATE SIGNED Nov. 24, 2020
------------------------------------	--	------------------------------

12. AGREEMENT

AGREEMENT	TERM FROM	TERM THROUGH	TOTAL COST OF THIS TRANSACTION	BID, SOLE SOURCE, EXEMPT
Original	1/1/2021	12/31/2023	\$0.00	Bid
<input checked="" type="checkbox"/> Amendment 1				
<input checked="" type="checkbox"/> Amendment 2				
<input checked="" type="checkbox"/> Amendment 3				
<b>TOTAL</b>			\$0.00	

13. BIDDING METHOD USED

- Request for Proposal (RFP) (Attach justification if secondary method is used)  Use of Master Service Agreement  
 Invitation for Bid (IFB)  Exempt from Bidding (Give authority for exempt status)  Sole Source Contract (Attach STD. 821)  
 Other (Explain)

Note: Proof of advertisement in the State Contracts Register or an approved form STD. 821, Contract Advertising Exemption Request, must be attached

14. SUMMARY OF BIDS (List of bidders, bid amount and small business status) (If an amendment, sole source, or exempt, leave blank)

One fully responsive bid was received from West Publishing Corporation offering revenue of \$200,000 annual payment plus 15.00% royalty on net revenues. Only other known potential bidder was LexisNexis who sent a letter dated 10/15/2020 declining to bid.

15. IF AWARD OF AGREEMENT IS TO OTHER THAN THE LOWER BIDDER, EXPLAIN REASON(S) (If an amendment, sole source, or exempt, leave blank)

NA

16. WHAT IS THE BASIS FOR DETERMINING THAT THE PRICE OR RATE IS REASONABLE?

Competitive bidding method was used for this revenue generating contract. \$200,000 annual license fee, 15.00% royalty payments and additional services to be provided to state represent significant benefit to state. Rejecting all bids would result in detriment to state.

17a. JUSTIFICATION FOR CONTRACTING OUT (Check one)

- Contracting out is based on cost savings per Government Code 19130(a). The State Personnel Board has been so notified.  Contracting out is justified based on Government Code 19130(b). When this box is checked, a completed JUSTIFICATION - CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 547.60 must be attached to this document.  
 Not Applicable (Interagency / Public Works / Other \_\_\_\_\_)

17b. EMPLOYEE BARGAINING UNIT NOTIFICATION

- By checking this box, I hereby certify compliance with Government Code section 19132(b)(1).

AUTHORIZED SIGNATURE 	SIGNER'S NAME (Print or Type) Kenneth J. Pogue, Director	DATE SIGNED 11/24/2020
--------------------------	---	---------------------------

18. FOR AGREEMENTS IN EXCESS OF \$5,000: Has the letting of the agreement been reported to the Department of Fair Employment and Housing? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A	22. REQUIRED RESOLUTIONS ARE ATTACHED <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A
19. HAVE CONFLICT OF INTEREST ISSUES BEEN IDENTIFIED AND RESOLVED AS REQUIRED BY THE STATE CONTRACT MANUAL SECTION 7.10? <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A	23. IS THIS A SMALL BUSINESS AND/OR A DISABLED VETERAN BUSINESS CERTIFIED BY DGS? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes SB/DVBE Certification Number:
20. FOR CONSULTING AGREEMENTS: Did you review any contractor evaluations on file with the DGS Legal Office? <input type="checkbox"/> None on file <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A	
21. IS A SIGNED COPY OF THE FOLLOWING ON FILE AT YOUR AGENCY FOR THIS CONTRACTOR? A. Contractor Certification Clauses <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A B. STD 204 Vendor Data Record <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A	

SCO ID: 7910-OALECR2020

STATE OF CALIFORNIA  
**AGREEMENT SUMMARY**  
STD 215 (Rev. 04/2020)

AGREEMENT NUMBER	AMENDMENT NUMBER
OAL-CCR-2020	

24. ARE DISABLED VETERANS BUSINESS ENTERPRISE GOALS REQUIRED? (If an amendment, explain changes if any)  No (Explain below)  Yes \_\_\_\_\_ % of Agreement  
This contract has been exempted from DVBE goals by the Director of OAL.

25. IS THIS AGREEMENT (WITH AMENDMENTS) FOR A PERIOD OF TIME LONGER THAN THREE YEARS?  No  Yes (If Yes, provide justification below)

Due to considerable investment required of contractor, including highly trained and specialized staff devoted to the CCR and CRNR publication, a term of greater than one year is necessary to provide maximum benefit to the state in terms of both quality of work to be performed and the licensing and royalties paid to the state.

I certify that all copies of the referenced Agreement will conform to the original agreement sent to the Department of General Services.

SIGNATURE	NAME/TITLE (Print or Type)	DATE SIGNED
	Kenneth J. Pogue, Director	11/24/2020



SCO ID: 7910-OALCCR2020

STATE OF CALIFORNIA  
**AGREEMENT SUMMARY**  
STD 215 (Rev. 04/2020)

AGREEMENT NUMBER <b>OAL-CCR-2020</b>	AMENDMENT NUMBER
---	------------------

**JUSTIFICATION - CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 547.60**


In the space provided below, the undersigned authorized state representative documents, with specificity and detailed factual information, the reasons why the contract satisfies one or more of the conditions set forth in Government Code section 19130(b). Please specify the applicable subsection. Attach extra pages if necessary.

The specialized publication services required under the contract are complex and require expertise, knowledge and ability not available through civil service. OAL reviews regulations proposed by more than 200 state agencies and files approved regulations with the Secretary of State nearly every business day. The publisher must engage in extensive editorial analysis of each approved regulation, including review of graphics, charts, tables, formulas, forms or text with unusual characteristics. The publisher prepares galleys that are carefully proofed against the filed copy of regulations. The publisher must provide indexing services, maintain the CCR database, publish and distribute weekly updates to subscribers and publish the CRNR weekly. The contractor must provide the CCR in print and electronic formats and must maintain and provide a free internet version of the CCR. The contractor must also provide OAL with legal research services and additional publications at no additional cost. Contracting out also allows the state to obtain the benefit of commercial marketing practices by the contractor to establish a reasonable return for the states intellectual property. The Office of State Publishing has issued a Service Release Determination stating that OSP does not have the expertise to successfully produce the required publications under this contract.

*This justification is pursuant to Government Code section 19130(6)(3).*

*KP  
11/23/2020*

*The undersigned represents that, based upon his or her personal knowledge, information or belief the above justification correctly reflects the reasons why the contract satisfies Government Code section 19130(b).*

SIGNATURE 	NAME/TITLE (Print or Type) Kenneth J. Pogue, Director	DATE SIGNED 11-24-2020
PHONE NUMBER (916) 323-6221	STREET ADDRESS 300 Capitol Mall, Suite 1250	
EMAIL kenneth.pogue@oal.ca.gov	CITY Sacramento	STATE ZIP CA 95814

SCO ID: 7910-OALCCR2020

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER OAL-CCR-2020	PURCHASING AUTHORITY NUMBER (if Applicable)
----------------------------------	---

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Office of Administrative Law

CONTRACTOR NAME

West Publishing Corporation, a Thomson Reuters business

2. The term of this Agreement is:

START DATE

January 1, 2021

THROUGH END DATE

December 31, 2023

3. The maximum amount of this Agreement is:

Revenue Contract: \$200,000 annual licensing fee + 15.00% royalty paid to OAL

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits	Title	Pages
Exhibit A	Scope of Work	10
Exhibit B	Budget Detail and Payment Provisions	2
Exhibit C *	General Terms and Conditions - (GTC 04/2017) # 12/27/20	1
Exhibit D	Special Terms and Conditions	8

Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

**CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

West Publishing Corporation, a Thomson Reuters business

CONTRACTOR BUSINESS ADDRESS

610 Opperman Drive

CITY

Eagan

STATE

MN

ZIP

55123

PRINTED NAME OF PERSON SIGNING

John S. Nelson

TITLE

Director of Procurement & Proposal Management

CONTRACTOR AUTHORIZED SIGNATURE

*John Nelson*

DATE SIGNED

11/19/2020

**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

Office of Administrative Law

CONTRACTING AGENCY ADDRESS

300 Capitol Mall, Suite 1250

CITY

Sacramento

STATE

CA

ZIP

95814

PRINTED NAME OF PERSON SIGNING

Kenneth J. Pogue

TITLE

Director

CONTRACTING AGENCY AUTHORIZED SIGNATURE

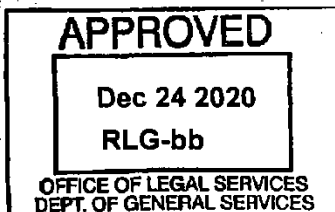
*Kenneth J. Pogue*

DATE SIGNED

11/24/2020

CALIFORNIA DEPARTMENT OF GENERAL SERVICES

EXEMPTION (if Applicable)



## **Exhibit A, Scope of Work/Required Publication Services**

### **1. Costs**

All costs incurred by the contractor in its performance of this contract are the responsibility of the contractor and shall not be charged to the state of California.

### **2. Master Database**

The contractor shall maintain the Official California Code of Regulations (CCR) in an electronic database, which for purposes of this contract shall be referred to as the "Master Database." To ensure that all CCR products accurately reflect the Official CCR content, the Master Database must be the source for all hard copy text and electronic products as well as the source for the contents of the Internet CCR.

Prompt and accurate updating of the CCR Master Database is a key component of the CCR publication contract. Except as provided herein, the contractor shall update the Master Database as soon as feasible after OAL provides the contractor with regulations that have been endorsed by the Secretary of State, preferably within 15 days but in no event longer than 30 days after OAL delivers the regulation text. The contractor may, after written notification and upon prior written approval by OAL, have an additional agreed upon number of days, not to exceed 7 days, to complete updates to the Master Database. In requesting such additional time, the contractor shall notify OAL at least 5 days in advance of the need for additional time, specify the amount of additional time needed and include an explanation of the reasons for the request, such as an unusually high volume of regulations delivered in the week at issue, intervening holidays, or information technology maintenance or upgrades. The text of regulations and all other items in the Master Database shall be subject to inspection, revision, and correction by OAL. The contractor shall take immediate action to make any corrections specified by OAL.

The contractor shall maintain the Master Database in a secure environment and shall establish an Availability and Operational Recovery Plan to protect the integrity and availability of the Master Database against the risk of attacks that may cause nuisance, significant interruptions of service or unauthorized changes to the Master Database content. At a minimum, the contractor's Availability and Operational Recovery Plan shall include upgrading software and installing software patches and updates as often as necessary to address security risks; removal of unnecessary software applications that run with administrative privileges or that receive packets from the network; use of an external firewall; establishment of remote administration security; restricted server scripts; web server shields with packet filtering, and education of personnel working with the Master Database.

The CCR Master Database shall include tables of contents, headings and captions, regulation text including all charts, graphs, tables, illustrations, forms etc. designated by OAL for publication, authority and reference citations, and history notes.

Upon completion or termination of the contract, the contractor shall provide OAL with a useable electronic database containing all the data from the Master Database required by

Exhibit J - 000052

this section or owned by OAL pursuant to section 18. The data must be provided in a standard (free from any proprietary formatting or codes) portable and easily processed or converted format such as XML or a relational database capable of extraction via standard SQL queries. The contractor shall be responsible for all costs associated with transferring the data to OAL in a usable form upon completion or termination of the CCR publication contract.

### **3. California Code of Regulations**

#### **3.1. Official California Code of Regulations**

The contractor shall publish the Official CCR on 8½ by 11 inch pages, loose leaf, in a form which assures that pages can be easily inserted into standard three-ring binders. Text paper shall be 20 lb. standard weight with a minimum of 30% postconsumer recycled content. Regulation text shall be printed in black, with font size no smaller than that used in the Official CCR in 2019. The format of the Official CCR is subject to OAL approval prior to initial publication. The contractor must submit any future format changes to the Director of OAL for approval prior to implementing any changes. The contractor may offer binders for sale to subscribers but shall not require any subscriber to purchase binders.

The contractor shall accurately and legibly print regulations as filed with the Secretary of State, including all charts, graphs, tables, illustrations, notes, graphics, etc. Each volume of the Official CCR shall contain the following:

- (a) Title Page;
- (b) A page listing hierarchy for that title with a nomenclature cross-reference for the pre-1990 hierarchy;
- (c) Table of contents for that title listing the headings of each Division, Chapter, Subchapter, Group and Subgroup where applicable, and Article;
- (d) Division level table of contents preceding each division within a title;
- (e) Complete text of regulations, including all narrative text, forms, appendices, prefaces, footnotes, endnotes, tables, formulas, graphics, illustrations or other regulatory material designated by OAL for publication;
- (f) Authority and reference citations for each section;
- (g) History notes for each section;
- (h) The Register number and publication date of the last revision on each page to reflect the last date any item on that page was affected by a regulatory action;
- (i) Such other materials as OAL may direct to be published.

In addition to the items listed above, the Official CCR may, in the contractor's sole discretion, also include annotations, appropriate research references, or other editorial material created by the contractor, to which the contractor may retain all intellectual property rights.

#### **3.2. CCR Supplement ("Register")**

The contractor shall compile the regulations filed during each calendar week, and use this compilation to update the CCR by publishing the weekly California Code of Regulations (CCR) Supplement. Using the underline (or italics) and strikeout in regulation text to discern

changes to the existing text of the CCR, the publisher shall integrate newly adopted, amended or repealed regulations into the CCR and publish the resulting regulatory changes in the CCR Supplement.

The contractor shall number the CCR Supplement by week and year (e.g. Register 2019, No. 42 contains regulations filed with the Secretary of State during the 42nd week of 2019); and shall publish the weekly CCR Supplement preferably within 15 days but in no event longer than 30 days after OAL delivers regulation text for publication. The contractor may, after written notification and upon prior written approval by OAL, have an additional agreed upon number of days, not to exceed 7 days, to complete publication. In requesting such additional time, the contractor shall notify OAL at least 5 days in advance of the need for additional time, specify the amount of additional time needed and include an explanation of the reasons for the request, such as an unusually high volume of regulations delivered in the week at issue, intervening holidays, or information technology maintenance or upgrades.

For sections that are being repealed, the contractor shall add the word (Repealed) to the heading for the repealed section. If other repealed section(s) appear on a page being revised in that issue of the CCR Supplement, and the heading of the other repealed section(s) are missing the word (Repealed), the contractor shall add (Repealed) to that heading.

The Supplement shall match the format requirements stated above for the Official CCR. The CCR Supplement shall be distributed to subscribers accompanied by information adequate to inform subscribers how to replace the updated pages of the Official CCR. The contractor shall distribute the CCR Supplement on a timely basis to subscribers for all full sets, subscribers to individual title(s) or subscribers to any other product iteration offered by the publisher that are affected by the weekly updates.

### **3.3. CCR Tables of Contents**

#### **3.3.1. Master Table of Contents**

The contractor shall publish a Master Table of Contents with a complete listing by heading of all regulations in all titles (excluding Title 24) by Title, Division, Chapter, Subchapter, Group and Subgroup where applicable, and Article. The contractor shall update the Master Table of Contents quarterly to reflect regulations that were added, amended or repealed during the previous calendar quarter, and distribute any revised pages, accompanied by instructions adequate to inform subscribers how to replace the updated pages.

#### **3.3.2. Division Level Table of Contents**

Each Division of the CCR shall be preceded by a Division Level Table of Contents for that Division listing the headings of each Chapter, Subchapter, Group and Subgroup where applicable, Article and Section. The contractor shall update the Division Level Tables of Contents quarterly to reflect regulations that were added, amended or repealed during the previous calendar quarter, and distribute any revised pages, accompanied by instructions adequate to inform subscribers how to replace the updated pages, except that if regulatory

material filed by OAL with the Secretary of State includes entire new chapters or entire new articles, the contractor shall distribute a revised Division level Table of Contents (or revised pages in the Division Level Table of Contents) when it publishes the new chapter or article.

#### **4. Master Index**

The contractor shall create and publish a Master Index to which the contractor may retain all intellectual property rights. The Master Index shall include a Table of Statutes to Regulations, listing all of the California statutes cited in the Authority and Reference notes following each section of the CCR. The Master Index shall be updated no less than annually.

The Master Index may, in the contractor's sole discretion, include appropriate research references, annotations or other editorial material to which the contractor may retain all intellectual property rights. The title page of the Master Index shall indicate that the Master Index has not been reviewed by the Office of Administrative Law and is not part of the Official California Code of Regulations. The contractor shall publish the Master Index no later than 180 days after the start date of the CCR publication contract.

The contractor may copyright the Master Index. If the contractor declines to obtain a copyright on its own behalf, the contractor shall, to the extent allowable by law, obtain a copyright in the name of OAL on behalf of the State of California. All expenses of obtaining such copyright, either on behalf of the contractor or OAL, shall be the responsibility of the contractor.

#### **5. Electronic CCR**

The contractor may publish the CCR electronically in addition to hardcopy. This is distinct from and does not change the contractor's obligations regarding the Internet CCR set forth in section 7 below.

#### **6. CCR Products**

In addition to selling full sets of the CCR in hardcopy and electronically, and licensing all or part of the CCR to other publishers, the contractor may, in its sole discretion, elect to additionally publish any segments or compilations of the CCR for sale as separate units, in any topic area or other grouping, and in any format.

#### **7. Internet CCR**

The contractor shall make available on the Internet and free to the public an electronic version of the CCR which is capable of accommodating a high number of simultaneous users, at minimum supporting the number of simultaneous users who visited the Internet CCR from July 1, 2019 to June 30, 2020. The Internet CCR shall meet the following minimum requirements:

- (a) Accessible to Persons with Disabilities: The contractor shall ensure that the Internet CCR complies with applicable state and federal requirements for accessibility by persons with disabilities. The contractor shall ensure that existing content of the

Internet CCR meets state and federal requirements in effect at the time of commencement of the contract and that new content delivered to the contractor meet state and federal accessibility requirements in effect at the time the content is delivered to the contractor.

- (b) **Content:** The Internet CCR shall accurately reflect the content of the Official CCR. The contractor shall update the Internet CCR no later than 5:00 p.m. Pacific time on the next business day following the date it issues the weekly CCR Supplement. The contractor may, after written notification and upon prior written approval by OAL, have an additional agreed upon number of days, not to exceed 7 days, to complete updates to the Internet CCR. In requesting such additional time, the contractor shall notify OAL at least 5 days in advance of the need for additional time, specify the amount of additional time needed and include an explanation of the reasons for the request, such as an unusually high volume of regulations delivered in the week at issue, intervening holidays, or information technology maintenance or upgrades. If content delivered to the contractor raises state or federal ADA accessibility issues that require additional information from OAL or another state agency, such as alternative text or approval of formatting changes, such content shall not be published in the Internet CCR until such information is provided and the content meets applicable accessibility standards. All other content shall be published in accordance with this section. The Internet CCR shall accurately reflect the date on which the online CCR was last updated.
- (c) **Format:** The Internet CCR shall include any necessary information, software, and technical support to make the complete CCR available, including graphics, tables, forms and any other material included in the Official CCR. The format shall be compatible with all Internet browser software and supported versions widely in use, including, but not limited, to Microsoft Edge, Internet Explorer, Mozilla Firefox, Apple Safari and Google Chrome. The format shall also be compatible with use on devices commonly in use, such as smart phones, tablets, laptops and personal computers. The use of browser plugins or additional software (such as Adobe Flash, Microsoft Silverlight etc.) to view the database content is discouraged.
- (d) **Agency List and Division Level Links:** The Internet CCR shall contain list of state agency names and addresses, each of which shall contain a permanent link (i.e. hard link that a user may save as a "favorite" or "bookmark" browser link) to the division level table of contents for that agency. This list shall be updated at least annually by the contractor, except that the contractor shall also update agency specific information upon notification by OAL of a change of information for an agency.
- (e) **Data Integrity and Availability:** The contractor shall make the Internet CCR available 24 hours a day, 7 days a week, excluding scheduled maintenance approved by OAL not to exceed 2 hours per week. In the event scheduled maintenance may or will require an Internet CCR outage of more than 2 hours, contractor will coordinate any such outage with OAL and provide OAL at least two weeks notice before the outage. Contractor will also post a conspicuous notice on the Internet CCR home page for at least two weeks immediately preceding and during the outage to inform users of the planned outage and anticipated duration. The maximum allowable outage during times of disaster shall not exceed 5 working days. The contractor shall take steps to protect the integrity and availability of the Internet CCR against the risk of attacks that

may cause nuisance, alter the data by unauthorized individuals, or significant interruptions of service. These steps shall include upgrading software and installing patches as often as necessary to address security risks; removal of unnecessary software applications that run with administrative privileges or that receive packets from the network; use of an external firewall; establishment of remote administration security; restricted server scripts; web server shields with packet filtering, and education of personnel working with the Internet CCR.

- (f) **Accuracy:** The contractor shall ensure that the Internet CCR accurately reflects the most recent weekly updated version of the Official CCR; that it is complete and contains all the material defined as part of the Official CCR; and that it is fit for publication on the Internet.
- (g) **User-Friendly:** Response time for a basic query must be comparable to response times for Internet legal research databases widely in use. The contractor shall ensure that users can view, print and search with reasonable ease of use. The contractor shall provide users with a universal search capability, including, but not limited to search by natural language, literal strings, and available use of Boolean operators. The contractor shall include a link to "FAQ" and/or "Help" on the home page to provide information to help users navigate the website. Linking commercial advertising is expressly prohibited without the prior written consent of the Director of OAL.
- (h) **User Support:** The contractor shall provide toll-free customer assistance during regular business hours. The contractor shall respond to customer service inquiries within two business days of receiving a voice message, written communication, or email.
- (i) **Privacy:** The contractor shall collect information adequate to report to OAL the number of visits to the website and length of session; however the contractor shall not collect personally identifiable information from any user's Internet session without the explicit, opt-in consent of the user. The contractor shall post a "privacy and conditions of use" page informing users about the collection and use of information regarding visits to the online CCR.
- (j) **Reports:** The contractor shall provide OAL with quarterly reports about usage of the Internet CCR during the prior calendar quarter. This report shall contain information about the number of users visiting the Internet CCR, including the number of visitors per week and average session length. The contractor shall also report the number and type of technical support queries for the Internet CCR, and provide a detailed explanation for any unanticipated interruption in service that exceeds one hour.
- (k) **Title 24 Explanatory Note:** The contractor shall list title 24 in the list of CCR titles in the Internet CCR, state that title 24 is published by the Building Standards Commission (BSC) and link the listing for title 24 to the BSC website at <http://www.bsc.ca.gov/default.htm>.

## 8. The California Regulatory Notice Register

The contractor shall publish the California Regulatory Notice Register (Notice Register) each Friday using material provided by OAL the previous week. The contractor may elect to receive the material in hardcopy or via electronic transmittal. The Notice Register shall be printed on 8½ by 11-inch pages, three-hole punched, in a format of comparable quality to



that in use in 2019. Text paper shall be 20 lb. standard weight with a minimum of 30% postconsumer recycled content. Text shall be printed in black; font size shall be no smaller than 10 point for text within paragraphs.

Potential elements of the Notice Register include, but are not limited to:

- (a) Notices of Proposed Regulatory Action
- (b) Summaries of approved regulations filed with the Secretary of State the previous week
- (c) Summaries of regulation decisions issued during the previous week and summaries of the reasons for OAL disapproval of a proposed regulation
- (d) Quarterly index of OAL regulation decisions
- (e) An agency's request for review of an OAL disapproval decision, OAL's response to the agency request for review, and the Governor's decision
- (f) Underground regulation petitions and underground regulation determinations issued pursuant to Government Code section 11340.5
- (g) General Public Interest Notices
- (h) Petition decisions pursuant to Government Code section 11340.7
- (i) Periodic indices of regulations approved and filed with the Secretary of State
- (j) OAL announcements
- (k) An Annual Rulemaking Calendar pursuant to Government Code section 11017.6.  
The contractor may distribute the Annual Rulemaking Calendar to subscribers on CD or other electronic format, but shall provide a print version upon request by any subscriber.

By 10:00 a.m. Pacific Time on every Friday, the contractor shall send a linked PDF copy of that day's issue of the Notice Register which fully and accurately reflects the print version of the Notice Register. (For purposes of this RFP, the term "linked PDF copy" means that each item listed in the online Table of Contents shall include a hyperlink so that clicking on that item in the Table of Contents takes the user to that notice in the text of the Notice Register.) The linked PDF copy of the Notice Register shall be sent by electronic mail to the person(s) designated by the Director of OAL to receive the linked PDF copy of the Notice Register. The linked PDF copy of the Notice Register is required to be published on OAL's website and therefore the linked PDF copy of the Notice Register shall meet all state and federal ADA accessibility requirements in effect at the time the Notice Register is provided to OAL.

## 9. Transmission of Material for Publication

OAL shall furnish to the contractor, at the contractor's expense, all regulations, notices and any other material designated for publication under the CCR publication contract. OAL shall deliver to the contractor, at the contractor's expense, a copy of approved regulations endorsed by the Secretary of State each day that OAL files regulations with the Secretary of State. The contractor's method for collection and delivery shall provide for routine delivery the next business day after OAL files approved regulations with the Secretary of State. OAL shall provide the contractor with approved notices each week via electronic mail or other mutually agreed upon method.

The contractor may elect to receive an unofficial advance copy of proposed regulations prior to review and action by OAL, to be transmitted to the contractor at the contractor's expense. The contractor shall understand that these unofficial advance copies of regulations may be revised before filing or may never be filed with the Secretary of State, and may therefore not become part of the Official CCR.

By 10:00 a.m. on the business day following the date OAL takes action on any proposed regulatory action, OAL shall inform the contractor of such action by sending, via electronic mail, a Daily Action Report containing the following information:

- (a) OAL File Number
- (b) Title affected
- (c) Agency
- (d) OAL Action (Approval/Disapproval/Withdrawn)
- (e) Date of filing with Secretary of State

## 10. Editorial Responsibilities and Accuracy

The contractor shall ensure that regulation text, as published, accurately reflects the final regulation text as filed with the Secretary of State. The contractor shall ensure that notice text, as published, accurately reflects the text of the notice provided by OAL. All editorial work, including but not limited to proofreading, copyreading, correction, data preparation, formatting, and typographical composition work for the CCR and Notice Register, shall be performed at the contractor's expense.

The contractor shall not alter the text of regulations, notices or any other materials furnished by OAL for publication, except as expressly directed or authorized by OAL. If, at any time during the CCR publication contract, OAL determines that the publisher's editorial work is unsatisfactory, OAL will advise the publisher in writing and give the publisher a reasonable opportunity to correct any deficiencies. OAL defines a satisfactory level of accuracy as zero percentage (0%) of error rate as compared to the final regulation text filed with the Secretary of State or as compared to the text of notices provided by OAL.

The text of regulations and all data in the Master Database shall be subject to inspection, revision, and correction by OAL. Questions regarding the text of regulations or notices shall be promptly called to the attention of OAL. Inferior, unprofessional, or unsatisfactory work shall be rejected and returned to the contractor for prompt correction at no additional cost to the state or CCR subscribers. OAL's inspection, revision, or acceptance of work shall not be considered a waiver of the contractor's duty to correct, at the contractor's own expense, errors or defects subsequently discovered.

The contractor shall advise the Director of OAL in advance, in writing, of any proposed changes in the method and manner of performing editorial work covered by the CCR publication contract. The Director of OAL, or designated representative, and the contractor's representative shall, on the request of either party or at reasonable intervals, meet and confer to foster communication and cooperation between OAL and the contractor about the parties' rights and responsibilities under the CCR publication contract.

## 11. Publications and Services for OAL

The contractor shall provide OAL during the term of the CCR publication contract with the following publications and products, free of charge:

- (a) Four (4) subscriptions to the Official CCR and CCR Supplement in hard copy;
- (b) Three (3) subscriptions to the Master Table of Contents, in hard copy;
- (c) Three (3) subscriptions to the Master Index, in hard copy;
- (d) One (1) subscription to Annotated California Codes;
- (e) Five (5) copies of each issue of the California Regulatory Notice Register;
- (f) One (1) complete replacement set of CCR binders annually;
- (g) 1000 copies annually of a softbound book containing selected statutes and regulations specified by OAL as relevant to California rulemaking law. The format and content of the book shall be substantially similar to the 2019 edition of "California Rulemaking Law under the Administrative Procedure Act."

Additionally, the contractor shall provide each employee of OAL, for the exclusive use by OAL, with free access to any online legal research database services provided by the contractor. The level of service provided shall include, at a minimum, access to cases and judicial materials, statutes and legislative materials, administrative law and regulations, analytical materials, and journals and law reviews for all states and the federal government; news and business materials available to basic national service subscribers, any other features available to subscribers that are reasonably relevant to OAL's duties, and to new online legal research database services created during the term of the CCR publication contract that are reasonably relevant to OAL's duties.

## 12. Publications for County Clerks and Depository Libraries

The contractor shall provide, free of charge, one (1) subscription of the hard copy version of the CCR (or, at the recipient's option, a subscription in an electronic format that is updated at least monthly, on CD ROM or other mutually agreeable electronic format to each of the fifty-eight (58) county clerks or their designees, pursuant to Government Code section 11343.5; and to each state depository library, pursuant to Government Code sections 14900-14912.

The contractor shall provide, free of charge, one (1) subscription of the hardcopy version of the Notice Register (or, at the recipient's option, a subscription in an electronic format) to state depository libraries, pursuant to Government Code sections 14900-14912.

## 13. Reports

The contractor shall provide OAL with periodic reports regarding the content of the Official CCR and the Notice Register. These reports are to be provided no less often than annually and shall include but are not limited to:

- (a) The number of regulation sections in existence at the end of the prior calendar year. This report shall specify the total number of active regulation sections and the total number of repealed regulation sections in each title, and in addition shall specify the total number of sections in all CCR titles combined;

- (b) A tally of the number of regulations adopted, amended or repealed during the prior calendar year. This report shall specify the number of files sent by OAL for publication and the number of regulation sections that were adopted, amended or repealed during the period covered.
- (c) A page count of the Official CCR for the prior calendar year. This report shall state the number of pages in each title and include the total number of pages for all titles.

**Exhibit B, Revenue Provisions****14. Annual License Fee and Royalty**

In exchange for the electronic delivery of the text of regulations and the state-created material to be published in the Official California Code of Regulations and the California Regulatory Notice Register and for being granted the exclusive rights to publish the Official California Code of Regulations and the California Regulatory Notice Register, the contractor agrees to pay an annual license fee of \$200,000.00 and a royalty of 15.00% on net revenues.

For purposes of this agreement, "net revenues" means all sales proceeds less returns, discounts refunded to the customer, and, if not charged separately but included in the sales price, sales taxes, transportation and handling, and in addition, all revenues received from licenses to third parties (including affiliated companies) without any reduction.

The contractor shall pay the annual license fee in advance, at quarterly intervals, beginning with the commencement of the CCR publication contract on January 1, 2021. No portion of the annual license fee shall be refundable during a quarter notwithstanding early termination of the contract.

The contractor shall pay the royalty at quarterly intervals. All royalties payable pursuant to this agreement shall accrue to the benefit of OAL, and be accounted for by the contractor, during each of the quarterly periods ending on March 31, June 30, September 30 and December 31 of each calendar year. The contractor shall pay OAL any and all royalty amounts due for each quarterly period within 90 days after the end of that quarterly period.

If the contractor provides academic institutions or governmental entities such as the courts with significantly discounted rates for its Internet legal research database because of their academic nature or the public benefit they provide, no royalties shall be paid by the contractor for CCR-related usage of the contractor's Internet legal research database by those customers. This exemption shall not apply to any academic institution or governmental entity whose subscription agreement is modified to require payments at rates comparable to those paid by commercial entities.

**15. Compensation Delivery Requirements**

Compensation shall be mailed or delivered to the following address:

Office of Administrative Law  
ATTN: Kenneth J. Pogue, Director  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

**16. Standard Budget Contingency Clause**

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no

liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the state of California shall have the option to either cancel this agreement with no liability occurring to the state, or offer an agreement amendment to the contractor to reflect the reduced amount.

**Exhibit C, State of California General Terms and Conditions**

The state of California General Terms and Conditions (GTC) are hereby incorporated by reference and made part of this agreement as if attached hereto. This document can be viewed at <https://www.dgs.ca.gov/-/media/Divisions/OLS/Resources/GTC-April-2017-FINALapril2017.pdf?la=en&hash=>.

## Exhibit D, Special Terms and Conditions

### 17. Compensation and Royalties

Refer to Exhibit B, Revenue Provisions.

### 18. Intellectual Property Rights

The Official CCR, Notice Register and the state created data within the Master Database, in all forms, are the sole and exclusive property of the state of California. Any copyrights in the Official CCR and Notice Register, excluding contractor's proprietary enhancements, shall be owned, noticed, and registered in the name of OAL on behalf of the state of California. In no event shall the Official CCR or Notice Register be considered a "joint work" as that term is defined in 17 U.S.C. section 101. Additional editorial enhancements, including but not limited to those described below, shall be the exclusive intellectual property of the contractor. The contractor agrees to deliver to OAL, at no cost to the state of California, all documents required for OAL to register or otherwise protect the state's intellectual property in the United States or in any other country and to recognize ownership in such works by the state of California. The contractor shall take no action which will infringe or abridge the rights of the state of California in any of the works which are the subject of this CCR publication contract.

The contractor shall not procure or claim any copyright or other intellectual property rights with respect to the Official CCR, the Notice Register or the Master Database, or in the Master Table of Contents the contractor develops pursuant to this CCR publication contract, or in any of the following material:

- Tables of contents for each Title and Division
- The hierarchical structure of the CCR (divisions, chapters, articles, etc.)
- The captions (e.g. Title 1, Section 6, "Submission of Regulatory Actions (Form 400)")
- The text of the regulations, including any appendices, tables, graphics, illustrations, charts, forms or other items that are part of regulatory material filed with the Secretary of State and designated by OAL for publication in the CCR
- Authority and Reference citations
- History Notes
- The Official California Code of Regulations Supplement

The state of California will own the data used to publish the California Code of Regulations and the California Regulatory Notice Register. Pursuant to section 2 of this contract, the contractor will provide to the state of California, upon contract termination at no additional cost, all data in the Master Database in an electronic format that preserves the content of the CCR for future publication.

The state of California expressly reserves the right to use the CCR, its captions, text, and related notations, etc., in any manner that the state so chooses.

The state grants the contractor the exclusive right to publish and use the Official CCR and Notice Register and/or provide the Official CCR and Notice Register to third parties in whatever form and by whatever means it desires, subject to the licensing and royalty



provisions of this contract. All versions of the CCR licensed shall accurately reflect the content of the Official CCR.

The contractor may add editorial enhancements which do not alter the substance of the CCR, CCR Supplement, or Notice Register, and may copyright the editorial enhancements. All expenses of obtaining copyright, either on behalf of the contractor or the state of California, will be the responsibility of the contractor, and copies of any documents pertaining to copyright must be provided to the Director of OAL. OAL and the state of California shall have a royalty-free, worldwide, nonexclusive, perpetual license, for use of all intellectual property rights in all editorial enhancements created by the contractor during the term of this contract. For the purposes of this provision, "use" shall include reproduction or disclosure by OAL or the state for informational purposes or as otherwise required by law, including but not limited to the Public Records Act.

If OAL terminates this CCR publication contract before the anticipated term due to the contractor's breach, default, or abandonment of the CCR and/or Notice Register publications, both OAL and any successor publisher of the CCR and/or Notice Register shall be held harmless for any infringement of the contractor's intellectual property rights in the editorial enhancements, including copyright, relating to action taken by OAL in good faith to facilitate continued publication and availability of the CCR and Notice Register. OAL and any successor publisher shall be held harmless for any such infringement even if the premature termination of the CCR publication contract by OAL is ultimately found to have been without cause. OAL and any successor publisher shall remove any material that infringes on contractor's intellectual property rights as soon as feasible after being notified by contractor of such infringement.

In continuance of its rights under the current contract, upon contract termination or expiration, the contractor may, in its sole discretion, continue using and publishing, in its entirety the CCR data in its possession at the time of termination or expiration, including the Master Index and Master Table of Contents in an unofficial capacity as the contractor deems fit. To facilitate this use, the contractor shall have a non-exclusive, royalty-free, worldwide, perpetual license to make, have made, sell, use, reproduce, modify, adapt, display, distribute, make other versions of and disclose the data in its possession at the time of termination or expiration, and to sublicense others to do these things.

**Pre-existing intellectual property:** In performing any services or providing any deliverables under this CCR publication contract, the contractor will not use any pre-existing intellectual property including, but not limited to, any trade secret, invention, work of authorship or protectable design that has already been conceived or developed by anyone before the contractor renders any services under this contract, unless the contractor has the right to use it for OAL's benefit. If the contractor is not the owner of such pre-existing intellectual property, the contractor will obtain from the owner any rights necessary to enable the contractor to comply with this agreement. If the contractor uses any pre-existing intellectual property in connection with this agreement, the contractor hereby grants to OAL a non-exclusive, royalty-free, worldwide perpetual license to make, have made, sell, use,

reproduce, modify, adapt, display, distribute, make other versions of and disclose the property and to sublicense others to do these things.

Intellectual property indemnification: The contractor will give OAL notice immediately if at any time the contractor knows or reasonably should know of any third party claim to any pre-existing intellectual property provided by the contractor to OAL pursuant to this agreement. The contractor will indemnify and hold harmless OAL from all liability arising from the contractor's use of such pre-existing intellectual property.

## **19. Damages**

### ***Actual Damages***

In the event that the contractor fails to satisfactorily complete or perform the activities it is obligated to perform under the CCR publication contract, the contractor shall be liable for the state's full cost in securing completion of any activities or services needed to publish the CCR and Notice Register and other publications covered by the CCR publication contract. The state shall not be liable for any of the contractor's costs, other than those specifically covered by this contract, in complying with the contract requirements.

## **20. Audits**

In addition to the audit provision contained in the state of California General Terms and Conditions, on written request by OAL, the contractor will allow the Bureau of State Audits, the State Controller or designee of OAL, or in the alternative, an independent certified public accountant who is mutually acceptable to the contractor and OAL to have access to, and to copy, during ordinary business hours and for as many days as required, the contractor's books and financial records as necessary to calculate the royalty for any quarter during the term of this CCR publication contract. If the contractor and OAL cannot agree on the selection of an independent certified public accountant, the contractor and OAL will each select a certified public accountant, and the two accountants will choose a third certified public accountant who will then review the contractor's books and records to determine the amount of the royalty.

The determination of the amount of royalties by the auditor will be final and binding on the contractor and OAL. If the auditor finds any discrepancy between the amount of royalty due and the amount of royalty paid for such quarter, the difference will be paid by the contractor to OAL, or refunded by OAL to the contractor, as the case may be, within 30 working days after written notice of the discrepancy is given to both parties. If the amount of the royalty paid for any quarter is less than 95% of the amount due, the contractor will pay all accounting costs. In all other instances, OAL will pay all accounting costs. The contractor will bear all other costs of access to its books and records.

The auditor will hold the contractor's financial information and trade secrets in confidence and will disclose to OAL only the amount of royalties due OAL and the factual basis for the determination of the amount(s) due.

Audits conducted under this provision shall be in accordance with generally accepted auditing standards.

## **21. Term; Termination**

### **21.1. Term**

The CCR publication contract shall begin January 1, 2021, and have a term of three years, with 2 optional 1-year extensions to be exercised upon mutual agreement of OAL and the contractor.

### **21.2. Failure to Perform**

OAL may terminate this CCR publication contract if the contractor fails to perform the covenants herein contained at the time and in the manner herein provided. In the event of termination, OAL may proceed with the work in any manner deemed proper by OAL. The cost to the state shall be added to any sum due from the contractor to OAL under this CCR publication contract.

Persistent failure to meet publication dates or persistent failure to take corrective actions specified by OAL shall constitute a material breach of the CCR Publication Contract. In the event the contractor fails to perform the CCR publication contract, or a substantial part thereof, the Director of OAL shall provide written notice of the failure and make a reasonable effort to resolve the failure with the contractor. If the contractor's failure is not resolved, OAL may, in its sole judgment reasonably exercised, terminate the contract, in whole or in substantial part, by presenting written notice of termination to the contractor. The notice shall specify the extent to which the contract is terminated and the date upon which such termination becomes effective. Upon termination, OAL will retain all legal remedies available to it, including damages for increased expense on behalf of all subscribers, for the remaining term of the contract.

### **21.3. Parties' Obligations Upon Termination**

If the contract is terminated for any reason other than by the expiration of the term specified in the contract or the term of any extension thereto, the contractor shall deliver or transmit to OAL, within 10 days after termination, the complete Master Database current as of the date of termination. The Master Database shall be provided to OAL in electronic form pursuant to Section 2 of this contract.

If the contract terminates by the expiration of the term specified in the contract or the term of any extension thereto, the contractor shall provide OAL with the Master Database in electronic form pursuant to Section 2 of this contract according to the following schedule: 1) 90 days prior to the anticipated expiration of the term; 2) 30 days prior to the anticipated expiration of the term; and 3) concurrently with the expiration of the term.

Upon termination of this contract for any reason, the contractor loses the right to publish the Official CCR. The contractor agrees, upon OAL's request, to provide to OAL within 10 days of termination, lists in mutually acceptable electronic form of the subscribers to all forms of

the publications covered by this contract, and of all entities granted a license to publish any of the publications covered by this contract. In addition, for a period of sixty (60) days after termination of this contract, the contractor agrees to cooperate with OAL and any successor publisher of the Official CCR to provide information necessary for the continued publication of the Official CCR.

## 22. Changes

If changes in California law oblige OAL to alter the publication services to be performed under this contract, or to alter the time allowed for performance of services under this contract, and such changes cause an increase in the costs to the contractor, or the time required for the contractor's performance of this contract, OAL and the contractor shall negotiate an equitable adjustment to the compensation, or time of performance, or both, and the contract shall be modified accordingly. Any such modification must be in writing and is subject to the approval of the Department of General Services before it becomes effective.

Any claim by the contractor for equitable adjustment under this provision must be asserted in writing to the director of OAL or designated representative not later than thirty (30) days after the date OAL notifies the contractor of a change in California law, or within such extension as OAL may grant in writing. OAL may, in its sole discretion, consider any such claim regardless of when asserted.

Pending any such equitable adjustment, the contractor shall diligently proceed with the contract as modified. Where the cost of property made excess or obsolete as a result of the change is included in the contractor's claim for equitable adjustment, OAL shall have the right to require the submission of supporting cost data and/or to inspect the contractor's pertinent books and records for the purpose of verifying the contractor's claim and determining the basis for entitlement to an equitable adjustment.

The contractor's claim for equitable adjustment shall be fully supported by factual information and shall separately identify all increases and decreases in costs. The claim shall be submitted by a senior official authorized to bind the contractor in a signed writing that contains the following certification statement: "I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief and that the amount requested to be changed accurately reflects the contract adjustment for which (insert contractor's name here) believes the state is liable."

## 23. Substitutions

If it becomes necessary for the contractor to substitute any subcontractor, or management, supervisory or key personnel, those substitutions must include replacements with equal or greater qualifications. The contractor shall notify OAL of any key personnel changes as soon as the contractor knows that the change has occurred or will occur. The contractor will take necessary measures to ensure that any staffing changes do not adversely impact OAL or the contractor's publication and related responsibilities under this contract.

## **24. Severability**

Should any provision of this contract be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions shall not be affected thereby.

## **25. Waiver/Non-Waiver**

Any waiver of the terms and conditions of the CCR publication contract must be in writing. Any single waiver does not imply any future waiver of any terms or conditions. Failure of either party to enforce any provision of this contract shall not constitute or be construed as a waiver of such provision or the right to enforce such provision.

## **26. Rights of State Agencies**

Nothing in this contract shall prevent the state of California or a California state agency from publishing, reproducing, or distributing its own regulations, except that no agency of the state of California may, during the term of this contract, authorize commercial publication of regulations unless the commercial publisher has obtained a license from the contractor.

## **27. Right of Inspection**

The director of OAL or designated representative, shall have a continuing right to inspect, at reasonable intervals, all manufacturing and editorial premises used in performance of the CCR publication contract, including premises occupied by the contractor's subcontractors, if any. The contractor shall provide for such right of inspection in any subcontractors' facilities by arrangements with subcontractors or agents. The contractor shall be responsible for all reasonable expenses relating to any meeting or inspection pursuant to this contract, including reasonable transportation, lodging, and related travel expenses of OAL personnel reasonably necessary to the purpose of any meeting or inspection.

Upon request by the Director of OAL or designated representative, the contractor shall provide one copy of any of its CCR or Notice Register products for inspection by OAL.

## **28. Subscription Lists**

Upon completion or termination of this contract, including premature termination due to a breach, default, abandonment or any other reason, the contractor shall provide a copy to OAL, or to a successor publisher designated by OAL, of each and every subscription list for all contractor's Official CCR products. The copy of each and every subscription list shall include all relevant information reasonably needed by a successor publisher to fulfill subscription obligations. This includes, but is not limited to, the names and addresses of subscribers, types and categories of subscriptions for all Official CCR products for each subscriber, and subscription cost information, including current payment status of all subscribers, and beginning and ending dates of each subscription.

## **29. Miscellaneous Provisions**

### **29.1. Short Title**

This contract shall be referred to by the parties as the "CCR Publication Contract."

### **29.2. Statutory Requirements**

The contractor shall ensure that the content and distribution of all CCR and Notice Register products published pursuant to this contract comply with applicable requirements of the Administrative Procedure Act, including, but not limited to, Government Code sections 11344 and 11344.1.

### **29.3. Cooperation**

Each party shall cooperate with the other party as is reasonably necessary to further the purposes of this contract and the other party's performance hereunder.

### **29.4. Electronic Submission Plan**

The contractor shall work with OAL to devise a format and/or method that will allow for the future electronic transmission of proposed regulation text and notices.

### **29.5. Marketing and Advertising Of CCR**

The contractor shall undertake reasonable efforts to market and advertise the CCR during the term of this contract. The contractor shall keep the Director of OAL advised informally as to the manner in which the CCR is marketed and advertised during the term of the contract. No advertisements shall be published in the Official CCR or in the Internet CCR except with express written permission of the Director of OAL.

## **30. Entire Agreement**

This document constitutes the entire agreement of the parties. However, RFP-CCR-2020 and the contractor's proposal shall be used to establish intent in resolving any ambiguities that may be contained herein.

## **31. Contract Administration**

Subject to the other party's continuing approval, each party shall assign overall responsibility for its performance of this agreement to a contract administrator who is competent in the management and performance of the party's obligations under this agreement. Each party's contract administrator shall be the primary contact for the other party with regard to matters related to this agreement.

The contract administrator for OAL is:

Kevin D. Hull, Senior Attorney  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
[Kevin.Hull@oal.ca.gov](mailto:Kevin.Hull@oal.ca.gov)  
Phone: 916-323-8916  
Fax: 916-323-6826

The contractor administrators for the contractor are:

**Contract Administrator  
(Contract-Related Issues)**

Anne Barnard, Senior Counsel  
Thomson Reuters  
610 Opperman Drive  
Eagan, MN 55123  
[anne.barnard@tr.com](mailto:anne.barnard@tr.com)  
Phone: 763.326.7037

**Contract Administrator  
(Editorial-Related Issues)**

Rachel Utter, Manager, Content Strategy & Editorial  
Thomson Reuters  
610 Opperman Drive  
Eagan, MN 55123  
[rachel.utter@tr.com](mailto:rachel.utter@tr.com)  
Phone: 763.326.5495

**Contract Administrator  
(Editorial-Related Issues)**

Shannon Petersen, Manager, Content Operations  
Thomson Reuters  
610 Opperman Drive  
Eagan, MN 55123  
[shannon.petersen@thomsonreuters.com](mailto:shannon.petersen@thomsonreuters.com)  
Phone: 763.326.5520

1 ROB BONTA  
Attorney General of California  
2 MICHELLE M. MITCHELL  
Supervising Deputy Attorney General  
3 KEITH L. WURSTER  
Deputy Attorney General  
4 State Bar No. 198918  
LAURA A. RANDLES-LITTLE  
5 State Bar No. 232930  
1300 I Street, Suite 125  
6 P.O. Box 944255  
Sacramento, CA 94244-2550  
7 Telephone: (916) 210-6504  
Fax: (916) 324-8835  
8 E-mail: Laura.RandlesLittle@doj.ca.gov  
*Attorneys for Respondent*  
9 *Office of Administrative Law*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SACRAMENTO  
12 CIVIL DIVISION  
13

14 **PUBLIC.RESOURCE.ORG, INC.,**  
15  
16 Petitioner,

17 v.

18 **CALIFORNIA OFFICE OF**  
**ADMINISTRATIVE LAW, and the**  
19 **CALIFORNIA BUILDING STANDARDS**  
**COMMISSION,**  
20 Respondents.

*Exempt from filing fees pursuant to  
Government Code § 6103*

Case No. 34-2021-80003612

**RESPONDENT CALIFORNIA OFFICE  
OF ADMINISTRATIVE LAW'S  
OPPOSITION TO THE VERIFIED  
PETITION FOR PEREMPTORY WRIT  
OF MANDATE ORDERING  
COMPLIANCE WITH THE  
CALIFORNIA PUBLIC RECORDS ACT**

Date: January 21, 2021  
Time: 1:30 p.m.  
Dept: 27  
Judge: Steven, M Gevercer  
Trial Date:  
Action Filed: March 17, 2021



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1 Respondent California Office of Administrative Law (“OAL”) submits this memorandum  
2 of points and authorities in opposition to the Verified Petition for Peremptory Writ of Mandate  
3 (“Petition”). This opposition is based on and incorporates by reference the Declarations of Kevin  
4 Hull and Andrew Martens, Exhibits lodged as Petitioner’s Exhibits B-E and J<sup>1</sup>, and OAL’s  
5 Answer to the Complaint.

## 6 INTRODUCTION

7 OAL is responsible for reviewing administrative regulations proposed by over 200 state  
8 agencies for compliance with the standards set forth in California’s Administrative Procedure Act  
9 (“APA”), for transmitting these regulations to the Secretary of State, and for publishing  
10 regulations in the California Code of Regulations (“CCR”). As part of these duties, OAL makes  
11 the CCR publicly available in hard copy at various locations throughout the state and online for  
12 free through a contract with a third-party publisher, Thomson Reuters. In response to Petitioner’s  
13 request for a copy of the CCR, OAL offered to make it available in all of the formats in its  
14 possession: hard copy, via scanned PDFs, or electronically. Rather than accept the responsive  
15 records that OAL offered, Petitioner insisted OAL produce the CCR in a new “structured,  
16 machine-readable digital format,” a format not maintained by OAL or Thomson Reuters.  
17 Additionally, Petitioner also now seeks production of an entire database that is not in OAL’s  
18 possession, constructive or otherwise.

19 This action thus concerns Petitioner’s attempt to use the PRA to require OAL to create an  
20 entirely new record in a new format specifically for Petitioner’s use, even though the CCR is  
21 already available to the public in multiple formats and was offered to Petitioner in every format in  
22 OAL’s possession. The PRA does not require a government entity to create a record in a new  
23 format to satisfy a request for production of public records. The PRA further does not require a  
24 state agency to obtain a record from an outside entity as Petitioner demands—particularly when  
25 all of the contents of that record are readily available to the requestor and to the public. Because

26 <sup>1</sup> Petitioner compiled communications and records relevant to this action which it  
27 inappropriately refers to as an administrative record in its “Notice of Lodging of Administrative  
28 Record.” In the interest of facilitating this review for the court and avoiding confusion,  
Respondent OAL will also refer to these exhibits. By doing so, Respondent OAL does not  
concede that their submission transmits this action to an administrative appeal.

1 the CCR is available in various printed and digital formats, Petitioner’s claim that OAL is  
2 denying Petitioner access to public records is simply not supported by the facts or law.  
3 Compelling OAL to obtain and produce the CCR in the requested format will neither provide  
4 greater access to the CCR nor further the goal of the PRA to provide “access to information  
5 concerning the conduct of the people’s business.” (Gov. Code, § 6250.) For these reasons, OAL  
6 requests this Court deny this Petition for Writ of Mandate requiring OAL to create a new record  
7 in a structured, machine-readable format to provide to Petitioner or to produce a database that is  
8 not in OAL’s possession.

9 **BACKGROUND**

10 **I. OAL’S UNIQUE STATUTORY FRAMEWORK FOR REGULATION PUBLICATION**

11 The APA establishes rulemaking procedures and standards for state agencies in California.  
12 (Gov. Code, § 11340 *et seq.*) Under the APA, OAL is charged with providing for the “official  
13 compilation, printing, and publication of adoption, amendment or repeal of regulations.” (Gov.  
14 Code, § 11344, subd. (a).) The result is the Official CCR.<sup>2</sup>

15 As part of its duties to publish the CCR, the Legislature requires that OAL sell the  
16 regulations “at prices which will reimburse the state for all costs incurred for printing, publication  
17 and distribution.” (Gov. Code, § 11344.4.) OAL is also directed to supply a complete set of the  
18 CCR to county clerks in specific situations. (Gov. Code, § 11344.2.) OAL negotiated and entered  
19 into an agreement in 1991 with a third-party for exclusive publication of the CCR and any  
20 supplements. (See CA Bill Analysis dated June 27, 1996, Sen. Bill No. 1910 (1995-1996 Reg.  
21 Sess.) as amended June 27, 1996.) The exclusive licensing agreement arrangement, renewed in  
22 1993, was set to expire April 1, 1998. (See CA Bill Analysis dated May 29, 1996, Sen. Rules  
23 Comm. on Sen. Bill No. 1910 (1995-1996 Reg. Sess.) as amended May 29, 1996.) However,  
24 before the expiration of the agreement, the Legislature passed new legislation that provided that,  
25 after the expiration of the contract, OAL must also make available on the Internet, free of charge,  
26 the full text of the CCR. (Stats. 1996 (S.B. 1910), Gov. Code, § 11344, subd. (a).) The

27 <sup>2</sup> OAL currently publishes all but 3 of the 28 titles that make up the CCR. Title 6 has been  
28 repealed, Title 8 is not currently utilized, and Title 24 is published by the California Building  
Standards Commission.

1 Legislature further stated its intent that the Internet CCR include “complete authority and  
2 reference citations and history notes.” (Gov. Code, § 11340.1, subd. (b).) These legislative  
3 changes did not otherwise alter or modify the existing requirement that OAL sell the regulations  
4 to reimburse the state to cover the cost of publication under Government Code section 11344.4.

## 5 **II. OAL’S PUBLICATION AGREEMENT**

6 To implement the above requirements, OAL now contracts with a third-party publisher,  
7 Thomson Reuters, for these necessary, specialized publication services. The agreement between  
8 OAL and Thomson Reuters, addresses different aspects of publication. At issue here are the  
9 Official CCR, the Internet CCR, and the Master Database although the publisher is also required  
10 to publish a weekly CCR supplement, CCR Tables of Contents, and the California Regulatory  
11 Notice Register.

### 12 **A. The Official CCR and the Internet CCR**

13 Pursuant to the agreement, the Official CCR is defined to include the following:

- 14 (a) Title Page;
- 15 (b) A page listing hierarchy for that title with a nomenclature cross-reference for the pre-  
16 1990 hierarchy;
- 17 (c) Table of contents for that title listing the headings of each Division, Chapter,  
18 Subchapter, Group and Subgroup where applicable, and Article;
- 19 (d) Division level table of contents preceding each division within a title;
- 20 (e) Complete text of regulations, including all narrative text, forms, appendices, prefaces,  
21 footnotes, endnotes, tables, formulas, graphics, illustrations or other regulatory  
22 material designated by OAL for publication;
- 23 (f) Authority and reference citations for each section;
- 24 (g) History notes for each section;
- 25 (h) The Register number and publication date of the last revision on each page to reflect  
26 the last date any item on that page was affected by a regulatory action;
- 27 (i) Such other materials as OAL may direct to be published.

28 (Exhibit B at 000010 and Exhibit J at 000053.) While the publisher is required to include the  
specific materials described above in the Official CCR, the publisher may also choose to include  
additional materials at their discretion (such as annotations and research references.) (*Id.*) The  
Official CCR must be published in hard copy, and the publisher must also “make available on the  
Internet and free to the public an electronic version of the CCR.” (Exhibit J at 000055.) Pursuant  
to the contract language, the Internet CCR “shall accurately reflect the content of the Official

1 CCR,” the contents of which are detailed above. The publisher shall also provide a copy of the  
2 CCR to each of the 58 counties and to each state depository library. (Exhibit B at 000016 and  
3 Exhibit J at 000060.)

4 **B. The Master Database**

5 The third-party publisher must also maintain and update a Master Database, which is the  
6 source for all hard copy text, electronic products, and the contents of the Internet CCR. (Exhibit B  
7 at 000009 and Exhibit J at 000052.) The Master Database must include “tables of contents,  
8 headings and captions, regulation text including all charts, graphs, tables, illustrations, forms etc.  
9 designated by OAL for publication, authority and reference citations and history notes.” (*Id.*)  
10 Although the Master Database is subject to “inspection, revision and correction by OAL,” OAL  
11 does not possess the database or have access to it, nor has it ever attempted to exercise any  
12 control over the database. (Exhibit B at 00009 and J at 000052.) Upon the completion or  
13 termination of the contract, OAL is, however, entitled to request the creation and transmittal of a  
14 copy in the form of an electronic database containing the data from the Master Database. (*Id.*)  
15 OAL has never exercised this contractual right. (Decl. of Kevin Hull at ¶ 3, Decl. of Andrew  
16 Martens at ¶ 5.)

17 **III. PETITIONER’S REQUEST FOR RECORDS**

18 On December 29, 2020, Petitioner submitted a PRA request for the titles of the CCR  
19 published by OAL. Petitioner requested the records be provided in “all formats in your [OAL’s]  
20 possession including (but not limited to) structured, machine-readable digital formats, such as  
21 XML or PDF files.” (Exhibit C at 000030.) OAL replied on January 22, 2021, providing a link to  
22 the publicly available Internet CCR and offering to provide a hard copy or a scanned pdf version  
23 of the hardcopy of the CCR (Exhibit D at 000035.) On February 3, 2021, PRO replied arguing  
24 that the online version is not publicly available due to end-user restrictions and reiterated its  
25 request for a “structured, machine-readable digital format.” (Exhibit E at 000039.) Between  
26 February 3, 2021, and March 2, 2021, OAL and Petitioner engaged in email communications  
27 wherein OAL described the different formats of the CCR it possessed, including describing  
28 historic CD-ROMs, and other possible options available to provide copies to PRO. (Exhibit D at

1 000031 - 000034.) On February 24, 2021, Petitioner specifically requested “a CCR Master  
2 Database.” (Exhibit D at 000033.) On March 2, 2021, OAL confirmed that it did not possess a  
3 master database. (Exhibit D at 000031.) On March 24, 2021, OAL was served with the current  
4 petition at issue challenging OAL’s response to Petitioner’s request.

5 **LEGAL STANDARD**

6 Any person may institute proceedings for injunctive or declarative relief “to enforce his or  
7 her right to inspect or to receive a copy of any public record or class of public records.” (Gov.  
8 Code, § 6258.) A court may order disclosure of records when it finds that records are being  
9 improperly withheld from a member of the public. (Gov. Code, § 6259, subd. (a); *County of Santa*  
10 *Clara v. Super. Ct.* (2019) 171 Cal.App.4th 119, 130 [the PRA’s only remedy is an action to  
11 determine “whether a particular record or class of records must be disclosed.”]) The PRA  
12 embodies a strong public policy in favor of disclosure, yet the right to access public records is not  
13 absolute. “The CPRA generally presumes that all documents maintained by a public entity are  
14 subject to disclosure to any member of the public, *unless a statutory exemption applies or the*  
15 *catchall exemption, section 6255, is satisfied* (when public interest served by nondisclosure of  
16 records clearly outweighs the public interest in disclosure).” (*Fredericks v. Super. Ct.* (2015) 233  
17 Cal.App.4th 209, 223, italics added; see § 6254 et seq. [exemptions to disclosure].) A requestor  
18 may be awarded costs and reasonable attorney’s fees only if the requestor prevails in litigation.  
19 (Gov. Code, § 6259, subd. (d).)

20 **ARGUMENT**

21 OAL fulfilled its statutory obligations under both the APA and the PRA to provide  
22 Petitioner access to the CCR. On January 22, 2021, OAL responded to Petitioner’s request for the  
23 CCR in three ways, by directing them to the online website where the CCR is publicly available,  
24 offering a hard copy of the CCR, and offering to scan each page of the CCR as well. (Exhibit D at  
25 000035 - 000036.) As discussed below, OAL’s response and offer goes beyond OAL’s  
26 obligations under the APA to make the CCR available to the public. On February 17, 2021, OAL  
27 further clarified all available formats and additionally described historical CD-ROMs that are also  
28 in OAL’s possession. (Exhibit D at 000033 - 000034.) OAL offered to provide Petitioner the

Document received by the CA 3rd District Court of Appeal.



1 CCR in any of these available formats. Neither the APA nor the PRA requires OAL to create a  
2 new record, however.

3 The Legislature set forth within the APA a detailed statutory framework for the CCR. That  
4 framework requires that the CCR be available for free online and available to the public in hard  
5 copy at various public sites, but also to be sold at a cost to reimburse for printing, publication, and  
6 distribution. (Gov. Code, §§ 11344, subd. (a), 11344.2, and 11344.4, subd. (a).) The Legislature  
7 did not direct that the CCR be made available in any electronic format requested by a member of  
8 the public.

9 The PRA requires public agencies to make its records available to prevent secrecy in  
10 government and to hold the government accountable for its actions. (*Fredericks v. Super. Ct.*,  
11 *supra*, 233 Cal.App.4th 209 at p. 223.) This obligation, however, is not without limits. The PRA  
12 simply requires that *if* an agency maintains a record in the format requested, it should be provided  
13 to the requestor in that format, subject to a few additional limitations such as not requiring  
14 disclosure if the record no longer exists in the requested format or disclosure would compromise  
15 the security or integrity of the record. (Gov. Code, § 6253.9.) The PRA does not authorize the  
16 public to demand information be provided in a new format of their choice, thereby requiring the  
17 creation of a new record. (See *Sander v. Super. Ct.* (2018) 26 Cal.App.5th 651.) Accordingly,  
18 OAL met the requirements of the APA and the PRA when it offered the CCR in every format in  
19 its possession and made the entire content of the Official CCR available for free on the internet.

20 Even though OAL made the CCR available to Petitioner in every format in its possession,  
21 Petitioner continues to seek the CCR in a format in which the CCR does not exist. Additionally,  
22 Petitioner now asks for a copy of a database that was created by, is maintained by, and is in the  
23 possession of a third-party contractor. OAL does not have the record at issue, the CCR, in a  
24 machine-readable format and also does not possess the Master Database. It is an abuse of the  
25 PRA to attempt to use it as a vehicle to thwart the clear intent of the Legislature, which expressly  
26 dictates how the CCR is to be made publicly available. A finding in Petitioner's favor would  
27 require the Court to read new requirements into the PRA, ignore the content of the APA, and  
28

1 require OAL to create a new record or alternately obtain a record from a private entity when it has  
2 already made all of the requested information publicly available in several ways and formats.

3 **I. THE LEGISLATURE DIRECTED HOW THE CCR SHOULD BE MADE AVAILABLE TO**  
4 **THE PUBLIC PURSUANT TO THE APA**

5 In enacting the APA, the Legislature crafted a specific statutory framework to govern the  
6 publication of, and the public's access to, the CCR. It was enacted well after the more general  
7 PRA, which was intended to provide the public access to certain governmental records. The APA  
8 provides direction for what records relating to the CCR OAL should have in its possession and  
9 how those should be made publicly available.

10 More than a decade after the PRA's enactment in 1968, the Legislature significantly  
11 amended the APA to establish the OAL and its oversight of the rulemaking process. (Statutes of  
12 1979, Chapter 567.) In 1996, the Legislature added provisions requiring OAL to make the CCR  
13 available online for free to make regulations, particularly new regulations, more accessible to the  
14 public. (See Sen. Rules Comm. Rep. on Sen. Bill No. 1910 (1995-1996 Reg. Sess.) as amended  
15 June 27, 1996.) In Section 11344, the Legislature detailed the framework for publication of and  
16 public access to the CCR. It includes direction on publication dates, the manner in which  
17 regulations are to be printed, and that regulations are to be made available as soon as possible  
18 after approval and filing. OAL is required to provide access to the regulations to the public in a  
19 variety of ways, including multiple free options. (Gov. Code, §§ 11344,11344.2.) OAL is also  
20 required to *sell* the CCR at prices that *reimburse* the State for the cost of printing, publication, and  
21 distribution. (Gov. Code, § 11344.4.) This cost requirement is in stark contrast to the PRA, which  
22 provides that agencies can only charge for either the direct cost of duplication or the cost of  
23 "compilation, extraction, or programming" of data to produce a record. (See Gov. Code, §§ 6253,  
24 subd. (b), 6253.9, subd. (b)(2).)

25 Because the APA details a specific statutory framework that governs how the records at  
26 issue here are to be made available to the public, this suggests the Legislature intended for OAL  
27 to respond to PRA requests for the CCR by following the publication provisions in the APA. This  
28 reasoning is supported by the rules of statutory construction whereby a more specific statute

1 prevails over the general statute. (See *Rose v. State* (1942) 19 Cal.2d 713 at 723-724, holding that  
2 “a general provision is controlled by one that is special, the latter being treated as an exception to  
3 the former.”) The APA provisions also control due to its later passage in time, as it must be  
4 assumed the Legislature knew of the PRA when it amended the APA and instead intended these  
5 more specific provisions to apply to the records at issue. (*City of Chula Vista v. Drager* (2020) 49  
6 Cal.App.5th 539, citing *Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal. 4th 301.)

7       Although the APA authorizes OAL to contract with a third party to publish and make a free  
8 online version of the contents of the Official CCR publicly available, Petitioner argues OAL is  
9 avoiding PRA obligations by outsourcing the publication to a third party in violation of  
10 Government Code Section 6270 (“Section 6270”). This argument fails because OAL provided, or  
11 offered to provide, the CCR in the manner required by the PRA and in all formats in its  
12 possession. Consequently, Section 6270 is not at issue here. There is nothing in the APA or  
13 elsewhere to suggest that the Legislature intended to prohibit OAL from continuing to contract  
14 with a third-party for the publication of the CCR by enacting Section 6270. OAL’s contracting  
15 mechanism at issue here was not unknown by the Legislature when it passed Section 6270 in  
16 1995—this is apparent because it specifically referenced that framework. (See CA Bill Analysis  
17 dated June 12, 1995, Sen. Rules Comm. Rep. on Assem. Bill No. 141 (1995-1996 Reg. Sess.) as  
18 amended Jun 12, 1995.) The subsequent enactment of Section 11344 further demonstrates the  
19 Legislature’s continuous awareness of the CCR’s unique publication and access provisions.  
20 Section 11344 expanded OAL’s publication obligations by also requiring that the CCR be  
21 publicly available online. (Gov. Code, § 11344.) Section 11344 recognized that the publisher had  
22 the exclusive rights to publish the Official CCR until 1998, but clarified that the CCR would then  
23 be made available online. (See CA Bill Analysis dated May 29, 1996, Sen. Rules Comm. on Sen.  
24 Bill No. 1910 (1995-1996 Reg. Sess.) as amended May 29, 1996.) However, there is nothing to  
25 suggest that the Legislature also intended that this change strip the publisher of other  
26 opportunities to continue to publish the CCR in the same manner it used before 1998 while also  
27 providing the public version on the Internet.

28

1 **II. OAL COMPLIED WITH THE PRA BY MAKING THE CCR AVAILABLE TO**  
2 **PETITIONER IN EVERY FORMAT IN OAL'S POSSESSION**

3 OAL complied with the PRA and its requirements to assist Petitioner in identifying records.  
4 (Gov. Code, § 6253.1, subd. (b).) OAL offered to make available the CCR in every format in its  
5 possession, offering paper copies, electronic scans of the paper copies, CD-ROMs with historic  
6 copies, and finally, provided a link to the Internet CCR, where the entire CCR could be printed.  
7 On February 3, 2021, and again on February 17, 2021, OAL clearly described the various formats  
8 in which OAL maintains the CCR. These efforts fully satisfied the requirements of Section  
9 6253.1, subdivision (b), to assist the requestor with a focused and effective request. (See Exhibit  
10 D at 000031 - 000036.) Yet, Petitioner continues to seek a copy of the CCR in a format not  
11 maintained by OAL.

12 **A. OAL Satisfied the Requirements of the PRA by Making the CCR Available**  
13 **Electronically**

14 The PRA requires that records are open to inspection at all times during office hours and  
15 that copies shall be made promptly upon payment of required fees. (Gov. Code, § 6253, subds. (a)  
16 and (b).) Under Section 6253.9, the PRA also requires that a public record be made available in  
17 any electronic format possessed by an agency. However, in 2016, the Legislature recognized the  
18 efficiency, for both the requestor and the agency at issue, to post records that have already been  
19 deemed disclosable online and to refer any requests to those online records. (See Assem. Com. on  
20 Judiciary, Analysis of Assem. Bill No. 2853 (2015-2016 Reg. Sess.) as amended March 18,  
21 2016.) Thus, a public agency may comply with its obligation under the PRA to provide access to  
22 public records by directing the requester to the location on its internet website where the record is  
23 posted. (Gov. Code, § 6253, subd. (f).) However, if the PRA requester still seeks a copy of the  
24 public record "due to an inability to access or reproduce the public record from the internet  
25 website," the agency must promptly provide a copy. (*Id.*) Thus, OAL's direction to the website  
26 where the records are publicly available satisfies the PRA requirements. Notably, the link that  
27 was provided to the requestor is also the same link that OAL provides any other requestor,  
28 including other state agencies, when OAL receives a request to view the CCR. (Decl. of Kevin  
Hull at ¶ 4.)

1           Petitioner argues that the Internet CCR is not “publicly available” because it is “subject to  
2 an array of technological and legal restrictions that prevent users from engaging in a variety of  
3 lawful activity, including text-searching, copying and pasting, or distributing any of those  
4 provisions of the CCR.” (See Opening Brief at page 6.) This argument is unpersuasive for at least  
5 two reasons. First, there is no requirement under the PRA that the version of disclosable records  
6 an agency posts online be text searchable or adaptable for copying and pasting—and Petitioner  
7 cites no statute or case law to support that such a requirement exists. Section 6253, subdivision  
8 (f), merely requires that if the requestor cannot access or reproduce the record from the internet  
9 the agency must make a copy available. OAL has done so. Second, the Internet CCR never  
10 prevented an end user from text-searching, copying or pasting, or even printing the CCR. (Decl.  
11 of Andrew Martens at ¶ 4.)

12           At the time of Petitioner’s request, access to the Internet CCR was accompanied by  
13 commonly used end-user terms and conditions that were not so restrictive as to prevent access.  
14 Nonetheless, those terms and conditions have been removed and online access to the CCR is  
15 essentially unrestricted to all members of the public. Specifically, the Internet CCR was  
16 previously accompanied by a copyright policy and a statement informing the user that cookies  
17 were required to be enabled to view the site. (Decl. of Andrew Martens at ¶ 4.) Despite this  
18 language, however, the website used, and continues to use, only temporary cookies for  
19 functionality that minimally impact the user experience. Notably, the website does not utilize any  
20 advertising cookies or security cookies. At the time of this request, any user could, and continues  
21 to have the ability to, view, copy and paste content, or print with or without enabling any cookies.  
22 (*Id.*) In April 2021, as part of a holistic review of the various public websites they manage, the  
23 third-party publisher, Thomson Reuters, removed the copyright notice from the website. (*Id.*)  
24 Additionally, in July 2021, Thomson Reuters, again as part of a universal review of the various  
25 public websites they manage, removed the language that incorrectly stated that cookies must be  
26 enabled to view any of the public websites they manage. (*Id.*) Access to the Internet CCR is now  
27 only accompanied by a privacy policy statement that is used by Thomson Reuters as well as terms  
28 and conditions that merely request that users “agree not to use it in any manner that could disable,

1 overburden, damage, or impair the site or interfere with any other party's use of the website, or to  
2 use any device, software or routine that interferes with the proper working of the website.” (*Id.*)  
3 Although neither the cookie nor copyright notice effectively restricted access, they have both  
4 been removed since Petitioner made the original request for the CCR in December 2020.

5 And even had these minimal restrictions not been removed, Petitioner would have been able  
6 to access the records as required under the PRA. The terms and conditions that were in place at  
7 the time of Petitioner's request did not impede the user's ability to access or review the materials  
8 as detailed above and further do not appear to be the type of end-user restriction that restrict  
9 public access as contemplated by the statute and the court in *County of Santa Clara v Super. Ct.*,  
10 *supra*, 170 Cal.App.4th 1301. In that case, the government agency at issue proposed that  
11 disclosure of the GIS mapping data be accompanied by licensing agreements or other end-user  
12 restrictions. (*Id.* at p. 1310.) Although it is unclear the extent of those restrictions, they appeared  
13 to be targeted towards how the record was to be used instead of commonly used internet tools like  
14 those at issue here. *Santa Clara County* does not specifically address restrictions on publicly  
15 available websites and does not prohibit the types of end-user restrictions at issue here. To the  
16 extent any language may have appeared that could be interpreted to restrict or limit the end-user  
17 that language has since been removed. The remaining admonitions do not purport to impose any  
18 restrictions as to how the viewer can access or use the data; rather they are geared towards the  
19 integrity of the website that hosts the record. (Decl. of Andrew Martens at ¶ 4.)

20 Further, at all times, there have never been any restrictions that prevented an individual  
21 using the Internet CCR from printing any section of the CCR. Additionally, OAL offered to  
22 provide the petitioner with a scanned or paper copy which would meet the requirement of Section  
23 6253, subdivision (f) that the agency must provide a copy if the requestor has an “inability to  
24 access or reproduce the public record from the internet website.” (*Id.*) Thus, any previous end-  
25 user admonitions did not violate the requirements to provide public access. Any argument  
26 Petitioner makes to the contrary is a red herring.

27  
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Document received by the CA 3rd District Court of Appeal.

1           **B. OAL Does Not Possess the Records Petitioner Now Seeks**

2           Although OAL offered to make the CCR available in every format in its possession,  
3           Petitioner continues to demand the CCR in a “structured, machine-readable digital format, such as  
4           XML or PDF files,” as well as a copy of the master database itself. (Exhibit C at 000030, 000039  
5           - 000040). OAL does not possess the CCR, constructively or otherwise, in any additional format  
6           that satisfies Petitioner’s request. First, the data is not maintained by OAL or Thomson Reuters in  
7           an XML or PDF format.<sup>3</sup> (Decl. of Kevin Hull at ¶ 5, Decl. of Andrew Martens at ¶ 6.) Second,  
8           OAL does not possess a copy of the Master Database that Petitioner now seeks (Exhibit D at  
9           000033), and OAL has no access to, or control of, the Master Database. (Gov. Code, § 6252,  
10          subd. (e); *Sander v. Super. Ct.*, *supra*, 26 Cal.App.5th 651; *Anderson-Barker v. Super. Ct.* (2019)  
11          31 Cal.App.5th 528, review denied (Apr. 24, 2019).) Petitioner is not seeking records that it has  
12          not already received but rather the structural system in which the data is held—that does not even  
13          qualify as a record request. Finally, even if the third-party contractor was obligated to provide  
14          OAL the CCR in the structural system in which it is maintained in a usable format for public  
15          distribution (which it is not), it would impose an extremely burdensome obligation for disclosure  
16          of material that is already publicly available in various formats that extends far beyond what the  
17          PRA requires. (Decl. of Andrew Martens at ¶ 6.)

18          First, Petitioner requested the data in a “machine-readable” format that does not exist.<sup>4</sup> The  
19          language of the contract with Thomson Reuters provides for a “useable electronic database” in a  
20          “portable and easily processed or converted format such as XML or a relational database capable  
21          of extraction via standard SQL queries” only at the completion or termination of the contract.  
22          (Exhibit B at 000009 and Exhibit J at 000052- 000053.) To the extent Petitioner may be seeking

23                   <sup>3</sup> OAL offered to scan the Official CCR and provide PDFs of the scanned copies. (Exhibit  
24                   D at 000035.) Petitioner declined this offer. (Exhibit E at 000039.)

25                   <sup>4</sup> Machine-readable format is generally understood to mean a structured format that can  
26                   automatically be read and processed by a computer. Common types of machine readable formats  
27                   are: comma-separated values (CSV), JavaScript Object Notation (JSON) or Extensible Markup  
28                   Language (XML). Some PDFs may be “machine readable.” In eDiscovery, machine readable  
                    means the document can be processed by a machine (e.g., platforms like Relativity) to be made  
                    viewable and searchable. XML documents are searchable without requiring that they be  
                    converted, but are hard to visually read for content until they are processed using the program  
                    language to make it visually a document whereas a PDF may require conversion to enable search  
                    functionality.

1 an electronic record in this format detailed in the contract, OAL does not possess the CCR in that,  
2 or any other machine-readable, format. The reason is simple. The purpose of these contract terms  
3 for the potential transmission of the data is to ensure that OAL can obtain all of the data *from* the  
4 Master Database (but not the actual database itself) if needed to provide the historical data to a  
5 new contractor. (Decl. of Kevin Hull at ¶ 3.) However, to date, as there has been continuity with  
6 this contractor, OAL has never needed to request this data and so this contractual term has never  
7 been invoked. Thus, Thomson Reuters never extracted the data and formatted it in the manner  
8 now requested by Petitioner and OAL has never taken possession of the data in this format. (Decl.  
9 of Kevin Hull at ¶ 3; Decl. of Andrew Martens at ¶ 5.) In contrast to recent case law discussing  
10 constructive possession where a public record exists and the government entity “controls” the  
11 content of that record, here, there is no public record that currently exists in the machine-readable  
12 format requested and therefore there is nothing for OAL to possess, constructively or otherwise.  
13 (See e.g. *Anderson-Barker v. Super. Ct.*, *supra*, 31 Cal.App.5th at p. 528.) The CCR does not  
14 exist in the machine-readable format Petitioner demands, and the PRA does not require a  
15 government agency—or its third-party contractor—to create a new record. (See *Sander v. Super.*  
16 *Ct.*, *supra*, 26 Cal.App.5th 651.)<sup>5</sup>

17 Second, Petitioner now seeks a “copy of the Master Database.” (Exhibit D at 000033.) But  
18 OAL does not possess the Master Database, constructively or otherwise. In the most recent case  
19 on constructive possession, *Anderson-Barker v. Super. Ct.*, *supra*, 31 Cal.App.5th 528, the court  
20 held that a mere ability to *access data* does not equate to possession or control. In that case, the  
21 court found that the city did not have possession over records maintained by a private entity, even  
22 though the city had access to them. The court found that disclosure is not required under the PRA  
23 unless an agency *controls* that information—i.e., the agency has “the power or authority to

24  
25 <sup>5</sup> The Master Database is housed in proprietary software that is not XML based nor can it  
26 be easily extracted to XML or PDF formats. Data extraction to provide the record in a machine-  
27 readable digital format is at this time hypothetical but would most likely involve an extraction of  
28 over forty thousand pages worth of data that would then have to be translated into something  
readable while maintaining the hierarchy and structure of the Database. This record would also  
require the creation of a translation table that does not exist at this time. (Decl. of Andrew  
Martens at ¶ 6.) It is also unclear what reasonable costs could be recovered for the data extraction  
pursuant to Section 6253.9 since the entity in possession of the record is not a public entity.



1 manage, direct, or oversee” the records. (*Id.* at 540.) OAL has no such control over the Master  
2 Database here. Petitioner conflates OAL’s right to control the data within the Master Database,  
3 which consists of regulations text, with access and control over the database itself—a database  
4 that Thomson Reuters owns and controls. OAL does not have any level of possession,  
5 constructive or otherwise, over the Master Database itself. Petitioner misstates OAL’s contract  
6 with Thomson Reuters, claiming that “OAL maintains all rights to the master database” when in  
7 fact, OAL only maintains the rights to the *data* within the Master Database. But OAL does not  
8 constructively possess the Master Database, as it does not manage, direct, or oversee it.  
9 (*Anderson-Barker, supra*, 31 Cal.App.5th 528<sup>6</sup>; Exhibit J at 000065.) Any control OAL exerts  
10 over the Master Database is limited to content, which is already publicly available in several  
11 formats, not to the actual Master Database, which includes other functionality used by Thomson  
12 Reuters over which OAL has no control and which is of no use to the Petitioners. (Decl. of Anne  
13 Barnard at ¶ 6.) As stated previously, a document with the data from the Master Database in this  
14 format simply does not exist.

15 Petitioner’s insistence that OAL must somehow produce the CCR Master Database is  
16 wholly unnecessary and extraordinarily burdensome. As explained above, all of the data  
17 maintained in the Master Database by Thomson Reuters is publicly available on the Internet  
18 CCR, where anyone can download, print, and reproduce it. (Decl. of Andrew Martens at ¶ 5.) In  
19 addition, OAL has offered to provide the data to Petitioner in the additional formats in its  
20 possession. Producing a database that OAL does not even possess is wholly unnecessary for OAL  
21 to fulfill its PRA obligations. Furthermore, requiring OAL to attempt to create a copy of the  
22 database would be hugely burdensome. The Master Database itself cannot easily be produced in a  
23 machine-readable format useable by Petitioners. The Master Database exists in a proprietary  
24 platform, which uses a software license that was purchased by Thomson Reuters. (Decl. of

25 <sup>6</sup> Here, as in *Anderson-Barker*, the Master Database is used in furtherance of a public  
26 contract to provide information to the public. The Master Database exists in proprietary software  
27 licensed by Thomson Reuters and it contains, among other things, contractually required CCR  
28 content. (Exhibit B at 000009 and Exhibit J at 000052.) However, the Master Database also  
contains proprietary information such as pagination and structural hierarchy.

1 Andrew Martens at ¶ 6). Access to the Master Database is limited to a select group of staff at  
2 Thomson Reuters. (*Id.*) In order to utilize the machine-readable features of the Master Database, a  
3 user must purchase a license to the software which Thomson Reuters uses, from some entity other  
4 than Thomson Reuters. (*Id.*) The must also set up specific background requirements and perform  
5 some coding to replicate the Master Database. (*Id.*) Taking these many steps to create a new  
6 record of the Master Database would be an exceedingly burdensome and unnecessary undertaking  
7 imposed on a private, third-party company. Nowhere does the PRA impose such a requirement.  
8 Moreover, such a burden would be virtually unworkable given how frequently the Master  
9 Database is updated; any “copy” of it would have to be updated frequently to be of any use and to  
10 not mislead the public with inaccurate content. It is untenable to impose such an unrealistic  
11 burden where the public records have already been made public in multiple forms.

12 OAL offered to make the CCR available in every format in its possession, including paper  
13 copies, electronic scans of the paper copies, CD-ROMs with historic copies and finally, a link to  
14 the Internet CCR, where the entire CCR can be copied or printed without restrictions. Despite  
15 this, Petitioner continues to demand the CCR in specific formats that OAL does not possess. The  
16 PRA does not authorize the public to demand information be provided in a new format of their  
17 choice, thereby requiring the creation of a new record, nor does it require a state agency to obtain  
18 a record from a private, third-party entity when it does not control the record and it has already  
19 made all of the requested information publicly available in several ways and formats. OAL has  
20 fulfilled its statutory obligations under both the APA and the PRA by providing Petitioner access  
21 to the CCR and offering to provide it in additional formats in OAL’s possession.

22 Finally, the public interest in disclosure of the Master Database in the precise formats now  
23 requested by Petitioner is far outweighed by the public interest in maintaining OAL’s ability to  
24 work with third-party entities to maintain comprehensive, up-to-date databases—at no cost to the  
25 public, as well as the public interest in enabling OAL to comply with its statutory obligation to  
26 sell the CCR to reimburse the state to cover the cost of its publication. (See Gov. Code, §§ 6255,  
27 11344.4.)

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**III. PETITIONER’S COPYRIGHT ARGUMENTS ARE NOT APPLICABLE TO OAL**

To the extent Petitioner relies on arguments relating to copyright, these arguments do not apply to OAL. Although copyright protections set forth in the federal Copyright Law at 17 United States Code section 101 et. seq. are incorporated as an exemption from the PRA pursuant to Section 6254, subdivision (k), OAL has not raised copyright as a basis for withholding the requested record. The cases on which Petitioner relies are inapplicable as they do not address incorporation of a third-party’s legitimate copyright interest into the PRA, but instead address the underlying copyright interest. Petitioner’s reference to title 1 of the CCR additionally does not have any impact on OAL’s disclosure of records as all regulations approved by OAL are appropriately disclosed in the manner required by the APA, as detailed above.


**CONCLUSION**

For the foregoing reasons, OAL respectfully requests that the Court deny the writ petition.

Dated: December 27, 2021

Respectfully submitted,

ROB BONTA  
Attorney General of California  
MICHELLE M. MITCHELL  
Supervising Deputy Attorney General

  
LAURA A. RANDLES-LITTLE  
Deputy Attorney General  
*Attorney for Respondent*  
*Office of Administrative Law*

SA2021301395  
OAL Opposition 12.20.21

1 ROB BONTA  
Attorney General of California  
2 MICHELLE M. MITCHELL  
Supervising Deputy Attorney General  
3 KEITH L. WURSTER  
Deputy Attorney General  
4 State Bar No. 198918  
LAURA A. RANDLES-LITTLE  
5 State Bar No. 232930  
1300 I Street, Suite 125  
6 P.O. Box 944255  
Sacramento, CA 94244-2550  
7 Telephone: (916) 210-6504  
Fax: (916) 324-8835  
8 E-mail: Laura.RandlesLittle@doj.ca.gov  
*Attorneys for Respondent California Office of  
9 Administrative Law*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SACRAMENTO  
12 CIVIL DIVISION  
13

14  
15 **PUBLIC.RESOURCE.ORG., INC.,**  
16 Petitioners,  
17 v.  
18 **CALIFORNIA OFFICE OF**  
19 **ADMINISTRATIVE LAW, and the**  
20 **CALIFORNIA BUILDING STANDARDS**  
21 **COMMISSION,**  
22 Respondents.

Case No. 34-2021-80003612  
**DECLARATION OF ANDREW  
MARTENS IN SUPPORT OF  
RESPONDENT CALIFORNIA OFFICE  
OF ADMINISTRATIVE LAW'S  
OPPOSITION TO THE VERIFIED  
PETITION FOR PEREMPTORY WRIT  
OF MANDATE ORDERING  
COMPLIANCE WITH THE PUBLIC  
RECORDS ACT**

Date: January 21, 2022  
Time: 1:30 p.m.  
Dept: Dept. 27  
Judge: Steven M. Gevercer  
Trial Date:  
Action Filed: March 17, 2021

26 I, Andrew Martens, declare as follows:

27 1. I am Senior Vice President and Global Head Legal Product and Editorial with  
28 Thomson Reuters and have served in this position since 2012, leading the Product Management

Document received by the CA 3rd District Court of Appeal.

1 and Editorial teams for the Legal business. Thomson Reuters provides various online state  
2 government sites on behalf of various government agencies. I have personal knowledge of the  
3 matters in this declaration, except for the matters that are specified to be based on information and  
4 belief and, if called, would so testify. I submit this declaration in Support of Respondent  
5 California Office of Administrative Law's Opposition to the Verified Petition for Peremptory  
6 Writ of Mandate.

7 2. Thomson Reuters entered into a contract with the California Office of Administrative  
8 Law (OAL) to provide publication services relating to the California Code of Regulations (CCR).  
9 The current contract went into effect on January 1, 2021. Thomson Reuters provided these  
10 publication services previously pursuant to a contract that was in effect from January 1, 2016  
11 through December 31, 2020.

12 3. As part of its publication services set forth in the contract with OAL, Thomson  
13 Reuters makes the CCR available online. Additionally, Thomson Reuters provides a subscription  
14 of the hard copy of the Official CCR (or a CD-ROM or other electronic format at the recipient's  
15 option) to each county clerk and each state depository library. The online CCR contains all  
16 content that is available in the hard copies.

17 4. On April 9, 2021, as part of a holistic review of the various public websites managed  
18 by Thomson Reuters, the linked notice "© 2021 Thomson Reuters" was removed from the footer  
19 frame for all Westlaw state government sites. On July 9, 2021, the following language was  
20 removed from all Westlaw state government sites maintained by Thomson Reuters: "Note: Your  
21 browser must have cookies enabled to access the [content]." Thomson Reuters has, and continues  
22 to require, temporary cookies for functionality. However, a user who disables cookies can still  
23 text search, copy and print the information from the online CCR. Additional cookies such as those  
24 used for advertising are not in effect on the Westlaw state government sites such as the online  
25 CCR. The remaining disclaimer on the website is the same as that on all state government  
26 websites managed by Thomson Reuters and states that "[b]y using this website, you agree not to  
27 use it in any manner that could disable, overburden, damage, or impair the site or interfere with  
28 any other party's use of the website, or to use any device, software or routine that interferes with

1 the proper working of the website.” This language relates to the integrity of the website that hosts  
2 the data, not to the data itself.

3 5. Pursuant to the contract, Thomson Reuters creates and maintains a Master Database  
4 of all of the contents of the Official CCR. Thomson Reuters owns the Master Database. At the  
5 termination or expiration of the contract, OAL is entitled to an electronic copy of all the data from  
6 the Master Database in a specific format. Due to the continued contractual relationship, Thomson  
7 Reuters has never extracted the data and produced it in this format to OAL. The content of the  
8 Official CCR that is maintained in the Master Database is all made available to the public online.

9 6. The Master Database exists in proprietary software obtained by Thomson Reuters.  
10 While a small team of Thomson Reuters employees has access to the Master Database, OAL staff  
11 does not. Even if the Master Database was provided to OAL for release to others, it cannot be  
12 accessed or read without at least two other steps. The end user must have also purchased the same  
13 proprietary software utilized by Thomson Reuters and must also set up certain background  
14 requirements and perform some coding to replicate the functionality of the Master Database. The  
15 Master Database cannot be easily converted to an XML or PDF format. To do so would require  
16 extraction of over forty thousand pages of data and would also require the creation of a translation  
17 table to allow the data to be converted in a logical and coherent manner that could be read in the  
18 new format.

19 I declare under penalty of perjury under the laws of California that the foregoing is true and  
20 correct to the best of my knowledge. Executed on December 21, 2021, in Minneapolis,  
21 Minnesota.

22   
23 \_\_\_\_\_  
24 Andrew Martens

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26 35678695  
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1 ROB BONTA  
Attorney General of California  
2 MICHELLE M. MITCHELL  
Supervising Deputy Attorney General  
3 KEITH L. WURSTER  
Deputy Attorney General  
4 State Bar No. 198918  
LAURA A. RANDLES-LITTLE  
5 State Bar No. 232930  
1300 I Street, Suite 125  
6 P.O. Box 944255  
Sacramento, CA 94244-2550  
7 Telephone: (916) 210-6504  
Fax: (916) 324-8835  
8 E-mail: Laura.RandlesLittle@doj.ca.gov  
*Attorneys for Respondent Office of Administrative*  
9 *Law*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
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15 **PUBLIC.RESOURCE.ORG, INC.,**

Petitioner,

16  
17 v.

18 **CALIFORNIA OFFICE OF**  
19 **ADMINISTRATIVE LAW, and the**  
20 **CALIFORNIA BUILDING STANDARDS**  
**COMMISSION,**

21 Respondents.

Case No. 34-2021-80003612

**DECLARATION OF KEVIN D. HULL IN**  
**SUPPORT OF RESPONDENT**  
**CALIFORNIA OFFICE OF**  
**ADMINISTRATIVE LAW'S**  
**OPPOSITION TO THE VERIFIED**  
**PETITION FOR PEREMPTORY WRIT**  
**OF MANDATE ORDERING**  
**COMPLIANCE WITH THE PUBLIC**  
**RECORDS ACT**

22 Date: January 21, 2022  
23 Time: 1:30 p.m.  
24 Dept: Dept. 27  
25 Judge: Steven M. Gevercer  
26 Trial Date:  
27 Action Filed: March 17, 2021

28 I, Kevin D. Hull, declare as follows:

1. I am an attorney with the California Office of Administrative Law ("OAL") and have served in this position since 2012. As part of my responsibilities, since 2016, I have served as the contract administrator for OAL regarding the contract between Thomson Reuters and OAL for

1 the publication of the California Code of Regulations, California Code of Regulations  
2 Supplement, California Regulatory Notice Register, and the online California Code of  
3 Regulations. I have personal knowledge of the matters in this declaration, except for the matters  
4 that are specified to be based on information and belief and, if called, would so testify. I submit  
5 this declaration in Support of Respondent California Office of Administrative Law's Opposition  
6 to the Verified Petition for Peremptory Writ of Mandate.

7 2. OAL is responsible for, among other things, compiling and publishing the California  
8 Code of Regulations ("CCR".) To ensure the public has access to the CCR, OAL is responsible  
9 for making it available for free online and available in hard copy at various locations throughout  
10 California. To accomplish this, OAL contracts with Thomson Reuters for their specialized  
11 publication services. The most recent contract between OAL and Thomson Reuters became  
12 effective on January 1, 2021.

13 3. The terms of the contract between OAL and Thomson Reuters require that Thomson  
14 Reuters maintain a "Master Database," the contents of which are specified in the contract.  
15 Thomson Reuters maintains ownership over the physical database. Although the contract  
16 authorizes OAL to receive an electronic database containing the data from the Master Database at  
17 the expiration or termination of the contract, due to continuity of the contractual relationship,  
18 OAL has never needed, and Thomson Reuters has never provided to OAL, the data in the Master  
19 Database in the form of a useable electronic database or in any other format. The parties agreed to  
20 this contract provision in the event that OAL would need to provide the historical data contained  
21 in the Master Database to a new contractor. OAL has never viewed or directly accessed the  
22 Master Database and additionally does not have the proprietary software needed to view or access  
23 let alone copy the data in the Master Database.

24 4. When OAL receives a request to view or access the CCR from anyone, including the  
25 public or another state agency, OAL directs the requestor to the various locations with hard copy  
26 formats as well as to a free electronic version available at the online website.

27 5. OAL received a request for records from Public.Resource.Org., Inc. dated December  
28 29, 2020. In response to this request, OAL offered copies of the CCR in every format in OAL's



1 possession and provided a link to the online CCR. OAL does not possess the CCR in any format  
2 not offered to Petitioner. Specifically, OAL does not possess the CCR in a “structured, machine-  
3 readable format, such as XML or PDF files.”

4 6. Exhibit B, lodged by Petitioner in its Notice of Lodging of Administrative Record is a  
5 true and correct copy of the previous contract between OAL and Thomson Reuters for publication  
6 of the CCR that was in effect on December 29, 2020, the date OAL was in receipt of Petitioner’s  
7 request for records under the Public Records Act (PRA.)

8 7. Exhibit C, lodged by Petitioner in its Notice of Lodging of Administrative Record, is  
9 a true and correct copy of correspondence received by OAL dated December 29, 2020.

10 8. Exhibit D, lodged by Petitioner in its Notice of Lodging of Administrative Record is a  
11 true and correct copy of the email correspondence between OAL and Petitioner between the dates  
12 of December 29, 2020 and March 2, 2021.

13 9. Exhibit E, lodged by Petitioner in its Notice of Lodging of Administrative Record, is  
14 a true and correct copy of correspondence received by OAL dated February 3, 2021.

15 10. Exhibit J, lodged by Petitioner in its Notice of Lodging of Administrative Record is a  
16 true and correct copy of the current contract between OAL and Thomson Reuters for publication  
17 of the CCR that went into effect on January 1, 2021.

18 I declare under penalty of perjury under the laws of California and that the foregoing is  
19 true and correct to the best of my knowledge. Executed on December 27, 2021, in Sacramento,  
20 California.

21 

22  
23 KEVIN D. HULL

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1 COOLEY LLP  
MATTHEW D. CAPLAN (260388)  
2 (mcaplan@cooley.com)  
JOSEPH D. MORNIN (307766)  
3 (jmornin@cooley.com)  
RYAN O'HOLLAREN (316478)  
4 (rohollaren@cooley.com)  
3 Embarcadero Center, 20<sup>th</sup> floor  
5 San Francisco, CA 94111-4004  
Telephone: +1 415 693 2000  
6 Facsimile: +1 415 693 2222  
7 Attorneys for Petitioner  
PUBLIC.RESOURCE.ORG, INC.  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SACRAMENTO  
11

12 PUBLIC.RESOURCE.ORG, INC.,

13 Petitioner,

14 v.

15 CALIFORNIA OFFICE OF  
ADMINISTRATIVE LAW, and the  
16 CALIFORNIA BUILDING STANDARDS  
COMMISSION  
17

18 Respondents.  
19

Case No. 34-2021-80003612

**PETITIONER PUBLIC.RESOURCE.ORG,  
INC.'S REPLY TO RESPONDENT  
CALIFORNIA OFFICE OF ADMINISTRATIVE  
LAW'S OPPOSITION TO PETITION FOR  
WRIT OF MANDATE**

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**BY FAX**  
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1 **I. INTRODUCTION**

2 The California Office of Administrative Law (“OAL”) has failed to demonstrate why  
3 Public.Resource.Org, Inc.’s (“Public Resource”) petition for a writ of mandate (“Petition”)  
4 pursuant to the California Public Records Act (“CPRA”) should not be granted. OAL’s  
5 Opposition brief (“Opposition”) strays from well-settled California law in an effort to avoid  
6 providing Public Resource with a usable electronic copy of the California Code of Regulations  
7 (“CCR”) under the clear mandates of the CPRA. That effort is unpersuasive for multiple reasons.

8 First, OAL must comply with Public Resource’s request because it is in constructive  
9 possession of the CCR in a structured electronic format. OAL’s contract with Thompson Reuters  
10 (“West”) establishes a “Master Database” of the CCR, and contains contractual provisions  
11 regarding how OAL controls the data (the CCR) on that database. California law provides that an  
12 agency has constructive possession of records when it has the ability to control them. Here, it is  
13 undisputed that OAL has the full contractual rights to control the CCR records on the Master  
14 Database. As a result, OAL is in constructive possession of the Master Database CCR, and must  
15 disclose it to Public Resource.

16 Second, OAL argues that its contract with West was considered in the making of the  
17 CPRA and is therefore uniquely exempt. This argument is not only unsupported by the legislative  
18 history; it is squarely contradicted. The *exact same* legislative materials cited in the Opposition  
19 clearly demonstrate that the California Senate was specifically targeting OAL’s contract with  
20 West when it passed a specific provision in the CPRA to prevent agencies from dodging their  
21 CPRA obligations by offloading public records to private entities. As such, OAL cannot plausibly  
22 argue that its agreement with West is somehow immune from that provision.

23 Third, the California Administrative Procedures Act (“APA”) neither exclusively controls  
24 the distribution of the CCR nor serves as an implied exemption to the CPRA. The APA’s  
25 provisions, by their plain terms, do not replace OAL’s obligations under the CPRA. Moreover,  
26 OAL’s argument that it does is contrary to the California Constitution, and finds no support in the  
27 text of the CPRA or California case law, under which agencies must justify withholding public  
28 records under a specific statutory exemption. Despite the existence of hundreds of exemptions in

1 the CPRA’s text, OAL can point to none for the proposition that the APA supersedes OAL’s  
2 duties regarding the CCR.

3 Fourth, the current online version of the CCR on West’s website is insufficient for the  
4 public’s access and use. That the public has limited access to a record has absolutely zero impact  
5 on an agency’s duties under the CPRA. A requestor’s pre-existing access to the records in  
6 question is entirely irrelevant to the agency’s duty to disclose the records subject to a valid  
7 CPRA request.

8 Finally, OAL makes a one-sentence argument that the CCR should be exempt from  
9 disclosure under the “public interest” catch-all exemption in § 6255. The argument is unsupported  
10 and meritless.

11 In sum, OAL’s Opposition fails to articulate any legally valid reason why the Petition  
12 should not be granted.

13 **II. ARGUMENT**

14 **A. OAL Has Constructive Possession of the Contents of the Master Database**

15 OAL argues that it “does not possess the records petitioner now seeks.” Opp. at 2, 16.  
16 This is incorrect as a matter of California law. The CPRA defines “possession” to “mean both  
17 actual and constructive possession.” *Bd. of Pilot Comm’rs v. Super. Ct.*, 218 Cal. App. 4th 577,  
18 598 (2013). Specifically, “an agency has constructive possession of records if it has the right to  
19 control the records, either directly or through another person.” *Consol. Irrigation Dist. v. Super.*  
20 *Ct.*, 205 Cal. App. 4th 697, 710 (2012). As Public Resource explained in its Petition, there is no  
21 dispute that OAL “has the right to control the contents of the CCR Master Database” maintained  
22 by West (“Thompson Reuters”). Pet. at 15. The contract between OAL and West is unambiguous.  
23 Pet. at 15-16. The contract provides that:

- 24 • When OAL sends updates to West, West is contractually obliged to include them in  
25 the Master Database.<sup>1</sup> Pet. Exhibit B. at 9.
- 26 • “The text of regulations and all other items in the Master Database shall be subject to

27 <sup>1</sup> OAL has, at some point in the past, sent the entirety of the CCR to West, and the contract clearly states  
28 that OAL sends West updates to the CCR as they’re approved by OAL and the Secretary of State. As a  
matter of logic, it seems obvious that OAL has copies of the CCR in usable electronic form.

1 inspection, revision, and correction by OAL. The contractor shall take immediate  
2 action to make any corrections specified by OAL.” *Id.*

- 3 • West cannot “alter the text of regulations, notices or any other materials furnished by  
4 OAL for publication, except as expressly directed or authorized by OAL.” *Id.* at 15.
- 5 • OAL mandates a satisfactory level of accuracy in the Master Database as zero  
6 percentage (0%) of error rate. *Id.*
- 7 • OAL maintains all claims of ownership in the contents of the Master Database. *Id.*

8 It is undisputed that OAL has control over the contents of the Master Database. West makes every  
9 change that OAL dictates and West has no contractual ability to make any changes whatsoever to  
10 the CCR on the Master Database. This alone establishes constructive possession under the CPRA.  
11 *Cnty. Youth Athletic Ctr. v. City of Nat'l City*, 220 Cal. App. 4th 1385, 1427 (2013)(ordering  
12 disclosure based on constructive possession and exempling that “the contractual relationship of a  
13 public agency and its private consultant is important in determining the agency's duty of  
14 disclosure.”).

15 OAL contends that it only controls the “data” in the Master Database, and not the database  
16 itself *Opp.* at 18. OAL misses the point. First, Public Resource is requesting a copy of the “data”  
17 in the Master Database. The “data” is the CCR, and the CCR is the record in question. The  
18 inquiry for purposes of constructive possession is whether the Agency has “control” of the  
19 records in question, and OAL *admits* that it has control over those records. *Opp.* at 18 (“OAL  
20 only maintains the rights to the *data* within the Master Database”). OAL thus has constructive  
21 possession over the exact records Public Resource seeks.

22 Second, OAL’s theory of constructive possession is groundless. Under OAL’s logic,  
23 constructive possession would only apply if an agency has actual control of the infrastructure  
24 containing the records. *Opp.* at 18 (stating that the Master Database is “a database that Thompson  
25 Reuters owns and controls.”). According to their theory, OAL would need to own or physically  
26 possess West’s computers, servers, and access passwords for it to have constructive possession  
27 over the records in question. But that’s not constructive possession—that’s just possession.  
28 Constructive possession, in the context of the CPRA, is found when the agency “has the right to



1 control the *records*, either directly or through another person.” *Consol. Irrigation Dist.*, 205 Cal.  
2 App. 4th at 710 (emphasis added). OAL unambiguously controls, through West, every letter of  
3 the CCR in the Master Database.

4 Caselaw is in accord. In *Community Youth Athletic Center v. City of National City*, 220  
5 Cal.App.4th 1385, 1426, 1428–1429 (2013), a city’s contractual ownership interest in, and right  
6 to possess, a consultant’s underlying field survey records imposed the CPRA duty to disclose. In  
7 the same vein, OAL’s reliance on *Anderson-Barker v. Super. Ct.*, 31 Cal. App. 5th 528, 538  
8 (2019) is misplaced. In *Anderson-Barker*, the court found that the agency did *not* have  
9 constructive possession of the records in question because “the City presented evidence showing  
10 that *it does not direct what information* the OPGs place on the VIIC and Laserfiche databases,  
11 *and has no authority to modify the data in any way.*” *Id.* at 540 (emphasis added). Here, in stark  
12 contrast, OAL has the express contractual right to direct exactly what information West places in  
13 the Master Database, and the exclusive authority to modify that data in every way. Pet. at 15-16;  
14 Exhibit B at 3, 15. *Anderson-Barker* showcases exactly why OAL has constructive possession of  
15 the CCR in the Master Database, and why OAL cannot dodge its obligations under the CPRA by  
16 arguing otherwise.

17 OAL states that it “offered to make the CCR available in every format in its possession.”  
18 Opp. 19. But this again ignores California law. The CPRA directs that agencies must provide a  
19 public record in “any electronic format in which it holds the information” and any requested  
20 format “used by the agency to create copies for its own use or for provision to other agencies.”  
21 Cal. Gov’t Code § 6253.9(a)(1)–(2). Here, that includes an XML format. OAL’s contract with  
22 West states that:

23 Upon completion or termination of the contract, the contractor shall provide OAL  
24 with a useable electronic database containing the data from the Master Database.

25 The data must be provided in a standard (free from any proprietary formatting or  
26 codes) portable and easily processed or converted format such as XML or a  
27 relational database capable of extraction via standard SQL queries.

28 (Pet. Exhibit B at 9). Thus, OAL has the express right to an XML copy of the CCR in the Master

1 Database. OAL contends that it does not currently possess the usable “electronic database  
2 containing the data from the Master Database,” and has never exercised its contractual right to do  
3 so. Opp. at 8, 16; Decl. of Kevin Hull at ¶ 3, Decl. of Andrew Martens at ¶ 5. But this is  
4 immaterial, since OAL has the contractual right to the record. In *Cnty. Youth Athletic Ctr.*, 220  
5 Cal. App. 4th at 1427, the court held that the agency had constructive possession of underlying  
6 survey records retained by a consultant based on the agency’s contractual right to them,  
7 regardless of whether it exercised that right: “Based on the contractual language between RSG  
8 and the Commission, the City had an ownership interest in the field survey material and it had the  
9 right to possess and control it, even though it did not enforce its contractual right.” *Id.* So too  
10 here.

11 **B. Section 6270 Forbids OAL from Offloading Possession of the CCR to West in**  
12 **a Way that Circumvents its Duties under the CPRA**

13 To the extent that OAL now argues that its contract with West prevents it from possessing  
14 the CCR in an XML format from West because that contractual right can only be exercised at the  
15 “completion or termination” of the contract (Opp. at 8, 17), then OAL’s position and conduct  
16 clearly violates a simple precept of the CPRA. The CPRA expressly forbids agencies from  
17 offloading public records to private entities in a manner that prevents them from responding to a  
18 CPRA request:

19 Notwithstanding any other provision of law, no state or local agency shall sell,  
20 exchange, furnish, or otherwise provide a public record subject to disclosure  
21 pursuant to this chapter to a private entity *in a manner that prevents a state or*  
22 *local agency from providing the record directly pursuant to this chapter.*

23 Cal. Gov’t Code § 6270.(a) (emphasis added). The California Supreme Court has interpreted this  
24 provision to mean what it says:

25 “The statute’s clear purpose is to prevent an agency from evading its disclosure  
26 duty by transferring custody of a record to a private holder and then arguing the  
27 record falls outside CPRA because it is no longer in the agency’s possession. . . . It  
28

1 simply prohibits agencies from attempting to evade CPRA by transferring public  
2 records to an intermediary not bound by the Act’s disclosure requirements.”  
3 *City of San Jose v. Super. Ct.*, 2 Cal. 5<sup>th</sup> 608, 623–24 (2017). The CPRA thus prohibits OAL from  
4 contracting around its CPRA obligations.

5 **1. Legislative History Confirms that Section 6270 was Passed to Address**  
6 **OAL’s Contract with West**

7 OAL cites to a 1995 Senate Report as support for the argument that § 6270 does not apply  
8 to its contract with West because the arrangement is mentioned in the Senate proceedings. Opp. at  
9 12; CA Bill Analysis dated June 12, 1995, Sen. Rules Comm. Rep. on Assem. Bill No. 141  
10 (1995-1996 Reg. Sess.) as amended Jun 12, 1995. However, that document stands for the exact  
11 opposite conclusion – it suggests that the Senate was motivated to pass § 6270 to *combat* OAL’s  
12 practices with West. Specifically, the OAL-West contract is used as an illustrative example of  
13 what the amendment (§ 6270) would *forbid*. The analysis states that § 6270 would “prohibit[]  
14 state and local agencies from providing public records to private entities in a way that would  
15 prevent the agency from providing the record directly to the public.” *Id.* In its next breath, it  
16 criticizes the revenues generated for private industry by selling public records. As its *only*  
17 *example*, it notes “the State Office of Administrative Law (OAL) has a contract with Barclays  
18 Law Publishers to publish the Official California Code of Regulations... Barclays pays the OAL  
19 a license fee of \$400,000 less a credit for 162 subscriptions of the Supplement that Barclays  
20 provides to various specified public offices and agencies. The state may buy the supplement for  
21 its own internal use...for a discounted price...These are not for resale or distribution to third  
22 parties.” *Id.* It concludes that “public records required to be disclosed should not be privatized.”  
23 *Id.* OAL’s argument is entirely backward and misleading. Its relationship with West was not  
24 implicitly blessed in the legislative history of § 6270 – it was explicitly condemned. Section 6270  
25 was seemingly passed for the express purpose of forbidding this exact arrangement. OAL cannot  
26 plausibly argue otherwise.

27 **C. The CCR is Not Exempted From the CPRA**

28 OAL argues that the legislature has implicitly exempted the CCR from the CPRA by

1 passing the California Administrative Procedures Act (“APA”). Opp. at 11-12. OAL’s argument  
2 fails at multiple levels.

3 **First**, as a matter of California law, the rights in the California constitution – including the  
4 right to public access of records enshrined in Art. I § 3(b)– reign supreme over statutes like the  
5 APA. *City & Cty. of San Francisco v. Regents of Univ. of California*, 7 Cal. 5th 536, 558 (2019)  
6 (“It is also basic that if there is a conflict between the California Constitution and a law adopted  
7 by the Legislature, the California Constitution prevails.”). Here, the APA contains zero language  
8 supporting OAL’s argument; nothing in its text suggests that the obligations specified for OAL  
9 are somehow substitutes for the CPRA. But nonetheless, even if there was a conflict between the  
10 people’s right of access and the APA (which there is decidedly not), the constitution would  
11 control.

12 **Second**, OAL argues that the more “specific” language in the APA should prevail over a  
13 “general” CPRA.<sup>2</sup> But OAL’s theory contradicts the California constitution, which states:

14 A statute, court rule, or other authority, including those in effect on the effective  
15 date of this subdivision, shall be broadly construed if it furthers the people’s right  
16 of access, and narrowly construed if it limits the right of access.

17 Cal. Const. Art I § 3(b)(2). The constitution directs that statutes such as the APA shall be  
18 narrowly construed to the extent they limit the people’s right of access. OAL’s reading of the  
19 APA *would* limit the people’s right of access, and is anything but narrow.

20 Next, OAL argues that the *timing* of the APA’s passage (after the CPRA) indicates that it  
21 should control over the CPRA’s clear commands. Opp. at 12. But again, the constitution  
22 contemplates this very argument:

23 A statute, court rule, or other authority *adopted after the effective date of this*  
24 *subdivision* that limits the right of access shall be adopted with findings

25  
26 <sup>2</sup> OAL cites to *Rose v. State*, 19 Cal. 2d 713, 723-24 (1942). However, this case undermines OAL’s  
27 argument at a fundamental level. In *Rose*, the California Supreme Court issued its seminal ruling that Cal.  
28 Const. Art I § 14 was “self-enforcing,” giving plaintiffs the right to sue for a government taking despite  
defendant’s arguments that statutes provided the state with immunity from suit. The court noted that  
legislation will not be interpreted to “abrogate or deny a right granted by the Constitution.” *Id.* at 725.

1 demonstrating the interest protected by the limitation and the need for protecting  
2 that interest.

3 Cal. Const. Art. I § 3(b)(2)(emphasis added). Thus, as a matter of California constitutional law,  
4 OAL should be able to point to the findings of the legislature demonstrating that the APA’s  
5 implicit limitation on the people’s right of access protects an important interest. OAL points to no  
6 such findings, and indeed none exist. Nothing in the text of the APA or the California constitution  
7 supports OAL’s strained reading.

8 **Third**, OAL’s argument is contrary to the express provisions of the CPRA itself. The  
9 CPRA and California caselaw are overtly clear that the only way for an agency to resist  
10 disclosure of public records is under an express exemption in the statute. Cal. Gov’t Code §  
11 6255(a) (“The agency shall justify withholding any record by demonstrating that the record in  
12 question is exempt under **express** provisions of this chapter...”); *Id.* § 6253(b) (“Except with  
13 respect to public records exempt from disclosure by **express** provisions of law, each state or local  
14 agency, upon a request for a copy of records that reasonably describes an identifiable record or  
15 records, shall make the records promptly available to any person...”); *Id.* § 6253.1 (d)(2) (“The  
16 public agency determines that the request should be denied and bases that determination **solely** on  
17 an exemption listed in Section 6254.”); *Long Beach Police Officers Ass’n v. City of Long Beach*,  
18 59 Cal. 4th 59, 67 (2014) (“The act has certain **specific** exemptions (Cal. Gov’t Code §§ 6254–  
19 6254.30), but a public entity claiming an exemption must show that the requested information  
20 falls within the exemption.”); *City of San Jose*, 2 Cal. 5th at 616 (“Every such record ‘must be  
21 disclosed unless a statutory exception is shown.’”).

22 The legislature has, over the years, included hundreds of express exemptions into the  
23 CPRA, from specific categories of documents to entire state agencies. *See* Cal. Gov’t Code §§  
24 6253.2-.21; 6253.5-.6; 6254-6253.33 (exemptions added to the CPRA by the legislature spanning  
25 five decades). Thus, the California legislature knows exactly how to exempt a record from  
26 disclosure pursuant to the CPRA. Yet, OAL points to no exemption in the CPRA that applies to  
27 the CCR. Indeed, in the same year the legislature passed the APA (1979), it amended four  
28 sections of the CPRA (See Gov’t Code § 6262-6265) but neglected to include any express

1 exemption for the CCR or OAL generally.

2 In sum, OAL contends that the APA can be read to imply an exemption because it  
3 contains specific statutory directives for OAL to distribute the CCR. Their argument has no  
4 support whatsoever. The APA does not support it. The California constitution expressly instructs  
5 that statutes like the APA be read to avoid any such limitations on the right of access. And finally,  
6 the CPRA itself and California case law confirm that agencies must point to an express exemption  
7 in the statute, which OAL has not done, and cannot do.

8 **D. West’s Online Version of the CCR Does Not Satisfy OAL’s Obligations Under**  
9 **the CPRA**

10 OAL contends that West recently changed its terms of service after a “holistic review” of  
11 its websites. Opp. at 14. Specifically, West removed the copyright notice from its website and the  
12 language requiring users to enable cookies since Public Resource filed its Petition. *Id.* But these  
13 changes do not relieve OAL from its obligations under the CPRA. This is so for two reasons.

14 First, the CPRA directs that an agency must make a public record available unless those records  
15 qualify for a statutory exemption. Cal. Gov’t Code § 6250, *et seq.* To be sure, those statutory commands  
16 apply to agencies, like OAL, not private companies, like West. Here, Public Resource served a CPRA  
17 request on OAL, which is in constructive possession of the CCR on the Master Database. *Supra*, Part I.  
18 West’s decisions regarding the terms of service may have increased access, but that does not eliminate  
19 OAL’s obligations under the CPRA and does not impact these proceedings in any way.

20 Second, OAL argues that Public Resource has full “access” to the CCR on West’s website, but  
21 this assertion rings hollow. Having “access” to some version of a public record is irrelevant to whether an  
22 agency is obligated to produce it pursuant to a valid CPRA request. California law establishes that even  
23 when a requestor has *actual possession* of the records at issue, even that is irrelevant to the agency’s duty  
24 to produce those same records. *Caldecott v. Super. Ct.*, 243 Cal. App. 4th 212, 220 (2015) (“Caldecott’s  
25 possession of copies is not a basis to withhold the Documents”). Here, OAL cannot point to West’s  
26 website as an excuse to dodge its obligations under the CPRA.

27 **E. The CCR is Not Exempt From Disclosure Under Cal. Gov’t Code § 6255**

28 At the end of its brief, OAL articulates a single sentence argument that the CCR should be

1 exempt from disclosure under the public interest catch-all exemption under Cal. Gov't Code §  
2 6255. Opp. at 19. But OAL fails to support this contention with anything more than conclusory  
3 assertions about OAL's ability to work with private entities and sell the CCR to the public. *Id.*  
4 OAL provides no authority as to how or why these two precepts affect the public interest. Nor  
5 does OAL even attempt to establish that these precepts "clearly outweigh" the overwhelming  
6 public interest in public access to the CCR, or the California constitution's fundamental right of  
7 the public to access documents concerning the people's business. Cal. Govt. Code § 6255; Cal.  
8 Const. Art I § 3. OAL simply asserts that the public interest favors the status quo, which shields  
9 the public from full access to the CCR and any meaningful ability to engage with it. This is  
10 plainly insufficient to establish an exemption under Cal. Gov't Code § 6255.

11 **III. CONCLUSION**

12 The status quo of the CCR is contrary to established caselaw (*supra*, Part I), has been  
13 condemned by the California Legislature (*supra*, Part II), and is unsupported by plain text of the  
14 CPRA and California Constitution (*supra*, Parts III, IV). OAL has failed to establish that the CCR  
15 should not be produced pursuant to OAL's clear obligations under the CPRA. Public Resource  
16 respectfully requests that this Court grant Public Resource's Petition.

17  
18 Dated: January 20, 2022

COOLEY LLP

19  
20 By: */s/ Matthew D. Caplan*  
21 Matthew D. Caplan

22 *Attorneys for Petitioner*  
23 Public.Resource.Org, Inc.  
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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

<b>DATE/TIME:</b>	<b>March 25, 2022 2:00 p.m.</b>	<b>DEP. NO.:</b>	<b>27</b>
<b>JUDGE:</b>	<b>HON. STEVEN M. GEVERCER</b>	<b>CLERK:</b>	<b>N. SMITH</b>
<b>Public.Resource.Org., Inc., Petitioner,</b>  <b>v.</b>  <b>California Office of Administrative Law, and the California Building Standards Commission, Respondents.</b>		<b>Case No. 34-2021-80003612</b>	
<b>Nature of Proceedings:</b>		<b>Petition for Writ of Mandate</b>	

**I. TENTATIVE RULING.**

The following shall constitute the Court’s tentative ruling on the above matter, set for hearing in Department 27, on Friday, March 25, 2022, at 2:00 p.m. The tentative ruling shall become the ruling of the Court, unless a party desiring to be heard so advises the Clerk of Department 27 no later than 4:00 p.m. on the Court day preceding the hearing, and further advises the Clerk that such party has notified the other side of its intention to appear.

The Court strongly encourages parties to appear remotely for the hearing on the tentative ruling through the Court’s Zoom Application. But any party wishing to appear in person may do so, provided that party notifies the Court by 4:00 the Court day before the hearing.

The parties may join the Zoom session for hearing on the tentative ruling by audio and/or video through the following link/telephone number:

<a href="https://saccourt.zoom.us/my/dept27a">https://saccourt.zoom.us/my/dept27a</a>	<b>(888) 475-4499 ID: 553-829-7195</b>
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Petitioner, Public.Resource.Org, Inc. has filed a petition for writ of mandate (Petition) against Respondents Office of Administrative Law (OAL) and the California Building Standards Commission (BSC), directing Respondents to comply with the Public Records Act (Gov. Code, §§ 6250 *et seq.*) (PRA). As to Respondent OAL, the Petition is denied. As to Respondent BSC, the Petition is stayed pending resolution of a final judgment from the District of Columbia District Court in *American Society for Testing and Materials, et al v. Public.Resource.Org* (D.C. Cir. 2018) 896 F.3d 437, 441.



## 1. Background.

On December 29, 2020, Petitioner<sup>1</sup> sent a PRA request to OAL for Titles 1-5, 7-23, and 25-28 of the California Code of Regulations (collectively, CCR).<sup>2</sup> (Petition, ¶13, Exh. C.) Petitioner requested that OAL provide the information “in all formats, in your possession, including (but not limited to) structured, machine-readable digital formats, such as XMF or PDF files,” pursuant to Government Code section<sup>3</sup> 6250, subdivision (a)(1). (Petition, Exh. C.) Petitioner also informed OAL that it must produce a copy of an electronic record in any format that has been used by it to create copies for its own use or for provision to other agencies, pursuant to Section 6250, subdivision (a)(2). (*Ibid.*)

OAL responded, stating that it could provide a paper copy of the CCR to Petitioner, and offered to scan each page of the print version, to serve as an “electronic” copy. (Petition, Exh. D.) OAL also directed Petitioner to a website that contained the most “up to date” version of the CCR. (*Ibid.*) OAL also offered to provide a CD-ROM with past versions of the CCR, but noted that the contents of the CD-ROM cannot be copied in whole or transferred to another storage device. (*Ibid.*) Petitioner and OAL corresponded further, and Petitioner contended that OAL’s response was insufficient, and that the website to which it directed Petitioner was not “publicly available.” (Petition, ¶¶14-19.)

Also on December 29, 2020, Petitioner also made a nearly identical, separate PRA request for Title 24 of the CCR (Title 24) to the Office of Public Affairs, which contains the Department of General Services, and BSC. (Petition, Exh. F.) Again, Petitioner requested an electronic copy of Title 24, and sought Title 24 in all formats in BSC’s possession, including “structured, machine-readable formats.” (*Ibid.*)

BSC also responded that it could not produce the records. BSC stated that a hard copy of Title 24 was available for inspection at BSC’s office, and noted that hard copies of Title 24 were available for public viewing and copying at state document depository libraries or at city of county building or planning departments. (Petition, Exh. G.) BSC stated that Title 24 may be viewed online on the BSC’s website, but because BSC did not have publishing rights, it could not provide copies to the public. (*Ibid.*) BSC explained that this is because Title 24 is based on and includes model codes produced by standards developing organizations (SDOs), Intervenor National Fire Protection Association (NFPA), International Codes Council (ICC), and the International Association of Plumbing and Mechanical Officials. (*Ibid.*) BSC also responded that

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<sup>1</sup> Petitioner is a non-profit organization with the mission of providing public access to government records and legal materials. (Petition, ¶5.)

<sup>2</sup> Respondent OAL oversees the publication and distribution of Titles 1-5, 7-23, and 25-28 of the CCR. (Petition, ¶6.) Respondent BSC administers the adoption of, and codifies and publishes the California Building Standards Code as Title 24 of the CCR. (Petition, ¶7.)

<sup>3</sup> Unless otherwise specified, all statutory references shall be to the Government Code.

individual parts or a full set of Title 24 may be purchased from these three publishing entities. (*Ibid.*)

Petitioner then filed a petition for writ of mandate, alleging that OAL and BSC violated the PRA. On August, 27, 2021, the Court granted NFPA's and ICC's motion for leave to intervene in this proceeding.

## **2. Discussion.**

### **a. Claims Against OAL.**

Petitioner argues that OAL has violated the PRA by refusing to produce the records and insufficiently responding to its request, namely by failing to provide an "electronic" copy of the CCR in a "structured, machine-readable" format. (Opening Brief, 9:4.) Respondent OAL responds that the Legislature, in enacting the pertinent provisions of the Administrative Procedure Act (APA), dictated how the CCR should be made publicly available, and that in any event it, has complied with the PRA in responding to Petitioner.

#### **i. PRA Statutes.**

Under the PRA, a public agency must make public records promptly available to any person who submits a PRA request that "reasonably describes an identifiable record or records." (Gov. Code, § 6253, subd. (b).) The PRA enables persons to seek "injunctive or declarative relief or writ of mandate" to enforce that person's right to inspect or receive copies of public records. (Gov. Code, §§ 6258, 6259.)

The PRA is construed broadly in favor of access. (*Am. Civil Liberties Union Foundation v. Superior Court* (2017) 3 Cal.5th 1032, 1040.) Exemptions from disclosure must be narrowly construed. (*Id.*) The agency withholding the records bears the burden of proving that an exception from disclosure applies. (*California First. Amend. Coal. v. Superior Court (California First)* (1998) 67 Cal.App.4th 159, 167.)

The PRA imposes on agencies an affirmative obligation to make available to the public any public records in their possession, unless the agency can demonstrate that a responsive record is otherwise exempt from disclosure. (Gov. Code, §§ 6253, 6254, 6255.) Public records may be exempted from disclosure if they fall within a particular specific statutory basis for exempting the records. (Gov. Code, § 6254). Additionally, public records may also be exempt from disclosure if the agency can show that "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 6255, subd. (a).) If "the requester has alternative, less intrusive means of obtaining the information sought" the public interest in disclosure is minimal, although the "existence of an alternative means does not wholly undermine the public interest in disclosure." (*County of Santa Clara v. Superior Court (Santa Clara)* (2009) 170 Cal.App.4th 1301,

1325 [citing *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1020, 1025].)

Section 6253.9 governs an agency's duty to produce electronic copies of records under the PRA. It provides:

- a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure...that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:
  - (1) The agency shall make the information available in any electronic format in which it holds the information.
  - (2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.
  
- (b) ...the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:
  - (1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.
  - (2) The request would require data compilation, extraction, or programming to produce the record.
  
- (c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.
  
- (d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.
  
- (e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

(Gov. Code, § 6253.9.) Thus, a government agency is required by the PRA to produce non-exempt responsive computer records in the same manner as paper records, and can be required to compile, redact or omit information from an electronic record. (See *Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 669.) Section 6253.9 contemplates that public agencies can be required to gather and segregate disclosable electronic data from nondisclosable exempt information and perform data compilation, extraction or computer programming if “necessary to produce a copy of the record.” (*Ibid.* [citing Gov. Code, § 6253.9, subdivision (b)].) However, the PRA does not require an agency to create a *new* record: an agency “cannot be required to create a new record by changing the substantive content of an existing record or replacing existing data with new data.” (*Ibid.* [citing *Yeager v. Drug Enforcement Admin.* (D.C. Cir. 1982) 678 F.2d 315, 323 and noting that “Segregating and extracting data is a far cry from requiring public agencies to undertake the extensive ‘manipulation or restructuring of the substantive content of a record.’”].) Additionally, agencies need not draft summary or explanatory material, perform calculations on data, or create inventories of data in response to a records request. (*National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward* (2020) 9 Cal.5th 488, 502; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075; see also *Sander v. Superior Court*, *supra*, 26 Cal.App.5th, at p. 669.)

## ii. Pertinent Law Governing the Public Availability of CCR.

The Administrative Procedure Act (APA) (see Gov. Code §§ 11340, et. seq.) among other things, establishes the OAL and sets forth specific statutes governing rulemaking, or an agency’s promulgation of regulations, which comprise the CCR. Section 11344, requires OAL to make the CCR available online. Section 11344 provides:

(OAL) shall do all of the following:

- (a) Provide for the official compilation, printing, and publication of adoption, amendment, or repeal of regulations, which shall be known as the [CCR]. On and after July 1, 1998, [OAL] shall make available on the Internet, free of charge, the full text of the [CCR], and may contract with another state agency or a private entity in order to provide this service.
- (b) Make available on its Internet Web site a list of, and a link to the full text of, each regulation filed with the Secretary of State that is pending effectiveness pursuant to Section 11343.4.

(c) Provide for the compilation, printing, and publication of weekly updates of the California Code of Regulations....

....

(Gov. Code, § 11344.) OAL is also required to supply a complete set of the CCR and its Supplement to any county clerk. (*Id.*, at § 11344.2.) Additionally, the CCR “shall be sold at prices which will reimburse the state for all costs incurred for printing, publication, and distribution.” (*Id.*, at § 11344.4.)

### iii. The Petition is Denied as to OAL.

Petitioner argues that OAL violated the PRA by not providing the CCR to Petitioner in a “structured, machine-readable” format. Underpinning Petitioner’s argument is its belief that OAL possesses a “Master Database” through its contract with Thomson Reuters/West Publishing, and has the ability to access the Master Database and provide Petitioner the CCR to Petitioner in a “structured, machine-readable” format.

OAL contends that Petitioner is demanding OAL provide the CCR in a format that it does not possess, and that it is really trying to compel OAL to create an entirely *new* record, which the PRA does not require.

Petitioner has not shown that OAL violated the PRA. OAL neither possesses the Master Database, nor do the PRA or pertinent statutes impose any duty upon OAL to provide the CCR in the “structured, machine-readable” format sought by Petitioner.

- **OAL Does Not Possess the Master Database.**

Petitioner argues that OAL constructively possesses the Master Database. OAL disagrees and claims that it does not possess the Master Database, or the data (the updated versions of regulations comprising the CCR) in it.

OAL has the better argument.

OAL declares that the Master Database exists in proprietary software of Thomson Reuters/West Publishing. (Declaration of Kevin Hull (Hull Decl.), ¶5; Declaration of Andrew Martens (Martens Decl.), ¶6.) The language of the contract with Thomson Reuters/West Publishing provides for a “useable electronic data base” in a “portable and easily processed or converted format” upon completion or termination of the contract. (Administrative Record<sup>4</sup>, Ex. B [000009] and Ex. J [000052-53].) The above contractual term ensures that OAL can obtain all the data (the regulations comprising the CCR) if needed to provide it to a new contractor. As the contract is not completed or terminated, OAL has not invoked this contractual term. Thus, Thomson Reuters/West Publishing has never given OAL the Master Database or the data in it.

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<sup>4</sup> Petitioner has furnished a collection of exhibits that it denotes as an “administrative record.”

(Hull Decl., ¶3; Martens Decl., ¶5.) The data has never been extracted and formatted in the manner requested by Petitioner.

Petitioner argues that OAL, in fact, constructively possesses the Master Database because it has the right to control it. First, this is belied by the OAL's agreement with Thomson Reuters/West Publishing. Second, Petitioner's argument that it is entitled to data from this Master Database (the CCR) in a particular format conflates OAL's right to the data *within* the Master Database with the Master Database itself, which is not a "record," and which OAL does not possess.

Thus, OAL does not possess the data in a structured-machine readable format requested by Petitioner. OAL has not violated the PRA for this reason.

- **The PRA Imposes No Duty Upon OAL To Produce the CCR in the Format Requested by Petitioner.**

Additionally, the PRA itself imposes no duty upon OAL to produce "electronic" records in the "structured, machine-readable format" requested by Petitioner.

In determining whether OAL violated the PRA, the Court must harmonize two sets of pertinent statutes: the PRA, and the APA. (*City of Chula Vista v. Drager* (2020) 49 Cal.App.5th 539, 560 ["If, after an examination of the statutes in context, they 'conflict on a central element, we strive to harmonize them so as to give effect to each. The Court is guided by the following principles of statutory construction.'"].)

"A court's overriding purpose in construing a statute is to ascertain legislative intent. ... [Citation.] In interpreting a statute to determine legislative intent, a court looks first to the words of the statute and gives them their usual and ordinary meaning. [Citation.] Statutes must be given a fair and reasonable interpretation, with due regard to the language used and the purpose sought to be accomplished.' (*Sander v. Superior Court, supra*, 26 Cal.App.5th, at 653-654 [internal quotations and citations omitted].)

In PRA cases, the California Constitution requires that '[a] statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.' (*Sander v. Superior Court, supra*, 26 Cal.App.5th, at 653-654. [citing Cal. Const., art I, § 3, subd. (b); *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617].)

Additionally, a specific statutory provision prevails over a general statute. (*See Rose v. State* (1942) 19 Cal.2d 713, 723-724.) If statutory provisions conflict, statutes that are passed later in time control. (*City of Chula Vista v. Drager, supra*, 49 Cal.App.5th, at p. 560 [citing *Collection Bureau of San Jose v. Rumsey* (200) 24 Cal.4th 301].)

The text of Section 6253.9 imposes no duty upon OAL to make records available in a particular format. It requires an agency to produce an "electronic" copy of records, and

contemplates that an agency may need to engage in “data compilation, extraction, or programming” to produce a record. Thus, the Court cannot find that OAL violated Section 6253.9 by failing to produce records in a “structured, machine-readable format.”

The Court is mindful that the California Constitution requires that statutes, such as Section 6253.9 be “broadly construed” if it furthers the people’s right of access. But the Court’s inquiry does not stop here. It must also consider more specific, later-enacted statutes in the APA, and give those statutes a “fair and reasonable” interpretation.

As noted above, the Legislature has enacted more specific statutes, governing OAL’s duty to make the CCR available. Pertinent here, Section 11344, provides that OAL must make the CCR publicly available on its website by posting a link to the full text of, each regulation. (Gov. Code, § 11344.) Notably, it imposes no duty upon OAL to make the CCR available in any electronic format requested by a member of the public. Thus, the Court finds that this specific statute directed only to OAL prevails over the more general PRA provisions governing all agencies.

Moreover, Section 11344, which was added in 1983, has been amended many times, most recently in 2012. (Stats. 2012, c. 295 (S.B. 1099), §3.) In contrast, Section 6253.9 was added in 2000, and has not been updated. (Gov. Code, § 6253.9 [Added by Stats. 2000, c. 982, (A.B. 2799) § 2.]) Thus, because Section 11344 is a later-amended statute, the Court presumes that the Legislature was aware of the PRA and Section 6253.9, when amending it.

Accordingly, the OAL has complied with Section 11344 and has not violated the PRA by failing to produce records in a “structured, machine-readable” format.

- **Petitioner’s Other Arguments Show no Violation of the PRA.**

Petitioner claims that the website that OAL directed it to is not “publicly available” because it is subject to technological and legal restrictions to prevent users from text-searching, copying and pasting, or distributing portions of the CCR. (Opening Brief, p. 6.) Nothing in the PRA requires that discloseable records be searchable or adaptable for copying and pasting. Additionally, for the same reasons articulated above, OAL has not violated the PRA in this regard.

Petitioner also argues that OAL is trying to circumvent its duties to disclose records by outsourcing the publication of to a third party in violation of Section 6720. This statute, enacted in 1995, provides in pertinent part that “no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this chapter.” (Gov. Code, § 6270 [Added by Stats.1995, c. 108 (A.B.141), § 1.]

However, the Court must presume that the Legislature, in enacting and amending statutes regarding OAL’s duty to publish the CCR, is aware of OAL’s arrangement with

Thomson Reuters/West. Again, the Court notes that Section 11344, was amended several times after the enactment of Section 6270, and was most recently amended in 2012. Thus, OAL has not violated the PRA on this ground.

**b. Claims Against Respondent BSC.**

Petitioner argues that BSC has violated the PRA by not disclosing an electronic copy of Title 24. BSC responds that Section 6254, subdivision (k), exempts Title 24 from disclosure, as it contains model codes drafted by Intervenor NPFA and ICC, which are protected by federal copyright law. BSC alternatively argues that Section 6255, the “catch-all” exemption, exempts Title 24 from disclosure, as the public interest in nondisclosure clearly outweighs the public interest in disclosure. Intervenor NPFA and ICC, which are aligned with BSC, note the pendency of two federal actions in which the similar copyright issues are addressed. Intervenor argue that the records are exempt from disclosure, but also argue that this proceeding should be stayed, pending resolution of the federal cases.

**i. Legal Standard.**

The PRA contains a lengthy list of statutory exemptions from disclosure. (Gov. Code, § 6254.) Pertinent here, an item is statutorily exempt from disclosure if they are “exempted or prohibited pursuant to federal or state law.” (*Id.*, § 6254, subd. (k).) BSC and Intervenor claim that Title 24 is protected by federal copyright law, as it incorporates by reference model codes drafted by Intervenor and other SDOs, and thus, Title 24 is statutorily exempt from disclosure.

“When an action is brought in a court of this state involving the same parties and the same subject matter as an action already pending in a court of another jurisdiction, a stay of the California proceedings is not a matter of right, but within the sound discretion of the trial court.” (*Farmland Irrigation Co. v. Dopplmaier* (1957) 48 Cal. 2d 208, 215.)

“It is black letter law that, when a federal action has been filed covering the same subject matter as is involved in a California action, the California court has the discretion but not the obligation to stay the state court action.” (*Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co. (Caiafa)* (1993) 15 Cal.App.4th 800, 804.) *Caiafa* enumerated various factors that courts should apply when deciding whether to stay a matter pending in a California court because of pending federal litigation. It provided that courts “should consider the importance of discouraging multiple litigation designed solely to harass an adverse party, and of avoiding unseemly conflicts with the courts of other jurisdictions. It should also consider whether the rights of the parties can best be determined by the court of the other jurisdiction because of the nature of the subject matter, the availability of witnesses, or the stage to which the proceedings in the other court have already advanced.” (*Id.*) Courts should also consider whether the federal action is pending in California. (*Id.*)



Of additional importance is the Court's inherent authority to control its docket. Courts routinely stay matters where circumstances warrant. (*Friberg v City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489 ["Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency."].)

**ii. The Petition is Stayed as to Claims against Respondent BSC.**

Petitioner argues that BSC violated the PRA by not disclosing Title 24, because it actually possesses it; the online version cited by OAL and BSC is not "publicly available," as the user is subject to end-user restrictions; and no exemption from disclosure applies, particularly Section 6254, subdivision (k).

Petitioner contends that although Title 24 contains model codes drafted by Intervenorors that are incorporated by reference, the model codes in Title 24 have now become "the law," and lost their copyright protection. Thus, Petitioner argues, Section 6254, subdivision (k), does not apply.

BSC responds that Title 24 is exempt under section 6254, subdivision (k), or alternatively, Section 6255, and that it complied with the PRA by making records available electronically.

Intervenorors argue that a stay is appropriate in light of pending federal litigation.<sup>5</sup> The Court agrees.

The issue of whether model codes that have been incorporated by reference into law is currently being litigated in federal court. In *American Society for Testing and Materials, et al v. Public.Resource.Org (ASTM)* (D.C. Cir. 2018) 896 F.3d 437, 441. Intervenor NFPA and two other SDOs sued Petitioner for copyright and trademark infringement, after Petitioner purchased copies of incorporated standards, scanned them into digital files, appended coversheets explaining Petitioner's mission and the source of the standards, and posted the documents to a public website. (*Id.*, at p. p. 444.) In some cases, Petitioner modified files so that the text of the standard could be more easily enlarged, searched, and read with text-to-speech software. (*Ibid.*)

In that case, Petitioner made, and is making, the same arguments raised here: that NFPA and the other SDOs lose the benefit of copyright protection for model standards they authored once those model standards are incorporated by reference. In *ASTME*, Petitioner and NFPA and the other plaintiffs filed competing motions for summary judgment. (*Ibid.*) The district court granted NFPA and the SDOs' motion, rejecting Petitioner's arguments. The district court found that NFPA and the SDOs held copyrights in the model standards incorporated by reference, and that Petitioner

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<sup>5</sup> Petitioner faults Intervenorors for raising this issue in the briefs, rather than bringing a separate motion for a stay under Code of Civil Procedure, section 1005. This point is well-taken. However, because Petitioner has been afforded the opportunity to respond to Intervenorors' request for a stay, the Court will consider it.

improperly reproduced them, and that Petitioner failed to create a triable issue of fact that its reproduction qualified as “fair use”---a defense to copyright infringement. (*Ibid.*)

PRO appealed that decision to the D.C. Circuit. The D.C. Circuit vacated the district court's decision. In doing so, it found that the district court should have considered Petitioner's affirmative defense of fair use. (*ASTM*, *supra*, 896 F.3d 437, 440-441.) Accordingly, the D.C. Circuit has remanded the matter to the district court to consider Petitioner's affirmative defense to the motion for summary judgment brought by NFPA and the other SDOs. (*Id.* at p. 458.) In briefing related to that motion, Petitioner does not dispute that it advances the same argument that it advances here: that codes that governments have expressly incorporated into law, lose copyright protection and that standards incorporated by reference are “government edicts” under *Georgia v. Public Resource.Org, Inc.* (*Georgia*) (2020) 140 S. Ct 1498.

Additionally, Intervenor ICC is involved in pending litigation in the Southern District of New York, where the accused infringer (a company named UpCodes) has raised similar defenses based on incorporation by reference, that Petitioner raises in *ASTM* and this case. (*International Code Council, Inc. v. UpCodes, Inc.* (S.D.N.Y. May 27, 2020, No. 17-cv-6261.)

The Court exercises its discretion to stay the proceedings against BSC. At issue is whether the model codes drafted by Intervenor and incorporated into Title 24 are protected by federal copyright law. The federal proceedings in *ASTM* are addressing this very issue, and as to the same parties: Intervenor NFPA and Petitioner. Additionally, another federal court is addressing these similar issues as to another organization and Intervenor ICC.

First, the nature of the subject matter—federal copyright law—is the exclusive province of federal court. (*Sears Roebuck & Co. v. Stieffel Co.* (1964) 376 U.S, 255, 231, fn.7; *Topolos v. Caldewey* (9th Cir. 1983) 698 F.2d 991, 993-994.) Petitioner cites to *Santa Clara*, *supra*, 170 Cal.App.4th 1301, for the proposition that “California law” addresses when the work of California agencies may be subject to copyright protection. This argument is unavailing. *Santa Clara* addressed copyright issues that arose after an *agency* claimed copyright protection in a work it authored. That is not the case here. The issue is whether copyright law protects *Intervenors'* works, which is currently under consideration in federal courts. The Court also rejects Petitioner's argument that the nature of the subject matter in this case differs, because the Court is concerned with the applicability of the PRA. This is true, but, if federal copyright law applies and protects model codes incorporated by reference into regulations, then this necessarily resolves whether BSC has violated the PRA. Thus, staying the proceedings also promotes judicial efficiency.

Second, a stay avoids the potential for “unseemly” conflicts with federal copyright issues raised by Petitioner, such as whether the “government edicts” doctrine, as articulated by the Supreme Court in *Georgia*, prevents Intervenor from asserting a copyright interest in the portions of Title 24 that incorporates their model codes by reference.

Third, the *ASTM* case is significantly advanced in the proceedings, weighing in favor of a stay. As noted above, the *ASTM* is on remand from the Court of Appeal where the district court will again consider the motions for summary judgment, including application of the government edicts' doctrine.

These factors all support the Court's decision to stay the proceedings as to BSC.

Petitioner argues upon reply, that BSC may not rely on *any* statutory exemption in Section 6254, because BSC has disclosed some copies of Title 24, and thus, waived its right to assert this exemption under Section 6254.5. Petitioner opposed BSC's nondisclosure based on Section 6254 on the merits, and did not at all raise this "waiver" argument in its Opening Brief. Thus, Intervenor and BSC had no opportunity to respond to it. Accordingly, the Court does not consider it.

### **3. Disposition.**

The Petition is denied as to Respondent OAL. The Petition is stayed as to Respondent BSC in light of the *ASTM* matter.

Counsel for Respondent OAL shall prepare a formal order and a separate judgment, incorporating this ruling as an exhibit to each, submit them to opposing counsel for approval as to form, and thereafter submit them to the Court for signature and entry of judgment in accordance with California Rules of Court, rule 3.1312.

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO  
GORDON D SCHABER COURTHOUSE**

**MINUTE ORDER**

DATE: 03/25/2022

TIME: 02:00:00 PM

DEPT: 27

JUDICIAL OFFICER PRESIDING: Steven M Gevercer

CLERK: N. Smith

REPORTER/ERM: No Court Reporter

BAILIFF/COURT ATTENDANT: A. Muir-Harrison

CASE NO: **34-2021-80003612-CU-WM-GD** CASE INIT.DATE: 03/17/2021

CASE TITLE: **Public. Resource.Org, Inc. vs. California Office Of Administrative Law**

CASE CATEGORY: Civil - Unlimited

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**EVENT TYPE:** Petition for Writ of Mandate - Writ of Mandate

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**APPEARANCES**

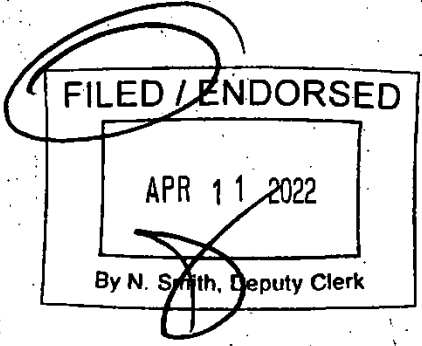
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The Tentative Ruling was accepted and no appearance was requested.

The Tentative Ruling issued March 24, 2022 on the Petition for Writ of Mandate is affirmed.

Document received by the CA 3rd District Court of Appeal.

1 ROB BONTA  
Attorney General of California  
2 MICHELLE M. MITCHELL  
Supervising Deputy Attorney General  
3 KEITH L. WURSTER  
Deputy Attorney General  
4 State Bar No. 198918  
LAURA A. RANGLES-LITTLE  
5 Deputy Attorney General  
State Bar No. 232930  
6 1300 I Street, Suite 125  
P.O. Box 944255  
7 Sacramento, CA 94244-2550  
Telephone: (916) 210-6504  
8 Fax:  
E-mail: Laura.RandlesLittle@doj.ca.gov  
9 *Attorneys for Respondents*  
*Office of Administrative Law and*  
10 *Building Standards Commission*



11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SACRAMENTO  
13 CIVIL DIVISION

15 PUBLIC.RESOURCE.ORG, INC.,	34-2021-80003612
16	
17 Petitioner,	<del>PROPOSED</del> JUDGMENT
18 v.	
19 CALIFORNIA OFFICE OF	
20 ADMINISTRATIVE LAW, and the	
21 CALIFORNIA BUILDING STANDARDS	
22 COMMISSION,	
23 Respondents.	

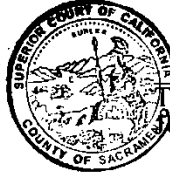
23 Having reviewed the papers submitted by the parties, IT IS ORDERED, ADJUGED AND  
24 DECREED that Petitioner Public.Resrouce.Org, Inc.'s Verified Petition for Writ of Mandate  
25 regarding Respondent California Office of Administrative Law is denied and judgment is entered  
26 in favor of Respondent California Office of Adminsitratve Law for the reasons set forth in the  
27  
28

Document received by the CA 3rd District Court of Appeal.

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the Court's Tentative Ruling attached and incorporated for reference hereto as Exhibit A.

Dated April 11, 2022



A handwritten signature in black ink, appearing to read "S. Geverscer".

THE HONORABLE STEVEN M. GEVERCER  
JUDGE OF THE SUPERIOR COURT

Document received by the CA 3rd District Court of Appeal.

# EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

<b>DATE/TIME:</b>	March 25, 2022 2:00 p.m.	<b>DEP. NO.:</b>	27
<b>JUDGE:</b>	HON. STEVEN M. GEVERCER	<b>CLERK:</b>	N. SMITH
<b>Public.Resource.Org., Inc., Petitioner,</b>  <b>v.</b>  <b>California Office of Administrative Law, and the California Building Standards Commission, Respondents.</b>		<b>Case No. 34-2021-80003612</b>	
<b>Nature of Proceedings:</b>		<b>Petition for Writ of Mandate</b>	

**I. TENTATIVE RULING.**

The following shall constitute the Court's tentative ruling on the above matter, set for hearing in Department 27, on Friday, March 25, 2022, at 2:00 p.m. The tentative ruling shall become the ruling of the Court, unless a party desiring to be heard so advises the Clerk of Department 27 no later than 4:00 p.m. on the Court day preceding the hearing, and further advises the Clerk that such party has notified the other side of its intention to appear.

The Court strongly encourages parties to appear remotely for the hearing on the tentative ruling through the Court's Zoom Application. But any party wishing to appear in person may do so, provided that party notifies the Court by 4:00 the Court day before the hearing.

The parties may join the Zoom session for hearing on the tentative ruling by audio and/or video through the following link/telephone number:

<a href="https://saccourt.zoom.us/my/dept27a">https://saccourt.zoom.us/my/dept27a</a>	(888) 475-4499 ID: 553-829-7195
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Petitioner, Public.Resource.Org, Inc. has filed a petition for writ of mandate (Petition) against Respondents Office of Administrative Law (OAL) and the California Building Standards Commission (BSC), directing Respondents to comply with the Public Records Act (Gov. Code, §§ 6250 *et seq.*) (PRA). As to Respondent OAL, the Petition is denied. As to Respondent BSC, the Petition is stayed pending resolution of a final judgment from the District of Columbia District Court in *American Society for Testing and Materials, et al v. Public.Resource.Org* (D.C. Cir. 2018) 896 F.3d 437, 441.



## 1. Background.

On December 29, 2020, Petitioner<sup>1</sup> sent a PRA request to OAL for Titles 1-5, 7-23, and 25-28 of the California Code of Regulations (collectively, CCR).<sup>2</sup> (Petition, ¶13, Exh. C.) Petitioner requested that OAL provide the information “in all formats, in your possession, including (but not limited to) structured, machine-readable digital formats, such as XMF or PDF files,” pursuant to Government Code section<sup>3</sup> 6250, subdivision (a)(1). (Petition, Exh. C.) Petitioner also informed OAL that it must produce a copy of an electronic record in any format that has been used by it to create copies for its own use or for provision to other agencies, pursuant to Section 6250, subdivision (a)(2). (*Ibid.*)

OAL responded, stating that it could provide a paper copy of the CCR to Petitioner, and offered to scan each page of the print version, to serve as an “electronic” copy. (Petition, Exh. D.) OAL also directed Petitioner to a website that contained the most “up to date” version of the CCR. (*Ibid.*) OAL also offered to provide a CD-ROM with past versions of the CCR, but noted that the contents of the CD-ROM cannot be copied in whole or transferred to another storage device. (*Ibid.*) Petitioner and OAL corresponded further, and Petitioner contended that OAL’s response was insufficient, and that the website to which it directed Petitioner was not “publicly available.” (Petition, ¶¶14-19.)

Also on December 29, 2020, Petitioner also made a nearly identical, separate PRA request for Title 24 of the CCR (Title 24) to the Office of Public Affairs, which contains the Department of General Services, and BSC. (Petition, Exh. F.) Again, Petitioner requested an electronic copy of Title 24, and sought Title 24 in all formats in BSC’s possession, including “structured, machine-readable formats.” (*Ibid.*)

BSC also responded that it could not produce the records. BSC stated that a hard copy of Title 24 was available for inspection at BSC’s office, and noted that hard copies of Title 24 were available for public viewing and copying at state document depository libraries or at city of county building or planning departments. (Petition, Exh. G.) BSC stated that Title 24 may be viewed online on the BSC’s website, but because BSC did not have publishing rights, it could not provide copies to the public. (*Ibid.*) BSC explained that this is because Title 24 is based on and includes model codes produced by standards developing organizations (SDOs), Intervenors National Fire Protection Association (NFPA), International Codes Council (ICC), and the International Association of Plumbing and Mechanical Officials. (*Ibid.*) BSC also responded that

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<sup>1</sup> Petitioner is a non-profit organization with the mission of providing public access to government records and legal materials. (Petition, ¶5.)

<sup>2</sup> Respondent OAL oversees the publication and distribution of Titles 1-5, 7-23, and 25-28 of the CCR. (Petition, ¶6.) Respondent BSC administers the adoption of, and codifies and publishes the California Building Standards Code as Title 24 of the CCR. (Petition, ¶7.)

<sup>3</sup> Unless otherwise specified, all statutory references shall be to the Government Code.

individual parts or a full set of Title 24 may be purchased from these three publishing entities. (*ibid.*)

Petitioner then filed a petition for writ of mandate, alleging that OAL and BSC violated the PRA. On August, 27, 2021, the Court granted NFPA's and ICC's motion for leave to intervene in this proceeding.

## 2. Discussion.

### a. Claims Against OAL.

Petitioner argues that OAL has violated the PRA by refusing to produce the records and insufficiently responding to its request, namely by failing to provide an "electronic" copy of the CCR in a "structured, machine-readable" format. (Opening Brief, 9:4.) Respondent OAL responds that the Legislature, in enacting the pertinent provisions of the Administrative Procedure Act (APA), dictated how the CCR should be made publicly available, and that in any event it, has complied with the PRA in responding to Petitioner.

#### i. PRA Statutes.

Under the PRA, a public agency must make public records promptly available to any person who submits a PRA request that "reasonably describes an identifiable record or records." (Gov. Code, § 6253, subd. (b).) The PRA enables persons to seek "injunctive or declarative relief or writ of mandate" to enforce that person's right to inspect or receive copies of public records. (Gov. Code, §§ 6258, 6259.)

The PRA is construed broadly in favor of access. (*Am. Civil Liberties Union Foundation v. Superior Court* (2017) 3 Cal.5th 1032, 1040.) Exemptions from disclosure must be narrowly construed. (*Id.*) The agency withholding the records bears the burden of proving that an exception from disclosure applies. (*California First Amend. Coal. v. Superior Court (California First)* (1998) 67 Cal.App.4th 159, 167.)

The PRA imposes on agencies an affirmative obligation to make available to the public any public records in their possession, unless the agency can demonstrate that a responsive record is otherwise exempt from disclosure. (Gov. Code, §§ 6253, 6254, 6255.) Public records may be exempted from disclosure if they fall within a particular specific statutory basis for exempting the records. (Gov. Code, § 6254.) Additionally, public records may also be exempt from disclosure if the agency can show that "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 6255, subd. (a).) If "the requester has alternative, less intrusive means of obtaining the information sought" the public interest in disclosure is minimal, although the "existence of an alternative means does not wholly undermine the public interest in disclosure." (*County of Santa Clara v. Superior Court (Santa Clara)* (2009) 170 Cal.App.4th 1301,

1325 [citing *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1020, 1025].)

Section 6253.9 governs an agency's duty to produce electronic copies of records under the PRA. It provides:

- a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure...that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:
  - (1) The agency shall make the information available in any electronic format in which it holds the information.
  - (2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.
  
- (b) ...the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:
  - (1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.
  - (2) The request would require data compilation, extraction, or programming to produce the record.
  
- (c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.
  
- (d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.
  
- (e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

(Gov. Code, § 6253.9.) Thus, a government agency is required by the PRA to produce non-exempt responsive computer records in the same manner as paper records, and can be required to compile, redact or omit information from an electronic record. (See *Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 669.) Section 6253.9 contemplates that public agencies can be required to gather and segregate disclosable electronic data from nondisclosable exempt information and perform data compilation, extraction or computer programming if "necessary to produce a copy of the record." (*Ibid.* [citing Gov. Code, § 6253.9, subdivision (b)].) However, the PRA does not require an agency to create a *new* record: an agency "cannot be required to create a new record by changing the substantive content of an existing record or replacing existing data with new data." (*Ibid.* [citing *Yeager v. Drug Enforcement Admin.* (D.C. Cir. 1982) 678 F.2d 315, 323 and noting that "Segregating and extracting data is a far cry from requiring public agencies to undertake the extensive 'manipulation or restructuring of the substantive content of a record.'"]) Additionally, agencies need not draft summary or explanatory material, perform calculations on data, or create inventories of data in response to a records request. (*National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward* (2020) 9 Cal.5th 488, 502; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075; see also *Sander v. Superior Court, supra*; 26 Cal.App.5th, at p. 669.)

## ii. Pertinent Law Governing the Public Availability of CCR.

The Administrative Procedure Act (APA) (see Gov. Code §§ 11340, et. seq.) among other things, establishes the OAL and sets forth specific statutes governing rulemaking, or an agency's promulgation of regulations, which comprise the CCR. Section 11344, requires OAL to make the CCR available online. Section 11344 provides:

(OAL) shall do all of the following:

- (a) Provide for the official compilation, printing, and publication of adoption, amendment, or repeal of regulations, which shall be known as the [CCR]. On and after July 1, 1998, [OAL] shall make available on the Internet, free of charge, the full text of the [CCR], and may contract with another state agency or a private entity in order to provide this service.
- (b) Make available on its Internet Web site a list of, and a link to the full text of, each regulation filed with the Secretary of State that is pending effectiveness pursuant to Section 11343.4.

- (c) Provide for the compilation, printing, and publication of weekly updates of the California Code of Regulations....

.....  
(Gov. Code, § 11344.) OAL is also required to supply a complete set of the CCR and its Supplement to any county clerk. (*Id.*, at § 11344.2.) Additionally, the CCR "shall be sold at prices which will reimburse the state for all costs incurred for printing, publication, and distribution." (*Id.*, at § 11344.4.)

**iii. The Petition is Denied as to OAL.**

Petitioner argues that OAL violated the PRA by not providing the CCR to Petitioner in a "structured, machine-readable" format. Underpinning Petitioner's argument is its belief that OAL possesses a "Master Database" through its contract with Thomson Reuters/West Publishing, and has the ability to access the Master Database and provide Petitioner the CCR to Petitioner in a "structured, machine-readable" format.

OAL contends that Petitioner is demanding OAL provide the CCR in a format that it does not possess, and that it is really trying to compel OAL to create an entirely *new* record, which the PRA does not require.

Petitioner has not shown that OAL violated the PRA. OAL neither possesses the Master Database, nor do the PRA or pertinent statutes impose any duty upon OAL to provide the CCR in the "structured, machine-readable" format sought by Petitioner.

• **OAL Does Not Possess the Master Database.**

Petitioner argues that OAL constructively possesses the Master Database. OAL disagrees and claims that it does not possess the Master Database, or the data (the updated versions of regulations comprising the CCR) in it.

OAL has the better argument.

OAL declares that the Master Database exists in proprietary software of Thomson Reuters/West Publishing. (Declaration of Kevin Hull (Hull Decl.), ¶5; Declaration of Andrew Martens (Martens Decl.), ¶6.) The language of the contract with Thomson Reuters/West Publishing provides for a "useable electronic data base" in a "portable and easily processed or converted format" upon completion or termination of the contract. (Administrative Record<sup>4</sup>, Exh. B [000009] and Exh. J [000052-53].) The above contractual term ensures that OAL can obtain all the data (the regulations comprising the CCR) if needed to provide it to a new contractor. As the contract is not completed or terminated, OAL has not invoked this contractual term. Thus, Thomson Reuters/West Publishing has never given OAL the Master Database or the data in it.

<sup>4</sup> Petitioner has furnished a collection of exhibits that it denotes as an "administrative record."

(Hull Decl., ¶3; Martens Decl., ¶5.) The data has never been extracted and formatted in the manner requested by Petitioner.

Petitioner argues that OAL, in fact, constructively possesses the Master Database because it has the right to control it. First, this is belied by the OAL's agreement with Thomson Reuters/West Publishing. Second, Petitioner's argument that it is entitled to data from this Master Database (the CCR) in a particular format conflates OAL's right to the data *within* the Master Database with the Master Database itself, which is not a "record," and which OAL does not possess.

Thus, OAL does not possess the data in a structured-machine readable format requested by Petitioner. OAL has not violated the PRA for this reason.

- **The PRA Imposes No Duty Upon OAL To Produce the CCR in the Format Requested by Petitioner.**

Additionally, the PRA itself imposes no duty upon OAL to produce "electronic" records in the "structured, machine-readable format" requested by Petitioner.

In determining whether OAL violated the PRA, the Court must harmonize two sets of pertinent statutes: the PRA, and the APA. (*City of Chula Vista v. Drager* (2020) 49 Cal.App.5th 539, 560 ["If, after an examination of the statutes in context, they 'conflict on a central element, we strive to harmonize them so as to give effect to each. The Court is guided by the following principles of statutory construction.'"])

"A court's overriding purpose in construing a statute is to ascertain legislative intent. ... [Citation.] In interpreting a statute to determine legislative intent, a court looks first to the words of the statute and gives them their usual and ordinary meaning. [Citation.] Statutes must be given a fair and reasonable interpretation, with due regard to the language used and the purpose sought to be accomplished.' (*Sander v. Superior Court*, *supra*, 26 Cal.App.5th, at 653-654 [internal quotations and citations omitted].)

In PRA cases, the California Constitution requires that '[a] statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.' (*Sander v. Superior Court*, *supra*, 26 Cal.App.5th, at 653-654. [citing Cal. Const., art I, § 3, subd. (b); *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617].)

Additionally, a specific statutory provision prevails over a general statute. (*See Rose v. State* (1942) 19 Cal.2d 713, 723-724.) If statutory provisions conflict, statutes that are passed later in time control. (*City of Chula Vista v. Drager*, *supra*, 49 Cal.App.5th, at p. 560 [citing *Collection Bureau of San Jose v. Rumsey* (200) 24 Cal.4th 301].)

The text of Section 6253.9 imposes no duty upon OAL to make records available in a particular format. It requires an agency to produce an "electronic" copy of records, and

contemplates that an agency may need to engage in "data compilation, extraction, or programming" to produce a record. Thus, the Court cannot find that OAL violated Section 6253.9 by failing to produce records in a "structured, machine-readable format."

The Court is mindful that the California Constitution requires that statutes, such as Section 6253.9 be "broadly construed" if it furthers the people's right of access. But the Court's inquiry does not stop here. It must also consider more specific, later-enacted statutes in the APA, and give those statutes a "fair and reasonable" interpretation.

As noted above, the Legislature has enacted more specific statutes, governing OAL's duty to make the CCR available. Pertinent here, Section 11344, provides that OAL must make the CCR publicly available on its website by posting a link to the full text of each regulation. (Gov. Code, § 11344.) Notably, it imposes no duty upon OAL to make the CCR available in any electronic format requested by a member of the public. Thus, the Court finds that this specific statute directed only to OAL prevails over the more general PRA provisions governing all agencies.

Moreover, Section 11344, which was added in 1983, has been amended many times, most recently in 2012. (Stats. 2012, c. 295 (S.B. 1099), §3.) In contrast, Section 6253.9 was added in 2000, and has not been updated. (Gov. Code, § 6253.9 [Added by Stats. 2000, c. 982, (A.B. 2799) § 2.]) Thus, because Section 11344 is a later-amended statute, the Court presumes that the Legislature was aware of the PRA and Section 6253.9, when amending it.

Accordingly, the OAL has complied with Section 11344 and has not violated the PRA by failing to produce records in a "structured, machine-readable" format.

- **Petitioner's Other Arguments Show no Violation of the PRA.**

Petitioner claims that the website that OAL directed it to is not "publicly available" because it is subject to technological and legal restrictions to prevent users from text-searching, copying and pasting, or distributing portions of the CCR. (Opening Brief, p. 6.) Nothing in the PRA requires that discloseable records be searchable or adaptable for copying and pasting. Additionally, for the same reasons articulated above, OAL has not violated the PRA in this regard.

Petitioner also argues that OAL is trying to circumvent its duties to disclose records by outsourcing the publication of to a third party in violation of Section 6720. This statute, enacted in 1995, provides in pertinent part that "no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this chapter." (Gov. Code, § 6270 [Added by Stats.1995, c. 108 (A.B.141), § 1.]

However, the Court must presume that the Legislature, in enacting and amending statutes regarding OAL's duty to publish the CCR, is aware of OAL's arrangement with

Thomson Reuters/West. Again, the Court notes that Section 11344, was amended several times after the enactment of Section 6270, and was most recently amended in 2012. Thus, OAL has not violated the PRA on this ground.

**b. Claims Against Respondent BSC.**

Petitioner argues that BSC has violated the PRA by not disclosing an electronic copy of Title 24. BSC responds that Section 6254, subdivision (k), exempts Title 24 from disclosure, as it contains model codes drafted by Intervenor NPFA and ICC, which are protected by federal copyright law. BSC alternatively argues that Section 6255, the "catch-all" exemption, exempts Title 24 from disclosure, as the public interest in nondisclosure clearly outweighs the public interest in disclosure. Intervenor NPFA and ICC, which are aligned with BSC, note the pendency of two federal actions in which the similar copyright issues are addressed. Intervenor argue that the records are exempt from disclosure, but also argue that this proceeding should be stayed, pending resolution of the federal cases.

**i. Legal Standard.**

The PRA contains a lengthy list of statutory exemptions from disclosure. (Gov. Code, § 6254.) Pertinent here, an item is statutorily exempt from disclosure if they are "exempted or prohibited pursuant to federal or state law." (*Id.*, § 6254, subd. (k).) BSC and Intervenor claim that Title 24 is protected by federal copyright law, as it incorporates by reference model codes drafted by Intervenor and other SDOs, and thus, Title 24 is statutorily exempt from disclosure.

"When an action is brought in a court of this state involving the same parties and the same subject matter as an action already pending in a court of another jurisdiction, a stay of the California proceedings is not a matter of right, but within the sound discretion of the trial court." (*Farmland Irrigation Co. v. Dopplmaier* (1957) 48 Cal. 2d 208, 215.)

"It is black letter law that, when a federal action has been filed covering the same subject matter as is involved in a California action, the California court has the discretion but not the obligation to stay the state court action." (*Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co. (Caiafa)* (1993) 15 Cal.App.4th 800, 804.) *Caiafa* enumerated various factors that courts should apply when deciding whether to stay a matter pending in a California court because of pending federal litigation. It provided that courts "should consider the importance of discouraging multiple litigation designed solely to harass an adverse party, and of avoiding unseemly conflicts with the courts of other jurisdictions. It should also consider whether the rights of the parties can best be determined by the court of the other jurisdiction because of the nature of the subject matter, the availability of witnesses, or the stage to which the proceedings in the other court have already advanced." (*Id.*) Courts should also consider whether the federal action is pending in California. (*Id.*)



Of additional importance is the Court's inherent authority to control its docket. Courts routinely stay matters where circumstances warrant. (*Frieberg v City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489 ["Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency."].)

**ii. The Petition is Stayed as to Claims against Respondent BSC.**

Petitioner argues that BSC violated the PRA by not disclosing Title 24, because it actually possesses it; the online version cited by OAL and BSC is not "publicly available," as the user is subject to end-user restrictions; and no exemption from disclosure applies, particularly Section 6254, subdivision (k).

Petitioner contends that although Title 24 contains model codes drafted by Intervenor that are incorporated by reference, the model codes in Title 24 have now become "the law," and lost their copyright protection. Thus, Petitioner argues, Section 6254, subdivision (k), does not apply.

BSC responds that Title 24 is exempt under section 6254, subdivision (k), or alternatively, Section 6255, and that it complied with the PRA by making records available electronically.

Intervenor argues that a stay is appropriate in light of pending federal litigation.<sup>5</sup> The Court agrees.

The issue of whether model codes that have been incorporated by reference into law is currently being litigated in federal court. In *American Society for Testing and Materials, et al v. Public.Resource.Org (ASTM)* (D.C. Cir. 2018) 896 F.3d 437, 441. Intervenor NFPA and two other SDOs sued Petitioner for copyright and trademark infringement, after Petitioner purchased copies of incorporated standards, scanned them into digital files, appended coversheets explaining Petitioner's mission and the source of the standards, and posted the documents to a public website. (*Id.*, at p. p. 444.) In some cases, Petitioner modified files so that the text of the standard could be more easily enlarged, searched, and read with text-to-speech software. (*Ibid.*)

In that case, Petitioner made, and is making, the same arguments raised here: that NFPA and the other SDOs lose the benefit of copyright protection for model standards they authored once those model standards are incorporated by reference. In *ASTME*, Petitioner and NFPA and the other plaintiffs filed competing motions for summary judgment. (*Ibid.*) The district court granted NFPA and the SDOs' motion, rejecting Petitioner's arguments. The district court found that NFPA and the SDOs held copyrights in the model standards incorporated by reference, and that Petitioner

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<sup>5</sup> Petitioner faults Intervenor for raising this issue in the briefs, rather than bringing a separate motion for a stay under Code of Civil Procedure, section 1005. This point is well-taken. However, because Petitioner has been afforded the opportunity to respond to Intervenor's request for a stay, the Court will consider it.

improperly reproduced them, and that Petitioner failed to create a triable issue of fact that its reproduction qualified as "fair use"—a defense to copyright infringement. (*Ibid.*)

PRO appealed that decision to the D.C. Circuit. The D.C. Circuit vacated the district court's decision. In doing so, it found that the district court should have considered Petitioner's affirmative defense of fair use. (*ASTM*, *supra*, 896 F.3d 437, 440-441.) Accordingly, the D.C. Circuit has remanded the matter to the district court to consider Petitioner's affirmative defense to the motion for summary judgment brought by NFPA and the other SDOs. (*Id.*, at p. 458.) In briefing related to that motion, Petitioner does not dispute that it advances the same argument that it advances here: that codes that governments have expressly incorporated into law, lose copyright protection and that standards incorporated by reference are "government edicts" under *Georgia v. Public Resource.Org, Inc.* (*Georgia*) (2020) 140 S. Ct 1498.

Additionally, Intervenor ICC is involved in pending litigation in the Southern District of New York, where the accused infringer (a company named UpCodes) has raised similar defenses based on incorporation by reference, that Petitioner raises in *ASTM* and this case. (*International Code Council, Inc. v. UpCodes, Inc.* (S.D.N.Y. May 27, 2020, No. 17-cv-6261.)

The Court exercises its discretion to stay the proceedings against BSC. At issue is whether the model codes drafted by intervenors and incorporated into Title 24 are protected by federal copyright law. The federal proceedings in *ASTM* are addressing this very issue; and as to the same parties: Intervenor NFPA and Petitioner. Additionally, another federal court is addressing these similar issues as to another organization and Intervenor ICC.

First, the nature of the subject matter—federal copyright law—is the exclusive province of federal court. (*Sears Roebuck & Co. v. Stieffel Co.* (1964) 376 U.S. 255, 231, fn.7; *Topolos v. Caldewey* (9th Cir. 1983) 698 F.2d 991, 993-994.) Petitioner cites to *Santa Clara*, *supra*, 170 Cal.App.4th 1301, for the proposition that "California law" addresses when the work of California agencies may be subject to copyright protection. This argument is unavailing. *Santa Clara* addressed copyright issues that arose after an agency claimed copyright protection in a work it authored. That is not the case here. The issue is whether copyright law protects *Intervenors'* works, which is currently under consideration in federal courts. The Court also rejects Petitioner's argument that the nature of the subject matter in this case differs, because the Court is concerned with the applicability of the PRA. This is true, but, if federal copyright law applies and protects model codes incorporated by reference into regulations, then this necessarily resolves whether BSC has violated the PRA. Thus, staying the proceedings also promotes judicial efficiency.

Second, a stay avoids the potential for "unseemly" conflicts with federal copyright issues raised by Petitioner, such as whether the "government edicts" doctrine, as articulated by the Supreme Court in *Georgia*, prevents Intervenor from asserting a copyright interest in the portions of Title 24 that incorporates their model codes by reference.

Third, the *ASTM* case is significantly advanced in the proceedings, weighing in favor of a stay. As noted above, the *ASTM* is on remand from the Court of Appeal where the district court will again consider the motions for summary judgment, including application of the government edicts' doctrine.

These factors all support the Court's decision to stay the proceedings as to BSC.

Petitioner argues upon reply, that BSC may not rely on *any* statutory exemption in Section 6254, because BSC has disclosed some copies of Title 24, and thus, waived its right to assert this exemption under Section 6254.5. Petitioner opposed BSC's nondisclosure based on Section 6254 on the merits, and did not at all raise this "waiver" argument in its Opening Brief. Thus, Intervenor's and BSC had no opportunity to respond to it. Accordingly, the Court does not consider it.

### **3. Disposition.**

The Petition is denied as to Respondent OAL. The Petition is stayed as to Respondent BSC in light of the *ASTM* matter.

Counsel for Respondent OAL shall prepare a formal order and a separate judgment, incorporating this ruling as an exhibit to each, submit them to opposing counsel for approval as to form, and thereafter submit them to the Court for signature and entry of judgment in accordance with California Rules of Court, rule 3.1312.

**From:** O'Hollaren, Ryan T.  
**To:** Laura RandlesLittle; Caplan, Matt; Mornin, Joe  
**Cc:** Keith Wurster  
**Subject:** RE: Case No. 34-2021-80003612-CU-WM-GDS (Public.Resource.Org, Inc. v. OAL, et al)- Proposed order and judgment  
**Date:** Monday, April 4, 2022 9:34:31 AM

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Good morning – We propose adding a simple sentence capturing the point you just put your finger on: “This proposed Judgment does not apply to Respondent BSC.” Such a statement avoids confusion, since it accurately captures the posture of the case.

Ryan O'Hollaren  
Cooley LLP  
w 415.693.2288 • m 415.385.2879  
rohollaren@cooley.com

---

**From:** Laura RandlesLittle <Laura.RandlesLittle@doj.ca.gov>  
**Sent:** Monday, April 4, 2022 8:08 AM  
**To:** O'Hollaren, Ryan T. <rohollaren@cooley.com>; Caplan, Matt <mcaplan@cooley.com>; Mornin, Joe <jmornin@cooley.com>  
**Cc:** Keith Wurster <Keith.Wurster@doj.ca.gov>  
**Subject:** RE: Case No. 34-2021-80003612-CU-WM-GDS (Public.Resource.Org, Inc. v. OAL, et al)- Proposed order and judgment

**[External]**

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Good morning,  
While we would be happy to consider alternate language you think might meet your objective, it is our position that additional language that goes beyond how the judgment applies to Respondent OAL will cause confusion. However, please let us know this morning if you have different language you would like us to consider. Please note, if we cannot agree that our draft is amenable, per the California Rules of Court, I will also transmit your concerns to the court when we submit the Proposed Judgment.  
Thank you,  
Laura

Laura Randles-Little  
Deputy Attorney General  
Government Law Section | California Department of Justice  
1300 I Street, 17th Floor | Sacramento, CA 95814  
tel. (916) 210-6504

Document received by the CA 3rd District Court of Appeal.

**From:** O'Hollaren, Ryan T. <[rohollaren@cooley.com](mailto:rohollaren@cooley.com)>  
**Sent:** Friday, April 1, 2022 4:31 PM  
**To:** Laura RandlesLittle <[Laura.RandlesLittle@doj.ca.gov](mailto:Laura.RandlesLittle@doj.ca.gov)>; Caplan, Matt <[mcaplan@cooley.com](mailto:mcaplan@cooley.com)>; Mornin, Joe <[jmornin@cooley.com](mailto:jmornin@cooley.com)>  
**Cc:** Keith Wurster <[Keith.Wurster@doj.ca.gov](mailto:Keith.Wurster@doj.ca.gov)>  
**Subject:** RE: Case No. 34-2021-80003612-CU-WM-GDS (Public.Resource.Org, Inc. v. OAL, et al)- Proposed order and judgment

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Laura,

We understand that the judgment only applies to OAL; we simply want to clarify that fact so as to avoid any potential confusion on the point. If our proposed language is not agreeable, we're happy to review an alternative approach.

We agree with the change to refer to the Tentative as an Exhibit. And as to the signature, we removed the line because we don't interpret the local rules to require our signature on the document.

Thanks,

**Ryan O'Hollaren**  
Cooley LLP  
w 415.693.2288 • m 415.385.2879  
[rohollaren@cooley.com](mailto:rohollaren@cooley.com)

---

**From:** Laura RandlesLittle <[Laura.RandlesLittle@doj.ca.gov](mailto:Laura.RandlesLittle@doj.ca.gov)>  
**Sent:** Friday, April 1, 2022 3:50 PM  
**To:** O'Hollaren, Ryan T. <[rohollaren@cooley.com](mailto:rohollaren@cooley.com)>; Caplan, Matt <[mcaplan@cooley.com](mailto:mcaplan@cooley.com)>; Mornin, Joe <[jmornin@cooley.com](mailto:jmornin@cooley.com)>  
**Cc:** Keith Wurster <[Keith.Wurster@doj.ca.gov](mailto:Keith.Wurster@doj.ca.gov)>  
**Subject:** RE: Case No. 34-2021-80003612-CU-WM-GDS (Public.Resource.Org, Inc. v. OAL, et al)- Proposed order and judgment

[External]

Good afternoon,

Thank you for your comments. We believe the judgment only applies to Respondent OAL and do not agree it is appropriate to add language referencing a party to whom the judgment does not apply. Additionally, to avoid confusion now and in the future as to the judgment's potential application to Respondent BSC, the language should be limited to Respondent OAL. Thus, we have not

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incorporated your recommended edit at this time. Please let us know if you continue to disagree with this approach. Pursuant to the Rule 3.1312 of the California Rules of Court we plan on filing the proposed Order and Judgment on Monday.

Also, please note, we made one minor edit to the Order to consistently reference the Tentative Ruling as an Exhibit. I understand from your email you do not have concerns with the Order. Can you clarify that this means you will not be signing the order as "Approved to Form"?

Thank you,  
Laura

**Laura Randles-Little**  
Deputy Attorney General  
Government Law Section | California Department of Justice  
1300 I Street, 17th Floor | Sacramento, CA 95814  
tel. (916) 210-6504

---

**From:** O'Hollaren, Ryan T. <[rohollaren@cooley.com](mailto:rohollaren@cooley.com)>  
**Sent:** Thursday, March 31, 2022 2:40 PM  
**To:** Laura RandlesLittle <[Laura.RandlesLittle@doj.ca.gov](mailto:Laura.RandlesLittle@doj.ca.gov)>; Caplan, Matt <[mcaplan@cooley.com](mailto:mcaplan@cooley.com)>; Mornin, Joe <[jmornin@cooley.com](mailto:jmornin@cooley.com)>  
**Cc:** Keith Wurster <[Keith.Wurster@doj.ca.gov](mailto:Keith.Wurster@doj.ca.gov)>  
**Subject:** RE: Case No. 34-2021-80003612-CU-WM-GDS (Public.Resource.Org, Inc. v. OAL, et al)- Proposed order and judgment

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Good afternoon,

Attached is the proposed judgment with our edits. We have no edits on the proposed order.

Thanks,

**Ryan O'Hollaren**  
Cooley LLP  
w 415.693.2288 • m 415.385.2879  
[rohollaren@cooley.com](mailto:rohollaren@cooley.com)

---

**From:** Laura RandlesLittle <[Laura.RandlesLittle@doj.ca.gov](mailto:Laura.RandlesLittle@doj.ca.gov)>  
**Sent:** Wednesday, March 30, 2022 10:57 AM  
**To:** Caplan, Matt <[mcaplan@cooley.com](mailto:mcaplan@cooley.com)>; Mornin, Joe <[jmornin@cooley.com](mailto:jmornin@cooley.com)>; O'Hollaren, Ryan T.

Document received by the CA 3rd District Court of Appeal.

<rohollaren@cooley.com>

**Cc:** Keith Wurster <Keith.Wurster@doj.ca.gov>

**Subject:** Case No. 34-2021-80003612-CU-WM-GDS (Public.Resource.Org, Inc. v. OAL, et al)-  
Proposed order and judgment

**[External]**

---

Good morning,

Attached please find a draft proposed judgment and a draft proposed order as directed by the Court. Please review this and let us know if you have any comments or concerns. If you do not have any concerns, we would appreciate it if you could please sign these as to form and return the signed documents to us.

Thank you,

Laura

**Laura Randles-Little**

**Deputy Attorney General**

**Government Law Section | California Department of Justice**

**1300 I Street, 17th Floor | Sacramento, CA 95814**

**tel. (916) 210-6504**

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Document received by the CA 3rd District Court of Appeal.



1 ROB BONTA  
Attorney General of California.  
2 MICHELLE M. MITCHELL  
Supervising Deputy Attorney General  
3 KEITH L. WURSTER  
Deputy Attorney General  
4 State Bar No. 198918  
LAURA A. RANGLES-LITTLE  
5 Deputy Attorney General  
State Bar No. 232930  
6 1300 I Street, Suite 125  
P.O. Box 944255  
7 Sacramento, CA 94244-2550  
Telephone: (916) 210-6504  
8 Fax:  
E-mail: Laura.RandlesLittle@doj.ca.gov  
9 *Attorneys for Respondents*  
*Office of Administrative Law and*  
10 *Building Standards Commission*

FILED / ENDORSED  
APR 11 2022  
By N. Smith, Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SACRAMENTO  
13 CIVIL DIVISION

16 PUBLIC.RESOURCE.ORG, INC., 34-2021-80003612  
17 Petitioner, ~~PROPOSED~~ ORDER  
18 v.  
19 CALIFORNIA OFFICE OF  
20 ADMINISTRATIVE LAW, and the  
21 CALIFORNIA BUILDING STANDARDS  
COMMISSION,  
22 Respondents.

24 After consideration of the papers submitted by the parties and Interventors, the Honorable  
25 Steven M. Gevercer issued a tentative ruling with regard to the Verified Petition for Writ of  
26 Mandate filed by Petitioner Public.Resource.Org, Inc. against the California Office of  
27 Administrative Law and the California Building Standards Commission. The parties did not  
28

Document received by the CA 3rd District Court of Appeal.

1 request a hearing and the tentative ruling became the ruling of the Court. For the reasons stated in  
2 the tentative ruling, attached here as Exhibit A and incorporated here by reference, Petitioner's  
3 Verified Petition for Writ of Mandate is denied as to Respondent California Office of  
4 Administrative Law. As to Respondent Building Standards Commission, the Petitioner's  
5 Verified Petition for Writ of Mandate is stayed pending resolution of the matter identified in  
6 Exhibit A.

7 IT IS SO ORDERED.

8 Dated April 11, 2022



A handwritten signature in black ink, appearing to read "S. Gevercer", written over the printed name of the judge.

9 THE HONORABLE STEVEN M. GEVERCER  
10 JUDGE OF THE SUPERIOR COURT  
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# EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

<b>DATE/TIME:</b>	March 25, 2022 2:00 p.m.	<b>DEP. NO.:</b>	27
<b>JUDGE:</b>	HON. STEVEN M. GEVERCER	<b>CLERK:</b>	N. SMITH
<b>Public.Resource.Org., Inc., Petitioner,</b>  <b>v.</b>  <b>California Office of Administrative Law, and the California Building Standards Commission, Respondents.</b>		<b>Case No. 34-2021-80003612</b>	
<b>Nature of Proceedings:</b>		<b>Petition for Writ of Mandate</b>	

**I. TENTATIVE RULING.**

The following shall constitute the Court's tentative ruling on the above matter, set for hearing in Department 27, on Friday, March 25, 2022, at 2:00 p.m. The tentative ruling shall become the ruling of the Court, unless a party desiring to be heard so advises the Clerk of Department 27 no later than 4:00 p.m. on the Court day preceding the hearing, and further advises the Clerk that such party has notified the other side of its intention to appear.

The Court strongly encourages parties to appear remotely for the hearing on the tentative ruling through the Court's Zoom Application. But any party wishing to appear in person may do so, provided that party notifies the Court by 4:00 the Court day before the hearing.

The parties may join the Zoom session for hearing on the tentative ruling by audio and/or video through the following link/telephone number:

<a href="https://saccourt.zoom.us/my/dept27a">https://saccourt.zoom.us/my/dept27a</a>	<b>(888) 475-4499 ID: 553-829-7195</b>
---	--

Petitioner, Public.Resource.Org, Inc. has filed a petition for writ of mandate (Petition) against Respondents Office of Administrative Law (OAL) and the California Building Standards Commission (BSC), directing Respondents to comply with the Public Records Act (Gov. Code, §§ 6250 *et seq.*) (PRA). As to Respondent OAL, the Petition is denied. As to Respondent BSC, the Petition is stayed pending resolution of a final judgment from the District of Columbia District Court in *American Society for Testing and Materials, et al v. Public.Resource.Org* (D.C. Cir. 2018) 896 F.3d 437, 441.

## 1. Background.

On December 29, 2020, Petitioner<sup>1</sup> sent a PRA request to OAL for Titles 1-5, 7-23, and 25-28 of the California Code of Regulations (collectively, CCR).<sup>2</sup> (Petition, ¶¶13, Exh. C.) Petitioner requested that OAL provide the information "in all formats, in your possession, including (but not limited to) structured, machine-readable digital formats, such as XMF or PDF files," pursuant to Government Code section<sup>3</sup> 6250, subdivision (a)(1). (Petition, Exh. C.) Petitioner also informed OAL that it must produce a copy of an electronic record in any format that has been used by it to create copies for its own use or for provision to other agencies, pursuant to Section 6250, subdivision (a)(2). (*Ibid.*)

OAL responded, stating that it could provide a paper copy of the CCR to Petitioner, and offered to scan each page of the print version, to serve as an "electronic" copy. (Petition, Exh. D.) OAL also directed Petitioner to a website that contained the most "up to date" version of the CCR. (*Ibid.*) OAL also offered to provide a CD-ROM with past versions of the CCR, but noted that the contents of the CD-ROM cannot be copied in whole or transferred to another storage device. (*Ibid.*) Petitioner and OAL corresponded further, and Petitioner contended that OAL's response was insufficient, and that the website to which it directed Petitioner was not "publicly available." (Petition, ¶¶14-19.)

Also on December 29, 2020, Petitioner also made a nearly identical, separate PRA request for Title 24 of the CCR (Title 24) to the Office of Public Affairs, which contains the Department of General Services, and BSC. (Petition, Exh. F.) Again, Petitioner requested an electronic copy of Title 24, and sought Title 24 in all formats in BSC's possession, including "structured, machine-readable formats." (*Ibid.*)

BSC also responded that it could not produce the records. BSC stated that a hard copy of Title 24 was available for inspection at BSC's office, and noted that hard copies of Title 24 were available for public viewing and copying at state document depository libraries or at city of county building or planning departments. (Petition, Exh. G.) BSC stated that Title 24 may be viewed online on the BSC's website, but because BSC did not have publishing rights, it could not provide copies to the public. (*Ibid.*) BSC explained that this is because Title 24 is based on and includes model codes produced by standards developing organizations (SDOs), Intervenors National Fire Protection Association (NFPA), International Codes Council (ICC), and the International Association of Plumbing and Mechanical Officials. (*Ibid.*) BSC also responded that

---

<sup>1</sup> Petitioner is a non-profit organization with the mission of providing public access to government records and legal materials. (Petition, ¶5.)

<sup>2</sup> Respondent OAL oversees the publication and distribution of Titles 1-5, 7-23, and 25-28 of the CCR; (Petition, ¶6.) Respondent BSC administers the adoption of, and codifies and publishes the California Building Standards Code as Title 24 of the CCR. (Petition, ¶7.)

<sup>3</sup> Unless otherwise specified, all statutory references shall be to the Government Code.

individual parts or a full set of Title 24 may be purchased from these three publishing entities. (*Ibid.*)

Petitioner then filed a petition for writ of mandate, alleging that OAL and BSC violated the PRA. On August, 27, 2021, the Court granted NFPA's and ICC's motion for leave to intervene in this proceeding.

## 2. Discussion.

### a. Claims Against OAL.

Petitioner argues that OAL has violated the PRA by refusing to produce the records and insufficiently responding to its request, namely by failing to provide an "electronic" copy of the CCR in a "structured, machine-readable" format. (Opening Brief, 9:4.) Respondent OAL responds that the Legislature, in enacting the pertinent provisions of the Administrative Procedure Act (APA), dictated how the CCR should be made publicly available, and that in any event it, has complied with the PRA in responding to Petitioner.

#### i. PRA Statutes.

Under the PRA, a public agency must make public records promptly available to any person who submits a PRA request that "reasonably describes an identifiable record or records." (Gov. Code, § 6253, subd. (b).) The PRA enables persons to seek "injunctive or declarative relief or writ of mandate" to enforce that person's right to inspect or receive copies of public records. (Gov. Code, §§ 6258, 6259.)

The PRA is construed broadly in favor of access. (*Am. Civil Liberties Union Foundation v. Superior Court* (2017) 3 Cal.5th 1032, 1040.) Exemptions from disclosure must be narrowly construed. (*Id.*) The agency withholding the records bears the burden of proving that an exception from disclosure applies. (*California First. Amend. Coal. v. Superior Court (California First)* (1998) 67 Cal.App.4th 159, 167.)

The PRA imposes on agencies an affirmative obligation to make available to the public any public records in their possession, unless the agency can demonstrate that a responsive record is otherwise exempt from disclosure. (Gov. Code, §§ 6253, 6254, 6255.) Public records may be exempted from disclosure if they fall within a particular specific statutory basis for exempting the records. (Gov. Code, § 6254.) Additionally, public records may also be exempt from disclosure if the agency can show that "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 6255, subd. (a).) If "the requester has alternative, less intrusive means of obtaining the information sought" the public interest in disclosure is minimal, although the "existence of an alternative means does not wholly undermine the public interest in disclosure." (*County of Santa Clara v. Superior Court (Santa Clara)* (2009) 170 Cal.App.4th 1301,

1325 [citing *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1020, 1025].)

Section 6253.9 governs an agency's duty to produce electronic copies of records under the PRA. It provides:

a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure...that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) ...the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

(Gov. Code, § 6253.9.) Thus, a government agency is required by the PRA to produce non-exempt responsive computer records in the same manner as paper records, and can be required to compile, redact or omit information from an electronic record. (See *Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 669.) Section 6253.9 contemplates that public agencies can be required to gather and segregate disclosable electronic data from nondisclosable exempt information and perform data compilation, extraction or computer programming if "necessary to produce a copy of the record." (*Ibid.* [citing Gov. Code, § 6253.9, subdivision (b)].) However, the PRA does not require an agency to create a new record: an agency "cannot be required to create a new record by changing the substantive content of an existing record or replacing existing data with new data." (*Ibid.* [citing *Yeager v. Drug Enforcement Admin.* (D.C. Cir. 1982) 678 F.2d 315, 323 and noting that "Segregating and extracting data is a far cry from requiring public agencies to undertake the extensive 'manipulation or restructuring of the substantive content of a record.'"]) Additionally, agencies need not draft summary or explanatory material, perform calculations on data, or create inventories of data in response to a records request. (*National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward* (2020) 9 Cal.5th 488, 502; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075; see also *Sander v. Superior Court*, *supra*, 26 Cal.App.5th, at p. 669.)

## ii. Pertinent Law Governing the Public Availability of CCR.

The Administrative Procedure Act (APA) (see Gov. Code §§ 11340, et. seq.) among other things, establishes the OAL and sets forth specific statutes governing rulemaking, or an agency's promulgation of regulations, which comprise the CCR. Section 11344, requires OAL to make the CCR available online. Section 11344 provides:

(OAL) shall do all of the following:

- (a) Provide for the official compilation, printing, and publication of adoption, amendment, or repeal of regulations, which shall be known as the [CCR]. On and after July 1, 1998, [OAL] shall make available on the Internet, free of charge, the full text of the [CCR], and may contract with another state agency or a private entity in order to provide this service.
- (b) Make available on its Internet Web site a list of, and a link to the full text of, each regulation filed with the Secretary of State that is pending effectiveness pursuant to Section 11343.4.



(c) Provide for the compilation, printing, and publication of weekly updates of the California Code of Regulations....

(Gov. Code, § 11344.) OAL is also required to supply a complete set of the CCR and its Supplement to any county clerk. (*Id.*, at § 11344.2.) Additionally, the CCR "shall be sold at prices which will reimburse the state for all costs incurred for printing, publication, and distribution." (*Id.*, at § 11344.4.)

### iii. The Petition is Denied as to OAL.

Petitioner argues that OAL violated the PRA by not providing the CCR to Petitioner in a "structured, machine-readable" format. Underpinning Petitioner's argument is its belief that OAL possesses a "Master Database" through its contract with Thomson Reuters/West Publishing, and has the ability to access the Master Database and provide Petitioner the CCR to Petitioner in a "structured, machine-readable" format.

OAL contends that Petitioner is demanding OAL provide the CCR in a format that it does not possess, and that it is really trying to compel OAL to create an entirely *new* record, which the PRA does not require.

Petitioner has not shown that OAL violated the PRA. OAL neither possesses the Master Database, nor do the PRA or pertinent statutes impose any duty upon OAL to provide the CCR in the "structured, machine-readable" format sought by Petitioner.

- **OAL Does Not Possess the Master Database.**

Petitioner argues that OAL constructively possesses the Master Database. OAL disagrees and claims that it does not possess the Master Database, or the data (the updated versions of regulations comprising the CCR) in it.

OAL has the better argument.

OAL declares that the Master Database exists in proprietary software of Thomson Reuters/West Publishing. (Declaration of Kevin Hull (Hull Decl.), ¶5; Declaration of Andrew Martens (Martens Decl.), ¶6.) The language of the contract with Thomson Reuters/West Publishing provides for a "useable electronic data base" in a "portable and easily processed or converted format" upon completion or termination of the contract. (Administrative Record<sup>4</sup>, Exh. B [000009] and Exh. J [000052-53].) The above contractual term ensures that OAL can obtain all the data (the regulations comprising the CCR) if needed to provide it to a new contractor. As the contract is not completed or terminated, OAL has not invoked this contractual term. Thus, Thomson Reuters/West Publishing has never given OAL the Master Database or the data in it.

<sup>4</sup> Petitioner has furnished a collection of exhibits that it denotes as an "administrative record."

(Hull Decl., ¶3; Martens Decl., ¶5.) The data has never been extracted and formatted in the manner requested by Petitioner.

Petitioner argues that OAL, in fact, constructively possesses the Master Database because it has the right to control it. First, this is belied by the OAL's agreement with Thomson Reuters/West Publishing. Second, Petitioner's argument that it is entitled to data from this Master Database (the CCR) in a particular format conflates OAL's right to the data *within* the Master Database with the Master Database itself, which is not a "record," and which OAL does not possess.

Thus, OAL does not possess the data in a structured-machine readable format requested by Petitioner. OAL has not violated the PRA for this reason.

- **The PRA Imposes No Duty Upon OAL To Produce the CCR in the Format Requested by Petitioner.**

Additionally, the PRA itself imposes no duty upon OAL to produce "electronic" records in the "structured, machine-readable format" requested by Petitioner.

In determining whether OAL violated the PRA, the Court must harmonize two sets of pertinent statutes: the PRA, and the APA. (*City of Chula Vista v. Drager* (2020) 49 Cal.App.5th 539, 560 ["If, after an examination of the statutes in context, they conflict on a central element, we strive to harmonize them so as to give effect to each. The Court is guided by the following principles of statutory construction."].)

"A court's overriding purpose in construing a statute is to ascertain legislative intent. ... [Citation.] In interpreting a statute to determine legislative intent, a court looks first to the words of the statute and gives them their usual and ordinary meaning. [Citation.] Statutes must be given a fair and reasonable interpretation, with due regard to the language used and the purpose sought to be accomplished.' (*Sander v. Superior Court*, *supra*, 26 Cal.App.5th, at 653-654. [internal quotations and citations omitted].)

In PRA cases, the California Constitution requires that '[a] statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.' (*Sander v. Superior Court*, *supra*, 26 Cal.App.5th, at 653-654. [citing Cal. Const., art I, § 3, subd. (b); *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617].)

Additionally, a specific statutory provision prevails over a general statute. (*See Rose v. State* (1942) 19 Cal.2d 713, 723-724.) If statutory provisions conflict, statutes that are passed later in time control. (*City of Chula Vista v. Drager*, *supra*, 49 Cal.App.5th, at p. 560 [citing *Collection Bureau of San Jose v. Rumsey* (200) 24 Cal.4th 301].)

The text of Section 6253.9 imposes no duty upon OAL to make records available in a particular format. It requires an agency to produce an "electronic" copy of records, and

contemplates that an agency may need to engage in "data compilation, extraction, or programming" to produce a record. Thus, the Court cannot find that OAL violated Section 6253.9 by failing to produce records in a "structured, machine-readable format."

The Court is mindful that the California Constitution requires that statutes, such as Section 6253.9 be "broadly construed" if it furthers the people's right of access. But the Court's inquiry does not stop here. It must also consider more specific, later-enacted statutes in the APA, and give those statutes a "fair and reasonable" interpretation.

As noted above, the Legislature has enacted more specific statutes, governing OAL's duty to make the CCR available. Pertinent here, Section 11344, provides that OAL must make the CCR publicly available on its website by posting a link to the full text of, each regulation. (Gov. Code, § 11344.) Notably, it imposes no duty upon OAL to make the CCR available in any electronic format requested by a member of the public. Thus, the Court finds that this specific statute directed only to OAL prevails over the more general PRA provisions governing all agencies.

Moreover, Section 11344, which was added in 1983, has been amended many times, most recently in 2012. (Stats. 2012, c. 295 (S.B. 1099), §3.) In contrast, Section 6253.9 was added in 2000, and has not been updated. (Gov. Code, § 6253.9 [Added by Stats. 2000, c. 982, (A.B. 2799) § 2.]) Thus, because Section 11344 is a later-amended statute, the Court presumes that the Legislature was aware of the PRA and Section 6253.9, when amending it.

Accordingly, the OAL has complied with Section 11344 and has not violated the PRA by failing to produce records in a "structured, machine-readable" format.

- **Petitioner's Other Arguments Show no Violation of the PRA.**

Petitioner claims that the website that OAL directed it to is not "publicly available" because it is subject to technological and legal restrictions to prevent users from text-searching, copying and pasting, or distributing portions of the CCR. (Opening Brief, p. 6.) Nothing in the PRA requires that discloseable records be searchable or adaptable for copying and pasting. Additionally, for the same reasons articulated above, OAL has not violated the PRA in this regard.

Petitioner also argues that OAL is trying to circumvent its duties to disclose records by outsourcing the publication of to a third party in violation of Section 6720. This statute, enacted in 1995, provides in pertinent part that "no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this chapter." (Gov. Code, § 6270 [Added by Stats. 1995, c. 108 (A.B. 141), § 1.]

However, the Court must presume that the Legislature, in enacting and amending statutes regarding OAL's duty to publish the CCR, is aware of OAL's arrangement with

Thomson Reuters/West. Again, the Court notes that Section 11344, was amended several times after the enactment of Section 6270, and was most recently amended in 2012. Thus, OAL has not violated the PRA on this ground.

**b. Claims Against Respondent BSC.**

Petitioner argues that BSC has violated the PRA by not disclosing an electronic copy of Title 24. BSC responds that Section 6254, subdivision (k), exempts Title 24 from disclosure, as it contains model codes drafted by Intervenor NPFA and ICC, which are protected by federal copyright law. BSC alternatively argues that Section 6255, the "catch-all" exemption, exempts Title 24 from disclosure, as the public interest in nondisclosure clearly outweighs the public interest in disclosure. Intervenor NPFA and ICC, which are aligned with BSC, note the pendency of two federal actions in which the similar copyright issues are addressed. Intervenor argues that the records are exempt from disclosure, but also argue that this proceeding should be stayed, pending resolution of the federal cases.

**i. Legal Standard.**

The PRA contains a lengthy list of statutory exemptions from disclosure. (Gov. Code, § 6254.) Pertinent here, an item is statutorily exempt from disclosure if they are "exempted or prohibited pursuant to federal or state law." (*Id.*, § 6254, subd. (k).) BSC and Intervenor claim that Title 24 is protected by federal copyright law, as it incorporates by reference model codes drafted by Intervenor and other SDOs, and thus, Title 24 is statutorily exempt from disclosure.

"When an action is brought in a court of this state involving the same parties and the same subject matter as an action already pending in a court of another jurisdiction, a stay of the California proceedings is not a matter of right, but within the sound discretion of the trial court." (*Farmland Irrigation Co. v. Dopplmaier* (1957) 48 Cal. 2d 208, 215.)

"It is black letter law that, when a federal action has been filed covering the same subject matter as is involved in a California action, the California court has the discretion but not the obligation to stay the state court action." (*Caifa Prof. Law Corp. v. State Farm Fire & Cas. Co. (Caifa)* (1993) 15 Cal.App.4th 800, 804.) *Caifa* enumerated various factors that courts should apply when deciding whether to stay a matter pending in a California court because of pending federal litigation. It provided that courts "should consider the importance of discouraging multiple litigation designed solely to harass an adverse party, and of avoiding unseemly conflicts with the courts of other jurisdictions. It should also consider whether the rights of the parties can best be determined by the court of the other jurisdiction because of the nature of the subject matter, the availability of witnesses, or the stage to which the proceedings in the other court have already advanced." (*Id.*) Courts should also consider whether the federal action is pending in California. (*Id.*)

Of additional importance is the Court's inherent authority to control its docket. Courts routinely stay matters where circumstances warrant. (*Frieberg v City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489 ["Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency."].)

**ii. The Petition is Stayed as to Claims against Respondent BSC.**

Petitioner argues that BSC violated the PRA by not disclosing Title 24, because it actually possesses it; the online version cited by OAL and BSC is not "publicly available," as the user is subject to end-user restrictions; and no exemption from disclosure applies, particularly Section 6254, subdivision (k).

Petitioner contends that although Title 24 contains model codes drafted by Intervenor that are incorporated by reference, the model codes in Title 24 have now become "the law," and lost their copyright protection. Thus, Petitioner argues, Section 6254, subdivision (k), does not apply.

BSC responds that Title 24 is exempt under section 6254, subdivision (k), or alternatively, Section 6255, and that it complied with the PRA by making records available electronically.

Intervenor argues that a stay is appropriate in light of pending federal litigation.<sup>5</sup> The Court agrees.

The issue of whether model codes that have been incorporated by reference into law is currently being litigated in federal court. In *American Society for Testing and Materials, et al v. Public.Resource.Org (ASTM)* (D.C. Cir. 2018) 896 F.3d 437, 441. Intervenor NFPA and two other SDOs sued Petitioner for copyright and trademark infringement, after Petitioner purchased copies of incorporated standards, scanned them into digital files, appended coversheets explaining Petitioner's mission and the source of the standards, and posted the documents to a public website. (*Id.*, at p. p. 444.) In some cases, Petitioner modified files so that the text of the standard could be more easily enlarged, searched, and read with text-to-speech software. (*Ibid.*)

In that case, Petitioner made, and is making, the same arguments raised here: that NFPA and the other SDOs lose the benefit of copyright protection for model standards they authored once those model standards are incorporated by reference. In *ASTME*, Petitioner and NFPA and the other plaintiffs filed competing motions for summary judgment. (*Ibid.*) The district court granted NFPA and the SDOs' motion, rejecting Petitioner's arguments. The district court found that NFPA and the SDOs held copyrights in the model standards incorporated by reference, and that Petitioner

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<sup>5</sup> Petitioner faults Intervenor for raising this issue in the briefs, rather than bringing a separate motion for a stay under Code of Civil Procedure, section 1005. This point is well-taken. However, because Petitioner has been afforded the opportunity to respond to Intervenor's request for a stay, the Court will consider it.

improperly reproduced them, and that Petitioner failed to create a triable issue of fact that its reproduction qualified as “fair use”—a defense to copyright infringement. (*Ibid.*)

PRO appealed that decision to the D.C. Circuit. The D.C. Circuit vacated the district court's decision. In doing so, it found that the district court should have considered Petitioner's affirmative defense of fair use. (*ASTM*, *supra*, 896 F.3d 437, 440-441.) Accordingly, the D.C. Circuit has remanded the matter to the district court to consider Petitioner's affirmative defense to the motion for summary judgment brought by NFPA and the other SDOs. (*Id.*, at p. 458.) In briefing related to that motion, Petitioner does not dispute that it advances the same argument that it advances here: that codes that governments have expressly incorporated into law, lose copyright protection and that standards incorporated by reference are “government edicts” under *Georgia v. Public Resource.Org, Inc.* (*Georgia*) (2020) 140 S. Ct 1498.

Additionally, Intervenor ICC is involved in pending litigation in the Southern District of New York, where the accused infringer (a company named UpCodes) has raised similar defenses based on incorporation by reference, that Petitioner raises in *ASTM* and this case. (*International Code Council, Inc. v. UpCodes, Inc.* (S.D.N.Y. May 27, 2020, No. 17-cv-6261.)

The Court exercises its discretion to stay the proceedings against BSC. At issue is whether the model codes drafted by intervenors and incorporated into Title 24 are protected by federal copyright law. The federal proceedings in *ASTM* are addressing this very issue, and as to the same parties: Intervenor NFPA and Petitioner. Additionally, another federal court is addressing these similar issues as to another organization and Intervenor ICC.

First, the nature of the subject matter—federal copyright law—is the exclusive province of federal court. (*Sears Roebuck & Co. v. Stieffel Co.* (1964) 376 U.S. 255, 231, fn.7; *Topolos v. Caldewey* (9th Cir. 1983) 698 F.2d 991, 993-994.) Petitioner cites to *Santa Clara*, *supra*, 170 Cal.App.4th 1301, for the proposition that “California law” addresses when the work of California agencies may be subject to copyright protection. This argument is unavailing. *Santa Clara* addressed copyright issues that arose after an agency claimed copyright protection in a work it authored. That is not the case here. The issue is whether copyright law protects *Intervenors'* works, which is currently under consideration in federal courts. The Court also rejects Petitioner's argument that the nature of the subject matter in this case differs, because the Court is concerned with the applicability of the PRA. This is true, but, if federal copyright law applies and protects model codes incorporated by reference into regulations, then this necessarily resolves whether BSC has violated the PRA. Thus, staying the proceedings also promotes judicial efficiency.

Second, a stay avoids the potential for “unseemly” conflicts with federal copyright issues raised by Petitioner, such as whether the “government edicts” doctrine, as articulated by the Supreme Court in *Georgia*, prevents intervenors from asserting a copyright interest in the portions of Title 24 that incorporates their model codes by reference.

Third, the *ASTM* case is significantly advanced in the proceedings, weighing in favor of a stay. As noted above, the *ASTM* is on remand from the Court of Appeal where the district court will again consider the motions for summary judgment, including application of the government edicts' doctrine.

These factors all support the Court's decision to stay the proceedings as to BSC.

Petitioner argues upon reply, that BSC may not rely on *any* statutory exemption in Section 6254, because BSC has disclosed some copies of Title 24, and thus, waived its right to assert this exemption under Section 6254.5. Petitioner opposed BSC's nondisclosure based on Section 6254 on the merits, and did not at all raise this "waiver" argument in its Opening Brief. Thus, Intervenor and BSC had no opportunity to respond to it. Accordingly, the Court does not consider it.

### **3. Disposition.**

The Petition is denied as to Respondent OAL. The Petition is stayed as to Respondent BSC in light of the *ASTM* matter.

Counsel for Respondent OAL shall prepare a formal order and a separate judgment, incorporating this ruling as an exhibit to each, submit them to opposing counsel for approval as to form, and thereafter submit them to the Court for signature and entry of judgment in accordance with California Rules of Court, rule 3.1312.

1 ROB BONTA  
Attorney General of California  
2 MICHELLE M. MITCHELL  
Supervising Deputy Attorney General  
3 KEITH L. WURSTER  
Deputy Attorney General  
4 State Bar No. 198918  
LAURA A. RANDES-LITTLE  
5 Deputy Attorney General  
State Bar No. 232930  
6 1300 I Street, Suite 125  
P.O. Box 944255  
7 Sacramento, CA 94244-2550  
Telephone: (916) 210-6504  
8 E-mail: Laura.RandlesLittle@doj.ca.gov  
*Attorneys for Respondent*  
9 *Office of Administrative Law*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SACRAMENTO  
12 CIVIL DIVISION  
13

14  
15 **PUBLIC.RESOURCE.ORG, INC.,**

Petitioner,

17 v.

18 **CALIFORNIA OFFICE OF**  
19 **ADMINISTRATIVE LAW, and the**  
20 **CALIFORNIA BUILDING STANDARDS**  
**COMMISSION,**

21 Respondents.  
22  
23

Case No. 34-2021-80003612

**NOTICE OF ENTRY OF ORDER AND JUDGMENT**

Date: May 10, 2022  
Dept: 27  
Judge: Steven M. Gevercer  
Action Filed: March 17, 2021

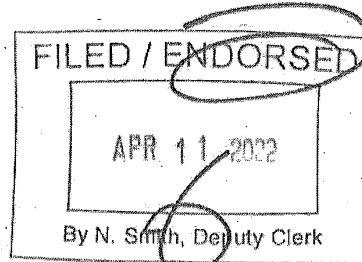
24 Please take notice that on April 11, 2022, the Honorable Steven M. Gevercer in Department  
25 27 of the Superior Court of the State of California, County of Sacramento, entered an Order  
26 denying Petitioner's Verified Petition for a Writ of Mandate as to Respondent California Office  
27 of Administrative Law. A true and correct copy of that Order is attached hereto as Exhibit 1.  
28





# **EXHIBIT 1**

1 ROB BONTA  
Attorney General of California  
2 MICHELLE M. MITCHELL  
Supervising Deputy Attorney General  
3 KEITH L. WURSTER  
Deputy Attorney General  
4 State Bar No. 198918  
LAURA A. RANGLES-LITTLE  
5 Deputy Attorney General  
State Bar No. 232930  
6 1300 I Street, Suite 125  
P.O. Box 944255  
7 Sacramento, CA 94244-2550  
Telephone: (916) 210-6504  
8 Fax:  
E-mail: Laura.RandlesLittle@doj.ca.gov  
9 *Attorneys for Respondents*  
*Office of Administrative Law and*  
10 *Building Standards Commission*



11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SACRAMENTO  
13 CIVIL DIVISION  
14

15  
16 PUBLIC.RESOURCE.ORG, INC.,  
17 Petitioner,  
18 v.  
19 CALIFORNIA OFFICE OF  
20 ADMINISTRATIVE LAW, and the  
21 CALIFORNIA BUILDING STANDARDS  
COMMISSION,  
22 Respondents.

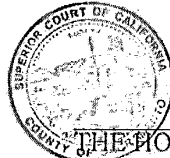
34-2021-80003612  
~~PROPOSED~~ ORDER

23  
24 After consideration of the papers submitted by the parties and Interventors, the Honorable  
25 Steven M. Gevercer issued a tentative ruling with regard to the Verified Petition for Writ of  
26 Mandate filed by Petitioner Public.Resource.Org, Inc. against the California Office of  
27 Administrative Law and the California Building Standards Commission. The parties did not  
28

1 request a hearing and the tentative ruling became the ruling of the Court. For the reasons stated in  
2 the tentative ruling, attached here as Exhibit A and incorporated here by reference, Petitioner's  
3 Verified Petition for Writ of Mandate is denied as to Respondent California Office of  
4 Administrative Law. As to Respondent Building Standards Commission, the Petitioner's  
5 Verified Petition for Writ of Mandate is stayed pending resolution of the matter identified in  
6 Exhibit A.

7 IT IS SO ORDERED.

8 Dated April 14, 2022



*Steven M. Gevercer*

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10 THE HONORABLE STEVEN M. GEVERCER  
11 JUDGE OF THE SUPERIOR COURT  
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# EXHIBIT A

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

DATE/TIME: JUDGE:	March 25, 2022 2:00 p.m. HON. STEVEN M. GEVERCER	DEP. NO.: CLERK:	27 N. SMITH
Public.Resource.Org., Inc., Petitioner,		Case No. 34-2021-80003612	
v.			
California Office of Administrative Law, and the California Building Standards Commission, Respondents.			
Nature of Proceedings:		Petition for Writ of Mandate	

I. TENTATIVE RULING.

The following shall constitute the Court's tentative ruling on the above matter, set for hearing in Department 27, on Friday, March 25, 2022, at 2:00 p.m. The tentative ruling shall become the ruling of the Court, unless a party desiring to be heard so advises the Clerk of Department 27 no later than 4:00 p.m. on the Court day preceding the hearing, and further advises the Clerk that such party has notified the other side of its intention to appear.

The Court strongly encourages parties to appear remotely for the hearing on the tentative ruling through the Court's Zoom Application. But any party wishing to appear in person may do so, provided that party notifies the Court by 4:00 the Court day before the hearing.

The parties may join the Zoom session for hearing on the tentative ruling by audio and/or video through the following link/telephone number:

<a href="https://saccourt.zoom.us/my/dept27a">https://saccourt.zoom.us/my/dept27a</a>	(888) 475-4499	ID: 553-829-7195
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Petitioner, Public.Resource.Org, Inc. has filed a petition for writ of mandate (Petition) against Respondents Office of Administrative Law (OAL) and the California Building Standards Commission (BSC), directing Respondents to comply with the Public Records Act (Gov. Code, §§ 6250 *et seq.*) (PRA). As to Respondent OAL, the Petition is denied. As to Respondent BSC, the Petition is stayed pending resolution of a final judgment from the District of Columbia District Court in *American Society for Testing and Materials, et al v. Public.Resource.Org* (D.C. Cir. 2018) 896 F.3d 437, 441.

## 1. Background.

On December 29, 2020, Petitioner<sup>1</sup> sent a PRA request to OAL for Titles 1-5, 7-23, and 25-28 of the California Code of Regulations (collectively, CCR).<sup>2</sup> (Petition, ¶13, Exh. C.) Petitioner requested that OAL provide the information "in all formats, in your possession, including (but not limited to) structured, machine-readable digital formats, such as XMF or PDF files," pursuant to Government Code section<sup>3</sup> 6250, subdivision (a)(1). (Petition, Exh. C.) Petitioner also informed OAL that it must produce a copy of an electronic record in any format that has been used by it to create copies for its own use or for provision to other agencies, pursuant to Section 6250, subdivision (a)(2). (*Ibid.*)

OAL responded, stating that it could provide a paper copy of the CCR to Petitioner, and offered to scan each page of the print version, to serve as an "electronic" copy. (Petition, Exh. D.) OAL also directed Petitioner to a website that contained the most "up to date" version of the CCR. (*Ibid.*) OAL also offered to provide a CD-ROM with past versions of the CCR, but noted that the contents of the CD-ROM cannot be copied in whole or transferred to another storage device. (*Ibid.*) Petitioner and OAL corresponded further, and Petitioner contended that OAL's response was insufficient, and that the website to which it directed Petitioner was not "publicly available." (Petition, ¶¶14-19.)

Also on December 29, 2020, Petitioner also made a nearly identical, separate PRA request for Title 24 of the CCR (Title 24) to the Office of Public Affairs, which contains the Department of General Services, and BSC. (Petition, Exh. F.) Again, Petitioner requested an electronic copy of Title 24, and sought Title 24 in all formats in BSC's possession, including "structured, machine-readable formats." (*Ibid.*)

BSC also responded that it could not produce the records. BSC stated that a hard copy of Title 24 was available for inspection at BSC's office, and noted that hard copies of Title 24 were available for public viewing and copying at state document depository libraries or at city of county building or planning departments. (Petition, Exh. G.) BSC stated that Title 24 may be viewed online on the BSC's website, but because BSC did not have publishing rights, it could not provide copies to the public. (*Ibid.*) BSC explained that this is because Title 24 is based on and includes model codes produced by standards developing organizations (SDOs), Intervenor National Fire Protection Association (NFPA), International Codes Council (ICC), and the International Association of Plumbing and Mechanical Officials. (*Ibid.*) BSC also responded that

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<sup>1</sup> Petitioner is a non-profit organization with the mission of providing public access to government records and legal materials. (Petition, ¶5.)

<sup>2</sup> Respondent OAL oversees the publication and distribution of Titles 1-5, 7-23, and 25-28 of the CCR. (Petition, ¶6.) Respondent BSC administers the adoption of, and codifies and publishes the California Building Standards Code as Title 24 of the CCR. (Petition, ¶7.)

<sup>3</sup> Unless otherwise specified, all statutory references shall be to the Government Code.

individual parts or a full set of Title 24 may be purchased from these three publishing entities. (*Ibid.*)

Petitioner then filed a petition for writ of mandate, alleging that OAL and BSC violated the PRA. On August, 27, 2021, the Court granted NFPA's and ICC's motion for leave to intervene in this proceeding.

## 2. Discussion.

### a. Claims Against OAL.

Petitioner argues that OAL has violated the PRA by refusing to produce the records and insufficiently responding to its request, namely by failing to provide an "electronic" copy of the CCR in a "structured, machine-readable" format. (Opening Brief, 9:4.) Respondent OAL responds that the Legislature, in enacting the pertinent provisions of the Administrative Procedure Act (APA), dictated how the CCR should be made publicly available, and that in any event it, has complied with the PRA in responding to Petitioner.

#### i. PRA Statutes.

Under the PRA, a public agency must make public records promptly available to any person who submits a PRA request that "reasonably describes an identifiable record or records." (Gov. Code, § 6253, subd. (b).) The PRA enables persons to seek "injunctive or declarative relief or writ of mandate" to enforce that person's right to inspect or receive copies of public records. (Gov. Code, §§ 6258, 6259.)

The PRA is construed broadly in favor of access. (*Am. Civil Liberties Union Foundation v. Superior Court* (2017) 3 Cal.5th 1032, 1040.) Exemptions from disclosure must be narrowly construed. (*Id.*) The agency withholding the records bears the burden of proving that an exception from disclosure applies. (*California First Amend. Coal. v. Superior Court (California First)* (1998) 67 Cal.App.4th 159, 167.)

The PRA imposes on agencies an affirmative obligation to make available to the public any public records in their possession, unless the agency can demonstrate that a responsive record is otherwise exempt from disclosure. (Gov. Code, §§ 6253, 6254, 6255.) Public records may be exempted from disclosure if they fall within a particular specific statutory basis for exempting the records. (Gov. Code, § 6254.) Additionally, public records may also be exempt from disclosure if the agency can show that "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 6255, subd. (a).) If "the requester has alternative, less intrusive means of obtaining the information sought" the public interest in disclosure is minimal, although the "existence of an alternative means does not wholly undermine the public interest in disclosure." (*County of Santa Clara v. Superior Court (Santa Clara)* (2009) 170 Cal.App.4th 1301,



1325 [citing *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1020, 1025].)

Section 6253.9 governs an agency's duty to produce electronic copies of records under the PRA. It provides:

- a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure...that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:
  - (1) The agency shall make the information available in any electronic format in which it holds the information.
  - (2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.
- (b) ...the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:
  - (1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.
  - (2) The request would require data compilation, extraction, or programming to produce the record.
- (c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.
- (d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.
- (e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

(Gov. Code, § 6253.9.) Thus, a government agency is required by the PRA to produce non-exempt responsive computer records in the same manner as paper records, and can be required to compile, redact or omit information from an electronic record. (See *Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 669.) Section 6253.9 contemplates that public agencies can be required to gather and segregate disclosable electronic data from nondisclosable exempt information and perform data compilation, extraction or computer programming if "necessary to produce a copy of the record." (*Ibid.*, [citing Gov. Code, § 6253.9, subdivision (b)].) However, the PRA does not require an agency to create a *new* record: an agency "cannot be required to create a new record by changing the substantive content of an existing record or replacing existing data with new data." (*Ibid.*, [citing *Yeager v. Drug Enforcement Admin.* (D.C. Cir. 1982) 678 F.2d 315, 323 and noting that "Segregating and extracting data is a far cry from requiring public agencies to undertake the extensive 'manipulation or restructuring of the substantive content of a record.'"]).) Additionally, agencies need not draft summary or explanatory material, perform calculations on data, or create inventories of data in response to a records request. (*National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward* (2020) 9 Cal.5th 488, 502; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075; see also *Sander v. Superior Court*, *supra*, 26 Cal.App.5th, at p. 669.)

## ii. Pertinent Law Governing the Public Availability of CCR.

The Administrative Procedure Act (APA) (see Gov. Code §§ 11340, et. seq.) among other things, establishes the OAL and sets forth specific statutes governing rulemaking, or an agency's promulgation of regulations, which comprise the CCR. Section 11344, requires OAL to make the CCR available online. Section 11344 provides:

(OAL) shall do all of the following:

- (a) Provide for the official compilation, printing, and publication of adoption, amendment, or repeal of regulations, which shall be known as the [CCR]. On and after July 1, 1998, [OAL] shall make available on the Internet, free of charge, the full text of the [CCR], and may contract with another state agency or a private entity in order to provide this service.
- (b) Make available on its Internet Web site a list of, and a link to the full text of, each regulation filed with the Secretary of State that is pending effectiveness pursuant to Section 11343.4.

- (c) Provide for the compilation, printing, and publication of weekly updates of the California Code of Regulations....

.....  
(Gov. Code, § 11344.) OAL is also required to supply a complete set of the CCR and its Supplement to any county clerk. (*Id.*, at § 11344.2.) Additionally, the CCR "shall be sold at prices which will reimburse the state for all costs incurred for printing, publication, and distribution." (*Id.*, at § 11344.4.)

### iii. The Petition is Denied as to OAL.

Petitioner argues that OAL violated the PRA by not providing the CCR to Petitioner in a "structured, machine-readable" format. Underpinning Petitioner's argument is its belief that OAL possesses a "Master Database" through its contract with Thomson Reuters/West Publishing, and has the ability to access the Master Database and provide Petitioner the CCR to Petitioner in a "structured, machine-readable" format.

OAL contends that Petitioner is demanding OAL provide the CCR in a format that it does not possess, and that it is really trying to compel OAL to create an entirely *new* record, which the PRA does not require.

Petitioner has not shown that OAL violated the PRA. OAL neither possesses the Master Database, nor do the PRA or pertinent statutes impose any duty upon OAL to provide the CCR in the "structured, machine-readable" format sought by Petitioner.

- **OAL Does Not Possess the Master Database.**

Petitioner argues that OAL constructively possesses the Master Database. OAL disagrees and claims that it does not possess the Master Database, or the data (the updated versions of regulations comprising the CCR) in it.

OAL has the better argument.

OAL declares that the Master Database exists in proprietary software of Thomson Reuters/West Publishing. (Declaration of Kevin Hull (Hull Decl.), ¶5; Declaration of Andrew Martens (Martens Decl.), ¶6.) The language of the contract with Thomson Reuters/West Publishing provides for a "useable electronic data base" in a "portable and easily processed or converted format" upon completion or termination of the contract. (Administrative Record<sup>4</sup>, Exh. B [000009] and Exh. J [000052-53].) The above contractual term ensures that OAL can obtain all the data (the regulations comprising the CCR) if needed to provide it to a new contractor. As the contract is not completed or terminated, OAL has not invoked this contractual term. Thus, Thomson Reuters/West Publishing has never given OAL the Master Database or the data in it.

<sup>4</sup> Petitioner has furnished a collection of exhibits that it denotes as an "administrative record."

(Hull Decl., ¶3; Martens Decl., ¶5.) The data has never been extracted and formatted in the manner requested by Petitioner.

Petitioner argues that OAL, in fact, constructively possesses the Master Database because it has the right to control it. First, this is belied by the OAL's agreement with Thomson Reuters/West Publishing. Second, Petitioner's argument that it is entitled to data from this Master Database (the CCR) in a particular format conflates OAL's right to the data *within* the Master Database with the Master Database itself, which is not a "record," and which OAL does not possess.

Thus, OAL does not possess the data in a structured-machine readable format requested by Petitioner. OAL has not violated the PRA for this reason.

- **The PRA Imposes No Duty Upon OAL To Produce the CCR in the Format Requested by Petitioner.**

Additionally, the PRA itself imposes no duty upon OAL to produce "electronic" records in the "structured, machine-readable format" requested by Petitioner.

In determining whether OAL violated the PRA, the Court must harmonize two sets of pertinent statutes: the PRA, and the APA. (*City of Chula Vista v. Drager* (2020) 49 Cal.App.5th 539, 560 ["If, after an examination of the statutes in context, they 'conflict on a central element, we strive to harmonize them so as to give effect to each. The Court is guided by the following principles of statutory construction.'"])

"A court's overriding purpose in construing a statute is to ascertain legislative intent. ... [Citation.] In interpreting a statute to determine legislative intent, a court looks first to the words of the statute and gives them their usual and ordinary meaning. [Citation.] Statutes must be given a fair and reasonable interpretation, with due regard to the language used and the purpose sought to be accomplished.' (*Sander v. Superior Court*, *supra*, 26 Cal.App.5th, at 653-654 [internal quotations and citations omitted].)

In PRA cases, the California Constitution requires that '[a] statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.' (*Sander v. Superior Court*, *supra*, 26 Cal.App.5th, at 653-654. [citing Cal. Const., art I, § 3, subd. (b); *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617].)

Additionally, a specific statutory provision prevails over a general statute. (*See Rose v. State* (1942) 19 Cal.2d 713, 723-724.) If statutory provisions conflict, statutes that are passed later in time control. (*City of Chula Vista v. Drager*, *supra*, 49 Cal.App.5th, at p. 560 [citing *Collection Bureau of San Jose v. Rumsey* (200) 24 Cal.4th 301].)

The text of Section 6253.9 imposes no duty upon OAL to make records available in a particular format. It requires an agency to produce an "electronic" copy of records, and

contemplates that an agency may need to engage in "data compilation, extraction, or programming" to produce a record. Thus, the Court cannot find that OAL violated Section 6253.9 by failing to produce records in a "structured, machine-readable format."

The Court is mindful that the California Constitution requires that statutes, such as Section 6253.9 be "broadly construed" if it furthers the people's right of access. But the Court's inquiry does not stop here. It must also consider more specific, later-enacted statutes in the APA, and give those statutes a "fair and reasonable" interpretation.

As noted above, the Legislature has enacted more specific statutes, governing OAL's duty to make the CCR available. Pertinent here, Section 11344, provides that OAL must make the CCR publicly available on its website by posting a link to the full text of, each regulation. (Gov. Code, § 11344.) Notably, it imposes no duty upon OAL to make the CCR available in any electronic format requested by a member of the public. Thus, the Court finds that this specific statute directed only to OAL prevails over the more general PRA provisions governing all agencies.

Moreover, Section 11344, which was added in 1983, has been amended many times, most recently in 2012. (Stats. 2012, c. 295 (S.B. 1099), §3.) In contrast, Section 6253.9 was added in 2000, and has not been updated. (Gov. Code, § 6253.9 [Added by Stats. 2000, c. 982, (A.B. 2799) § 2.]) Thus, because Section 11344 is a later-amended statute, the Court presumes that the Legislature was aware of the PRA and Section 6253.9, when amending it.

Accordingly, the OAL has complied with Section 11344 and has not violated the PRA by failing to produce records in a "structured, machine-readable" format.

- **Petitioner's Other Arguments Show no Violation of the PRA.**

Petitioner claims that the website that OAL directed it to is not "publicly available" because it is subject to technological and legal restrictions to prevent users from text-searching, copying and pasting, or distributing portions of the CCR. (Opening Brief, p. 6.) Nothing in the PRA requires that discloseable records be searchable or adaptable for copying and pasting. Additionally, for the same reasons articulated above, OAL has not violated the PRA in this regard.

Petitioner also argues that OAL is trying to circumvent its duties to disclose records by outsourcing the publication of to a third party in violation of Section 6720. This statute, enacted in 1995, provides in pertinent part that "no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this chapter." (Gov. Code, § 6270 [Added by Stats. 1995, c. 108 (A.B. 141), § 1.]

However, the Court must presume that the Legislature, in enacting and amending statutes regarding OAL's duty to publish the CCR, is aware of OAL's arrangement with

Thomson Reuters/West. Again, the Court notes that Section 11344, was amended several times after the enactment of Section 6270, and was most recently amended in 2012. Thus, OAL has not violated the PRA on this ground.

**b. Claims Against Respondent BSC.**

Petitioner argues that BSC has violated the PRA by not disclosing an electronic copy of Title 24. BSC responds that Section 6254, subdivision (k), exempts Title 24 from disclosure, as it contains model codes drafted by Intervenor NPFA and ICC, which are protected by federal copyright law. BSC alternatively argues that Section 6255, the "catch-all" exemption, exempts Title 24 from disclosure, as the public interest in nondisclosure clearly outweighs the public interest in disclosure. Intervenor NPFA and ICC, which are aligned with BSC, note the pendency of two federal actions in which the similar copyright issues are addressed. Intervenor argue that the records are exempt from disclosure, but also argue that this proceeding should be stayed, pending resolution of the federal cases.

**i. Legal Standard.**

The PRA contains a lengthy list of statutory exemptions from disclosure. (Gov. Code, § 6254.) Pertinent here, an item is statutorily exempt from disclosure if they are "exempted or prohibited pursuant to federal or state law." (*Id.*, § 6254, subd. (k).) BSC and Intervenor claim that Title 24 is protected by federal copyright law, as it incorporates by reference model codes drafted by Intervenor and other SDOs, and thus, Title 24 is statutorily exempt from disclosure.

"When an action is brought in a court of this state involving the same parties and the same subject matter as an action already pending in a court of another jurisdiction, a stay of the California proceedings is not a matter of right, but within the sound discretion of the trial court." (*Farmland Irrigation Co. v. Dopplmaier* (1957) 48 Cal. 2d 208, 215.)

"It is black letter law that, when a federal action has been filed covering the same subject matter as is involved in a California action, the California court has the discretion but not the obligation to stay the state court action." (*Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co. (Caiafa)* (1993) 15 Cal.App.4th 800, 804.) *Caiafa* enumerated various factors that courts should apply when deciding whether to stay a matter pending in a California court because of pending federal litigation. It provided that courts "should consider the importance of discouraging multiple litigation designed solely to harass an adverse party, and of avoiding unseemly conflicts with the courts of other jurisdictions. It should also consider whether the rights of the parties can best be determined by the court of the other jurisdiction because of the nature of the subject matter, the availability of witnesses, or the stage to which the proceedings in the other court have already advanced." (*Id.*) Courts should also consider whether the federal action is pending in California. (*Id.*)

Of additional importance is the Court's inherent authority to control its docket. Courts routinely stay matters where circumstances warrant. (*Frieberg v City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489 ["Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency."].)

**ii. The Petition is Stayed as to Claims against Respondent BSC.**

Petitioner argues that BSC violated the PRA by not disclosing Title 24, because it actually possesses it; the online version cited by OAL and BSC is not "publicly available," as the user is subject to end-user restrictions; and no exemption from disclosure applies, particularly Section 6254, subdivision (k).

Petitioner contends that although Title 24 contains model codes drafted by Intervenor's that are incorporated by reference, the model codes in Title 24 have now become "the law," and lost their copyright protection. Thus, Petitioner argues, Section 6254, subdivision (k), does not apply.

BSC responds that Title 24 is exempt under section 6254, subdivision (k), or alternatively, Section 6255, and that it complied with the PRA by making records available electronically.

Intervenor's argue that a stay is appropriate in light of pending federal litigation.<sup>5</sup> The Court agrees.

The issue of whether model codes that have been incorporated by reference into law is currently being litigated in federal court. In *American Society for Testing and Materials, et al v. Public.Resource.Org (ASTM)* (D.C. Cir. 2018) 896 F.3d 437, 441. Intervenor NFPA and two other SDOs sued Petitioner for copyright and trademark infringement, after Petitioner purchased copies of incorporated standards, scanned them into digital files, appended coversheets explaining Petitioner's mission and the source of the standards, and posted the documents to a public website. (*Id.*, at p. 444.) In some cases, Petitioner modified files so that the text of the standard could be more easily enlarged, searched, and read with text-to-speech software. (*Ibid.*)

In that case, Petitioner made, and is making, the same arguments raised here: that NFPA and the other SDOs lose the benefit of copyright protection for model standards they authored once those model standards are incorporated by reference. In *ASTME*, Petitioner and NFPA and the other plaintiffs filed competing motions for summary judgment. (*Ibid.*) The district court granted NFPA and the SDOs' motion, rejecting Petitioner's arguments. The district court found that NFPA and the SDOs held copyrights in the model standards incorporated by reference, and that Petitioner

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<sup>5</sup> Petitioner faults Intervenor's for raising this issue in the briefs, rather than bringing a separate motion for a stay under Code of Civil Procedure, section 1005. This point is well-taken. However, because Petitioner has been afforded the opportunity to respond to Intervenor's request for a stay, the Court will consider it.

improperly reproduced them, and that Petitioner failed to create a triable issue of fact that its reproduction qualified as “fair use”---a defense to copyright infringement. (*Ibid.*)

PRO appealed that decision to the D.C. Circuit. The D.C. Circuit vacated the district court's decision. In doing so, it found that the district court should have considered Petitioner's affirmative defense of fair use. (*ASTM*, *supra*, 896 F.3d 437, 440-441.) Accordingly, the D.C. Circuit has remanded the matter to the district court to consider Petitioner's affirmative defense to the motion for summary judgment brought by NFPA and the other SDOs. (*Id.*, at p. 458.) In briefing related to that motion, Petitioner does not dispute that it advances the same argument that it advances here: that codes that governments have expressly incorporated into law, lose copyright protection and that standards incorporated by reference are “government edicts” under *Georgia v. Public Resource Org, Inc.* (*Georgia*) (2020) 140 S. Ct 1498.

Additionally, Intervenor ICC is involved in pending litigation in the Southern District of New York, where the accused infringer (a company named UpCodes) has raised similar defenses based on incorporation by reference, that Petitioner raises in *ASTM* and this case. (*International Code Council, Inc. v. UpCodes, Inc.* (S.D.N.Y. May 27, 2020; No. 17-cv-6261.)

The Court exercises its discretion to stay the proceedings against BSC. At issue is whether the model codes drafted by Intervenor and incorporated into Title 24 are protected by federal copyright law. The federal proceedings in *ASTM* are addressing this very issue, and as to the same parties: Intervenor NFPA and Petitioner. Additionally, another federal court is addressing these similar issues as to another organization and Intervenor ICC.

First, the nature of the subject matter—federal copyright law—is the exclusive province of federal court. (*Sears Roebuck & Co. v. Stieffel Co.* (1964) 376 U.S. 255, 231, fn.7; *Topolos v. Caldewey* (9th Cir. 1983) 698 F.2d 991, 993-994.) Petitioner cites to *Santa Clara*, *supra*, 170 Cal.App.4th 1301, for the proposition that “California law” addresses when the work of California agencies may be subject to copyright protection. This argument is unavailing. *Santa Clara* addressed copyright issues that arose after an agency claimed copyright protection in a work it authored. That is not the case here. The issue is whether copyright law protects *Intervenors'* works, which is currently under consideration in federal courts. The Court also rejects Petitioner's argument that the nature of the subject matter in this case differs, because the Court is concerned with the applicability of the PRA. This is true, but, if federal copyright law applies and protects model codes incorporated by reference into regulations, then this necessarily resolves whether BSC has violated the PRA. Thus, staying the proceedings also promotes judicial efficiency.

Second, a stay avoids the potential for “unseemly” conflicts with federal copyright issues raised by Petitioner, such as whether the “government edicts” doctrine, as articulated by the Supreme Court in *Georgia*, prevents Intervenor from asserting a copyright interest in the portions of Title 24 that incorporates their model codes by reference.



Third, the *ASTM* case is significantly advanced in the proceedings, weighing in favor of a stay. As noted above, the *ASTM* is on remand from the Court of Appeal where the district court will again consider the motions for summary judgment, including application of the government edicts' doctrine.

These factors all support the Court's decision to stay the proceedings as to BSC.

Petitioner argues upon reply, that BSC may not rely on *any* statutory exemption in Section 6254, because BSC has disclosed some copies of Title 24, and thus, waived its right to assert this exemption under Section 6254.5. Petitioner opposed BSC's nondisclosure based on Section 6254 on the merits, and did not at all raise this "waiver" argument in its Opening Brief. Thus, Intervenor and BSC had no opportunity to respond to it. Accordingly, the Court does not consider it.

### **3. Disposition.**

The Petition is denied as to Respondent OAL. The Petition is stayed as to Respondent BSC in light of the *ASTM* matter.

Counsel for Respondent OAL shall prepare a formal order and a separate judgment, incorporating this ruling as an exhibit to each, submit them to opposing counsel for approval as to form, and thereafter submit them to the Court for signature and entry of judgment in accordance with California Rules of Court, rule 3.1312.

# **EXHIBIT 2**

Document received by the CA 3rd District Court of Appeal.

1 ROB BONTA  
Attorney General of California  
2 MICHELLE M. MITCHELL  
Supervising Deputy Attorney General  
3 KEITH L. WURSTER  
Deputy Attorney General  
4 State Bar No. 198918  
LAURA A. RANGLES-LITTLE  
5 Deputy Attorney General  
State Bar No. 232930  
6 1300 I Street, Suite 125  
P.O. Box 944255  
7 Sacramento, CA 94244-2550  
Telephone: (916) 210-6504  
8 Fax:  
E-mail: Laura.RandlesLittle@doj.ca.gov  
9 *Attorneys for Respondents*  
*Office of Administrative Law and*  
10 *Building Standards Commission*

FILED / ENDORSED  
APR 11 2022  
By N. Smith, Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SACRAMENTO.  
13 CIVIL DIVISION

14  
15 PUBLIC.RESOURCE.ORG, INC., 34-2021-80003612  
16 Petitioner, ~~PROPOSED~~ JUDGMENT  
17 v.  
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19 CALIFORNIA OFFICE OF  
20 ADMINISTRATIVE LAW, and the  
CALIFORNIA BUILDING STANDARDS  
21 COMMISSION,  
22 Respondents.

23 Having reviewed the papers submitted by the parties, IT IS ORDERED, ADJUGED AND  
24 DECREED that Petitioner Public.Resrouce.Org, Inc.'s Verified Petition for Writ of Mandate  
25 regarding Respondent California Office of Administrative Law is denied and judgment is entered  
26 in favor of Respondent California Office of Adminsitrative Law for the reasons set forth in the  
27  
28

Document received by the CA 3rd District Court of Appeal.

1 the Court's Tentative Ruling attached and incorporated for reference hereto as Exhibit A.

2 Dated April 11, 2022



*Steven M. Geverser*

3  
4 THE HONORABLE STEVEN M. GEVERCER  
5 JUDGE OF THE SUPERIOR COURT  
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# EXHIBIT A

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

DATE/TIME:	March 25, 2022 2:00 p.m.	DEP. NO.:	27
JUDGE:	HON. STEVEN M. GEVERCER	CLERK:	N. SMITH
Public.Resource.Org., Inc., Petitioner,		Case No. 34-2021-80003612	
v.			
California Office of Administrative Law, and the California Building Standards Commission, Respondents.			
Nature of Proceedings:		Petition for Writ of Mandate	

**I. TENTATIVE RULING.**

The following shall constitute the Court's tentative ruling on the above matter, set for hearing in Department 27, on Friday, March 25, 2022, at 2:00 p.m. The tentative ruling shall become the ruling of the Court, unless a party desiring to be heard so advises the Clerk of Department 27 no later than 4:00 p.m. on the Court day preceding the hearing, and further advises the Clerk that such party has notified the other side of its intention to appear.

The Court strongly encourages parties to appear remotely for the hearing on the tentative ruling through the Court's Zoom Application. But any party wishing to appear in person may do so, provided that party notifies the Court by 4:00 the Court day before the hearing.

The parties may join the Zoom session for hearing on the tentative ruling by audio and/or video through the following link/telephone number:

<a href="https://saccourt.zoom.us/my/dept27a">https://saccourt.zoom.us/my/dept27a</a>	(888) 475-4499	ID: 553-829-7195
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Petitioner, Public.Resource.Org, Inc. has filed a petition for writ of mandate (Petition) against Respondents Office of Administrative Law (OAL) and the California Building Standards Commission (BSC), directing Respondents to comply with the Public Records Act (Gov. Code, §§ 6250 *et seq.*) (PRA). As to Respondent OAL, the Petition is denied. As to Respondent BSC, the Petition is stayed pending resolution of a final judgment from the District of Columbia District Court in *American Society for Testing and Materials, et al v. Public.Resource.Org* (D.C. Cir. 2018) 896 F.3d 437, 441.

## 1. Background.

On December 29, 2020, Petitioner<sup>1</sup> sent a PRA request to OAL for Titles 1-5, 7-23, and 25-28 of the California Code of Regulations (collectively, CCR).<sup>2</sup> (Petition, ¶¶13, Exh. C.) Petitioner requested that OAL provide the information "in all formats, in your possession, including (but not limited to) structured, machine-readable digital formats, such as XMF or PDF files," pursuant to Government Code section<sup>3</sup> 6250, subdivision (a)(1). (Petition, Exh. C.) Petitioner also informed OAL that it must produce a copy of an electronic record in any format that has been used by it to create copies for its own use or for provision to other agencies, pursuant to Section 6250, subdivision (a)(2). (*Ibid.*)

OAL responded, stating that it could provide a paper copy of the CCR to Petitioner, and offered to scan each page of the print version, to serve as an "electronic" copy. (Petition, Exh. D.) OAL also directed Petitioner to a website that contained the most "up to date" version of the CCR. (*Ibid.*) OAL also offered to provide a CD-ROM with past versions of the CCR, but noted that the contents of the CD-ROM cannot be copied in whole or transferred to another storage device. (*Ibid.*) Petitioner and OAL corresponded further, and Petitioner contended that OAL's response was insufficient, and that the website to which it directed Petitioner was not "publicly available." (Petition, ¶¶14-19.)

Also on December 29, 2020, Petitioner also made a nearly identical, separate PRA request for Title 24 of the CCR (Title 24) to the Office of Public Affairs, which contains the Department of General Services, and BSC. (Petition, Exh. F.) Again, Petitioner requested an electronic copy of Title 24, and sought Title 24 in all formats in BSC's possession, including "structured, machine-readable formats." (*Ibid.*)

BSC also responded that it could not produce the records. BSC stated that a hard copy of Title 24 was available for inspection at BSC's office, and noted that hard copies of Title 24 were available for public viewing and copying at state document depository libraries or at city of county building or planning departments. (Petition, Exh. G.) BSC stated that Title 24 may be viewed online on the BSC's website, but because BSC did not have publishing rights, it could not provide copies to the public. (*Ibid.*) BSC explained that this is because Title 24 is based on and includes model codes produced by standards developing organizations (SDOs), Intervenor National Fire Protection Association (NFPA), International Codes Council (ICC), and the International Association of Plumbing and Mechanical Officials. (*Ibid.*) BSC also responded that

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<sup>1</sup> Petitioner is a non-profit organization with the mission of providing public access to government records and legal materials. (Petition, ¶15.)

<sup>2</sup> Respondent OAL oversees the publication and distribution of Titles 1-5, 7-23, and 25-28 of the CCR. (Petition, ¶16.) Respondent BSC administers the adoption of, and codifies and publishes the California Building Standards Code as Title 24 of the CCR. (Petition, ¶17.)

<sup>3</sup> Unless otherwise specified, all statutory references shall be to the Government Code.

individual parts or a full set of Title 24 may be purchased from these three publishing entities. (*Ibid.*)

Petitioner then filed a petition for writ of mandate, alleging that OAL and BSC violated the PRA. On August, 27, 2021, the Court granted NFPA's and ICC's motion for leave to intervene in this proceeding.

## 2. Discussion.

### a. Claims Against OAL.

Petitioner argues that OAL has violated the PRA by refusing to produce the records and insufficiently responding to its request, namely by failing to provide an "electronic" copy of the CCR in a "structured, machine-readable" format. (Opening Brief, 9:4.) Respondent OAL responds that the Legislature, in enacting the pertinent provisions of the Administrative Procedure Act (APA), dictated how the CCR should be made publicly available, and that in any event it, has complied with the PRA in responding to Petitioner.

#### i. PRA Statutes.

Under the PRA, a public agency must make public records promptly available to any person who submits a PRA request that "reasonably describes an identifiable record or records." (Gov. Code, § 6253, subd. (b).) The PRA enables persons to seek "injunctive or declarative relief or writ of mandate" to enforce that person's right to inspect or receive copies of public records. (Gov. Code, §§ 6258, 6259.)

The PRA is construed broadly in favor of access. (*Am. Civil Liberties Union Foundation v. Superior Court* (2017) 3 Cal.5th 1032, 1040.) Exemptions from disclosure must be narrowly construed. (*Id.*) The agency withholding the records bears the burden of proving that an exception from disclosure applies. (*California First. Amend. Coal. v. Superior Court (California First)* (1998) 67 Cal.App.4th 159, 167.)

The PRA imposes on agencies an affirmative obligation to make available to the public any public records in their possession, unless the agency can demonstrate that a responsive record is otherwise exempt from disclosure. (Gov. Code, §§ 6253, 6254, 6255.) Public records may be exempted from disclosure if they fall within a particular specific statutory basis for exempting the records. (Gov. Code, § 6254.) Additionally, public records may also be exempt from disclosure if the agency can show that "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 6255, subd. (a).) If "the requester has alternative, less intrusive means of obtaining the information sought" the public interest in disclosure is minimal, although the "existence of an alternative means does not wholly undermine the public interest in disclosure." (*County of Santa Clara v. Superior Court (Santa Clara)* (2009) 170 Cal.App.4th 1301,



1325 [citing *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1020, 1025].)

Section 6253.9 governs an agency's duty to produce electronic copies of records under the PRA. It provides:

- a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure...that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:
  - (1) The agency shall make the information available in any electronic format in which it holds the information.
  - (2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.
- (b) ...the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:
  - (1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.
  - (2) The request would require data compilation, extraction, or programming to produce the record.
- (c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.
- (d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.
- (e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

(Gov. Code, § 6253.9.) Thus, a government agency is required by the PRA to produce non-exempt responsive computer records in the same manner as paper records; and can be required to compile, redact or omit information from an electronic record. (See *Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 669.) Section 6253.9 contemplates that public agencies can be required to gather and segregate disclosable electronic data from nondisclosable exempt information and perform data compilation, extraction or computer programming if "necessary to produce a copy of the record." (*Ibid.* [citing Gov. Code, § 6253.9, subdivision (b)].) However, the PRA does not require an agency to create a *new* record: an agency "cannot be required to create a new record by changing the substantive content of an existing record or replacing existing data with new data." (*Ibid.* [citing *Yeager v. Drug Enforcement Admin.* (D.C. Cir. 1982) 678 F.2d 315, 323 and noting that "Segregating and extracting data is a far cry from requiring public agencies to undertake the extensive 'manipulation or restructuring of the substantive content of a record.'"]) Additionally, agencies need not draft summary or explanatory material, perform calculations on data, or create inventories of data in response to a records request. (*National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward* (2020) 9 Cal.5th 488, 502; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075; see also *Sander v. Superior Court, supra*, 26 Cal.App.5th, at p. 669.)

## ii. Pertinent Law Governing the Public Availability of CCR.

The Administrative Procedure Act (APA) (see Gov. Code §§ 11340, et. seq.) among other things, establishes the OAL and sets forth specific statutes governing rulemaking, or an agency's promulgation of regulations, which comprise the CCR. Section 11344, requires OAL to make the CCR available online. Section 11344 provides:

(OAL) shall do all of the following:

- (a) Provide for the official compilation, printing, and publication of adoption, amendment, or repeal of regulations, which shall be known as the [CCR]. On and after July 1, 1998, [OAL] shall make available on the Internet, free of charge, the full text of the [CCR], and may contract with another state agency or a private entity in order to provide this service.
- (b) Make available on its Internet Web site a list of, and a link to the full text of, each regulation filed with the Secretary of State that is pending effectiveness pursuant to Section 11343.4.

(c) Provide for the compilation, printing, and publication of weekly updates of the California Code of Regulations....

....

(Gov. Code, § 11344.) OAL is also required to supply a complete set of the CCR and its Supplement to any county clerk. (*Id.*, at § 11344.2.) Additionally, the CCR "shall be sold at prices which will reimburse the state for all costs incurred for printing, publication, and distribution." (*Id.*, at § 11344.4.)

### iii. The Petition is Denied as to OAL.

Petitioner argues that OAL violated the PRA by not providing the CCR to Petitioner in a "structured, machine-readable" format. Underpinning Petitioner's argument is its belief that OAL possesses a "Master Database" through its contract with Thomson Reuters/West Publishing, and has the ability to access the Master Database and provide Petitioner the CCR to Petitioner in a "structured, machine-readable" format.

OAL contends that Petitioner is demanding OAL provide the CCR in a format that it does not possess, and that it is really trying to compel OAL to create an entirely *new* record, which the PRA does not require.

Petitioner has not shown that OAL violated the PRA. OAL neither possesses the Master Database, nor do the PRA or pertinent statutes impose any duty upon OAL to provide the CCR in the "structured, machine-readable" format sought by Petitioner.

- **OAL Does Not Possess the Master Database.**

Petitioner argues that OAL constructively possesses the Master Database. OAL disagrees and claims that it does not possess the Master Database, or the data (the updated versions of regulations comprising the CCR) in it.

OAL has the better argument.

OAL declares that the Master Database exists in proprietary software of Thomson Reuters/West Publishing. (Declaration of Kevin Hull (Hull Decl.), ¶5; Declaration of Andrew Martens (Martens Decl.), ¶6.) The language of the contract with Thomson Reuters/West Publishing provides for a "useable electronic data base" in a "portable and easily processed or converted format" upon completion or termination of the contract. (Administrative Record<sup>4</sup>, Exh. B [000009] and Exh. J [000052-53].) The above contractual term ensures that OAL can obtain all the data (the regulations comprising the CCR) if needed to provide it to a new contractor. As the contract is not completed or terminated, OAL has not invoked this contractual term. Thus, Thomson Reuters/West Publishing has never given OAL the Master Database or the data in it.

<sup>4</sup> Petitioner has furnished a collection of exhibits that it denotes as an "administrative record."

(Hull Decl., ¶3; Martens Decl., ¶5.) The data has never been extracted and formatted in the manner requested by Petitioner.

Petitioner argues that OAL, in fact, constructively possesses the Master Database because it has the right to control it. First, this is belied by the OAL's agreement with Thomson Reuters/West Publishing. Second, Petitioner's argument that it is entitled to data from this Master Database (the CCR) in a particular format conflates OAL's right to the data *within* the Master Database with the Master Database itself, which is not a "record," and which OAL does not possess.

Thus, OAL does not possess the data in a structured-machine readable format requested by Petitioner. OAL has not violated the PRA for this reason.

- **The PRA Imposes No Duty Upon OAL To Produce the CCR in the Format Requested by Petitioner.**

Additionally, the PRA itself imposes no duty upon OAL to produce "electronic" records in the "structured, machine-readable format" requested by Petitioner.

In determining whether OAL violated the PRA, the Court must harmonize two sets of pertinent statutes: the PRA, and the APA. (*City of Chula Vista v. Drager* (2020) 49 Cal.App.5th 539, 560 ["If, after an examination of the statutes in context, they 'conflict on a central element, we strive to harmonize them so as to give effect to each. The Court is guided by the following principles of statutory construction.'"])

"A court's overriding purpose in construing a statute is to ascertain legislative intent. ... [Citation.] In interpreting a statute to determine legislative intent, a court looks first to the words of the statute and gives them their usual and ordinary meaning. [Citation.] Statutes must be given a fair and reasonable interpretation, with due regard to the language used and the purpose sought to be accomplished.' (*Sander v. Superior Court*, *supra*, 26 Cal.App.5th, at 653-654 [internal quotations and citations omitted].)

In PRA cases, the California Constitution requires that '[a] statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.' (*Sander v. Superior Court*, *supra*, 26 Cal.App.5th, at 653-654. [citing Cal. Const., art I, § 3, subd. (b); *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617].)

Additionally, a specific statutory provision prevails over a general statute. (*See Rose v. State* (1942) 19 Cal.2d 713, 723-724.) If statutory provisions conflict, statutes that are passed later in time control. (*City of Chula Vista v. Drager*, *supra*, 49 Cal.App.5th, at p. 560 [citing *Collection Bureau of San Jose v. Rumsey* (200) 24 Cal.4th 301].)

The text of Section 6253.9 imposes no duty upon OAL to make records available in a particular format. It requires an agency to produce an "electronic" copy of records, and

contemplates that an agency may need to engage in "data compilation, extraction, or programming" to produce a record. Thus, the Court cannot find that OAL violated Section 6253.9 by failing to produce records in a "structured, machine-readable format."

The Court is mindful that the California Constitution requires that statutes, such as Section 6253.9 be "broadly construed" if it furthers the people's right of access. But the Court's inquiry does not stop here. It must also consider more specific, later-enacted statutes in the APA, and give those statutes a "fair and reasonable" interpretation.

As noted above, the Legislature has enacted more specific statutes, governing OAL's duty to make the CCR available. Pertinent here, Section 11344, provides that OAL must make the CCR publicly available on its website by posting a link to the full text of each regulation. (Gov. Code, § 11344.) Notably, it imposes no duty upon OAL to make the CCR available in any electronic format requested by a member of the public. Thus, the Court finds that this specific statute directed only to OAL prevails over the more general PRA provisions governing all agencies.

Moreover, Section 11344, which was added in 1983, has been amended many times, most recently in 2012. (Stats. 2012, c. 295 (S.B. 1099), §3.) In contrast, Section 6253.9 was added in 2000, and has not been updated. (Gov. Code, § 6253.9 [Added by Stats. 2000, c. 982, (A.B. 2799) § 2.]) Thus, because Section 11344 is a later-amended statute, the Court presumes that the Legislature was aware of the PRA and Section 6253.9, when amending it.

Accordingly, the OAL has complied with Section 11344 and has not violated the PRA by failing to produce records in a "structured, machine-readable" format.

- **Petitioner's Other Arguments Show no Violation of the PRA.**

Petitioner claims that the website that OAL directed it to is not "publicly available" because it is subject to technological and legal restrictions to prevent users from text-searching, copying and pasting, or distributing portions of the CCR. (Opening Brief, p. 6.) Nothing in the PRA requires that discloseable records be searchable or adaptable for copying and pasting. Additionally, for the same reasons articulated above, OAL has not violated the PRA in this regard.

Petitioner also argues that OAL is trying to circumvent its duties to disclose records by outsourcing the publication of to a third party in violation of Section 6720. This statute, enacted in 1995, provides in pertinent part that "no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this chapter." (Gov. Code, § 6270 [Added by Stats. 1995, c. 108 (A.B. 141), § 1.]

However, the Court must presume that the Legislature, in enacting and amending statutes regarding OAL's duty to publish the CCR, is aware of OAL's arrangement with

Thomson Reuters/West. Again, the Court notes that Section 11344, was amended several times after the enactment of Section 6270, and was most recently amended in 2012. Thus, OAL has not violated the PRA on this ground.

**b. Claims Against Respondent BSC.**

Petitioner argues that BSC has violated the PRA by not disclosing an electronic copy of Title 24. BSC responds that Section 6254, subdivision (k), exempts Title 24 from disclosure, as it contains model codes drafted by Intervenor NPFA and ICC, which are protected by federal copyright law. BSC alternatively argues that Section 6255, the "catch-all" exemption, exempts Title 24 from disclosure, as the public interest in nondisclosure clearly outweighs the public interest in disclosure. Intervenor NPFA and ICC, which are aligned with BSC, note the pendency of two federal actions in which the similar copyright issues are addressed. Intervenor argue that the records are exempt from disclosure, but also argue that this proceeding should be stayed, pending resolution of the federal cases.

**i. Legal Standard.**

The PRA contains a lengthy list of statutory exemptions from disclosure. (Gov. Code, § 6254.) Pertinent here, an item is statutorily exempt from disclosure if they are "exempted or prohibited pursuant to federal or state law." (*Id.*, § 6254, subd. (k).) BSC and Intervenor claim that Title 24 is protected by federal copyright law, as it incorporates by reference model codes drafted by Intervenor and other SDOs, and thus, Title 24 is statutorily exempt from disclosure.

"When an action is brought in a court of this state involving the same parties and the same subject matter as an action already pending in a court of another jurisdiction, a stay of the California proceedings is not a matter of right, but within the sound discretion of the trial court." (*Farmland Irrigation Co. v. Dopplmaier* (1957) 48 Cal. 2d 208, 215.)

"It is black letter law that, when a federal action has been filed covering the same subject matter as is involved in a California action, the California court has the discretion but not the obligation to stay the state court action." (*Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co. (Caiafa)* (1993) 15 Cal.App.4th 800, 804.) *Caiafa* enumerated various factors that courts should apply when deciding whether to stay a matter pending in a California court because of pending federal litigation. It provided that courts "should consider the importance of discouraging multiple litigation designed solely to harass an adverse party, and of avoiding unseemly conflicts with the courts of other jurisdictions. It should also consider whether the rights of the parties can best be determined by the court of the other jurisdiction because of the nature of the subject matter, the availability of witnesses, or the stage to which the proceedings in the other court have already advanced." (*Id.*) Courts should also consider whether the federal action is pending in California. (*Id.*)

Of additional importance is the Court's inherent authority to control its docket. Courts routinely stay matters where circumstances warrant. (*Frieberg v City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489 ["Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency."].)

**ii. The Petition is Stayed as to Claims against Respondent BSC.**

Petitioner argues that BSC violated the PRA by not disclosing Title 24, because it actually possesses it; the online version cited by OAL and BSC is not "publicly available," as the user is subject to end-user restrictions; and no exemption from disclosure applies, particularly Section 6254, subdivision (k).

Petitioner contends that although Title 24 contains model codes drafted by Intervenor that are incorporated by reference, the model codes in Title 24 have now become "the law," and lost their copyright protection. Thus, Petitioner argues, Section 6254, subdivision (k), does not apply.

BSC responds that Title 24 is exempt under section 6254, subdivision (k), or alternatively, Section 6255, and that it complied with the PRA by making records available electronically.

Intervenor argues that a stay is appropriate in light of pending federal litigation.<sup>5</sup> The Court agrees.

The issue of whether model codes that have been incorporated by reference into law is currently being litigated in federal court. In *American Society for Testing and Materials, et al v. Public.Resource.Org (ASTM)* (D.C. Cir. 2018) 896 F.3d 437, 441. Intervenor NFPA and two other SDOs sued Petitioner for copyright and trademark infringement, after Petitioner purchased copies of incorporated standards, scanned them into digital files, appended coversheets explaining Petitioner's mission and the source of the standards, and posted the documents to a public website. (*Id.*, at p. 444.) In some cases, Petitioner modified files so that the text of the standard could be more easily enlarged, searched, and read with text-to-speech software. (*Ibid.*)

In that case, Petitioner made, and is making, the same arguments raised here: that NFPA and the other SDOs lose the benefit of copyright protection for model standards they authored once those model standards are incorporated by reference. In *ASTME*, Petitioner and NFPA and the other plaintiffs filed competing motions for summary judgment. (*Ibid.*) The district court granted NFPA and the SDOs' motion, rejecting Petitioner's arguments. The district court found that NFPA and the SDOs held copyrights in the model standards incorporated by reference, and that Petitioner

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<sup>5</sup> Petitioner faults Intervenor for raising this issue in the briefs, rather than bringing a separate motion for a stay under Code of Civil Procedure, section 1005. This point is well-taken. However, because Petitioner has been afforded the opportunity to respond to Intervenor's request for a stay, the Court will consider it.

improperly reproduced them, and that Petitioner failed to create a triable issue of fact that its reproduction qualified as "fair use"—a defense to copyright infringement. (*Ibid.*)

PRO appealed that decision to the D.C. Circuit. The D.C. Circuit vacated the district court's decision. In doing so, it found that the district court should have considered Petitioner's affirmative defense of fair use. (*ASTM*, *supra*, 896 F.3d 437, 440-441.) Accordingly, the D.C. Circuit has remanded the matter to the district court to consider Petitioner's affirmative defense to the motion for summary judgment brought by NFPA and the other SDOs. (*Id.*, at p. 458.) In briefing related to that motion, Petitioner does not dispute that it advances the same argument that it advances here: that codes that governments have expressly incorporated into law, lose copyright protection and that standards incorporated by reference are "government edicts" under *Georgia v. Public Resource.Org, Inc.* (*Georgia*) (2020) 140 S. Ct 1498.

Additionally, Intervenor ICC is involved in pending litigation in the Southern District of New York, where the accused infringer (a company named UpCodes) has raised similar defenses based on incorporation by reference, that Petitioner raises in *ASTM* and this case. (*International Code Council, Inc. v. UpCodes, Inc.* (S.D.N.Y. May 27, 2020; No. 17-cv-6261.)

The Court exercises its discretion to stay the proceedings against BSC. At issue is whether the model codes drafted by Intervenor and incorporated into Title 24 are protected by federal copyright law. The federal proceedings in *ASTM* are addressing this very issue, and as to the same parties: Intervenor NFPA and Petitioner. Additionally, another federal court is addressing these similar issues as to another organization and Intervenor ICC.

First, the nature of the subject matter—federal copyright law—is the exclusive province of federal court. (*Sears Roebuck & Co. v. Stieffel Co.* (1964) 376 U.S. 255, 231, fn.7; *Topolos v. Caldewey* (9th Cir. 1983) 698 F.2d 991, 993-994.) Petitioner cites to *Santa Clara*, *supra*, 170 Cal.App.4th 1301, for the proposition that "California law" addresses when the work of California agencies may be subject to copyright protection. This argument is unavailing. *Santa Clara* addressed copyright issues that arose after an agency claimed copyright protection in a work it authored. That is not the case here. The issue is whether copyright law protects *Intervenors'* works, which is currently under consideration in federal courts. The Court also rejects Petitioner's argument that the nature of the subject matter in this case differs, because the Court is concerned with the applicability of the PRA. This is true, but, if federal copyright law applies and protects model codes incorporated by reference into regulations, then this necessarily resolves whether BSC has violated the PRA. Thus, staying the proceedings also promotes judicial efficiency.

Second, a stay avoids the potential for "unseemly" conflicts with federal copyright issues raised by Petitioner, such as whether the "government edicts" doctrine, as articulated by the Supreme Court in *Georgia*, prevents Intervenor from asserting a copyright interest in the portions of Title 24 that incorporates their model codes by reference.



Third, the *ASTM* case is significantly advanced in the proceedings, weighing in favor of a stay. As noted above, the *ASTM* is on remand from the Court of Appeal where the district court will again consider the motions for summary judgment, including application of the government edicts' doctrine.

These factors all support the Court's decision to stay the proceedings as to BSC.

Petitioner argues upon reply, that BSC may not rely on *any* statutory exemption in Section 6254, because BSC has disclosed some copies of Title 24, and thus, waived its right to assert this exemption under Section 6254.5. Petitioner opposed BSC's nondisclosure based on Section 6254 on the merits, and did not at all raise this "waiver" argument in its Opening Brief. Thus, Intervenor and BSC had no opportunity to respond to it. Accordingly, the Court does not consider it.

### **3. Disposition.**

The Petition is denied as to Respondent OAL. The Petition is stayed as to Respondent BSC in light of the *ASTM* matter.

Counsel for Respondent OAL shall prepare a formal order and a separate judgment, incorporating this ruling as an exhibit to each, submit them to opposing counsel for approval as to form, and thereafter submit them to the Court for signature and entry of judgment in accordance with California Rules of Court, rule 3.1312.

**DECLARATION OF SERVICE BY E-MAIL**

Case Name: **Public.Resource.Org., Inc. v. California Office of Administrative Law,  
California Building Standards Commission**

Case No.: **34-2021-80003612**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On May 10, 2022, I served the attached **NOTICE OF ENTRY OF JUDGMENT** by transmitting a true copy via electronic mail, addressed as follows:

Matthew Caplan  
Joseph Mornin  
Ryan O'Hollaren  
Cooley LLP - San Francisco  
3 Embarcadero Center, 20th Floor  
San Francisco, CA 94111-4004

**E-mail Addresses:**

[mcaplan@cooley.com](mailto:mcaplan@cooley.com)  
[jmornin@cooley.com](mailto:jmornin@cooley.com)  
[rohollaren@cooley.com](mailto:rohollaren@cooley.com)

*Attorneys for Petitioner  
Public.Resource.Org., Inc.*

Kelly M. Klaus  
Bryan H. Heckenlively  
Rose Leda Ehler  
Munger, Tolles & Olson LLP  
560 Mission Street, 27<sup>th</sup> Floor  
San Francisco, CA 94105-2907

**E-mail Addresses:**

[Kelly.klaus@mto.com](mailto:Kelly.klaus@mto.com)  
[bryan.heckenlively@mto.com](mailto:bryan.heckenlively@mto.com)  
[rose.ehler@mto.com](mailto:rose.ehler@mto.com)

*Attorneys for Proposed Intervenor Nation  
Fire Protection Association, Inc.*

Louis Y. Lee  
J. Kevin Fee  
Jane W. Wise  
Morgan, Lewis & Bockius LLP

**E-mail Addresses:**

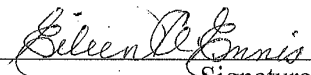
[louis.lee@morganlewis.com](mailto:louis.lee@morganlewis.com)  
[kevin.fee@morganlewis.com](mailto:kevin.fee@morganlewis.com)  
[jane.wise@morganlewis.com](mailto:jane.wise@morganlewis.com)

*Attorneys for Proposed Intervenor  
International Code Council, Inc.*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on May 10, 2022, at Sacramento, California.

Eileen A. Ennis

Declarant

  
Signature

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Document received by the CA 3rd District Court of Appeal.

**DECLARATION OF MATT CAPLAN PURSUANT TO  
CALIFORNIA RULES OF COURT, RULE 8.486(b)(3)  
RE ABSENCE OF HEARING TRANSCRIPT**

I, Matthew Caplan, declare as follows:

1. I am an attorney at law duly licensed to practice in the State of California before the Court of Appeal of the State of California. I am a partner at Cooley LLC, attorneys of record for Petitioner Public.Resource.Org, Inc. I am familiar with the facts and pleadings herein. The following is within my personal knowledge and if called and sworn as a witness, I could and would competently testify thereto.

2. This declaration is submitted pursuant to CRC Rule 8.486(b)(3(A)'s requirement that when no hearing transcript, a petitioner must explain why and fairly summarize the proceedings.

3. A tentative ruling was issued by the Respondent court on March 23, 2022 denying the petition as to the California Office of Administrative Law and staying the petition as to the California Building Standards Commission.

4. Pursuant to Sacramento Superior Court Local Rule 1.06 (B), no party requested oral argument, and the tentative became the order of the court. Therefore, there is no hearing transcript because no oral proceedings were held. The included March 25, 2022 Minute Order reflects this.

Document received by the CA 3rd District Court of Appeal.

Dated: May 24, 2022

COOLEY LLP

/s/ Matt Caplan

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By: Matt Caplan

Attorneys for Appellant  
PUBLIC.RESOURCE.ORG, INC.

Document received by the CA 3rd District Court of Appeal.

### Civil Case Details

**Case Information**

**Case Title**  
Public. Resource.Org, Inc. vs. California Office Of Administrative Law

**Case Number**  
34-2021-80003612-CU-WM-GDS

**Case Type**  
Writ of Mandate

**Filing Date**  
03/17/2021

**Case Category**  
Civil - Unlimited

**Participants**

Participant Name	Role	Represented By
California Building Standards Commission	Respondent	Laura A Randles-Little
California Office Of Administrative Law	Respondent	Laura A Randles-Little
International Code Council, Inc.	Intervenor	Louis Y. Lee
International Code Council, Inc.	Intervenor	Bryan H. Heckenlively
National Fire Protection Association, Inc.	Intervenor	Bryan H. Heckenlively
National Fire Protection Association, Inc.	Intervenor	Louis Y. Lee
Public. Resource.Org, Inc.	Petitioner	Matthew D. Caplan


**Scheduled Hearings**

Event Date	Event Time	Event Type	Department	Status
No Scheduled Hearings Found...				

**Past Hearings**

**\*\* NOTE:** There is a cost associated with **court reporter transcripts**. When you request a court reporter transcript, you will be contacted by the court reporter regarding the cost and method of payment accepted.

Event Date	Event Time	Event Type	Department	Status	**Request Transcript
03/25/2022	2:00 PM	Petition for Writ of Mandate - Writ of Mandate	27	Heard	<a href="#">Request (/PublicCaseAccess/Civil/RequestCourtReporterTranscript?dept=27&amp;eventDate=3%2F25%2F2022&amp;eventTime=2%3A00%2F25%2F2022)</a>
08/27/2021	10:00 AM	Motion - Other - Civil Special Sets	27	Scheduled	<a href="#">Request (/PublicCaseAccess/Civil/RequestCourtReporterTranscript?dept=27&amp;eventDate=8%2F27%2F2021&amp;eventTime=10%3A00%2F27%2F2021)</a>
08/27/2021	10:00 AM	Motion - Other - Writ of Mandate	27	Heard	<a href="#">Request (/PublicCaseAccess/Civil/RequestCourtReporterTranscript?dept=27&amp;eventDate=8%2F27%2F2021&amp;eventTime=10%3A00%2F27%2F2021)</a>

 Register of Actions

Click the Preview button to see a preview of the document. Previewed documents contain every other page, up to a maximum of five pages. To purchase a full version containing all pages, check the checkbox for the document(s) you want and then click the Document Cart link at the top of the page to review your cart / check out.

ROA#	ROA Entry	Filed Date	Filed By	Pages
74	Notice of Entry - Other (Of Order And Judgment) filed.	05/10/2022	California Office Of Administrative Law(Respondent)	35
73	Order	04/11/2022		15
72	Judgment	04/11/2022		20
71	Declaration of Service by E-Mail re: proposed judgment and order	04/11/2022		2
70	Correspondence from Respondent re: Judgment and Order	04/11/2022		1
69	Minutes finalized for Petition for Writ of Mandate - Writ of Mandate heard on 03/25/2022 02:00:00 PM	03/25/2022		1
68	TENTATIVE - Petition for Writ of Mandate	03/24/2022		12
	Public.Resource.Org v. Office of Administrative Law, et al.--petition for writ of mandate	03/23/2022		12
67	Proof of Service filed.	01/20/2022	Public. Resource.Org, Inc.(Petitioner)	3
66	Reply (to Respondent California Office of Administrative Law's Opposition to Petition for Writ of Mandate) filed.	01/20/2022	Public. Resource.Org, Inc.(Petitioner)	14
65	Reply (to Building Standard Commission's Opposition to Petition for a Writ of Mandate) filed.	01/20/2022	Public. Resource.Org, Inc.(Petitioner)	11
64	Reply (to Intervenors' Opposition to Petition for a Writ of Mandate) filed.	01/20/2022	Public. Resource.Org, Inc.(Petitioner)	16
63	Joint Stipulation to continue the hearing on petition for writ of mandate	01/04/2022		4
62	Proposed Order filed.	12/30/2021	California Building Standards Commission(Respondent); California Office Of Administrative Law(Respondent); International Code Council, Inc.(Intervenor); National Fire Protection Association, Inc.(Intervenor); Public. Resource.Org, Inc. (Petitioner)	4
61	Stipulation and Proposed Order - Other (Joint Stipulation To Continue The Hearing On Petition For Writ Of Mandate) filed.	12/30/2021	California Building Standards Commission(Respondent); California Office Of Administrative Law(Respondent); International Code Council, Inc.(Intervenor); National Fire Protection Association, Inc.(Intervenor); Public. Resource.Org, Inc. (Petitioner)	6
60	Petition for Writ of Mandate - Writ of Mandate scheduled for 03/25/2022 at 02:00:00 PM in Department 27 at Gordon D Schaber Courthouse .	12/30/2021		
59	Petition for Writ of Mandate - Writ of Mandate rescheduled to 03/25/2022 at 02:00:00 PM in Department 27 at Gordon D Schaber Courthouse .	12/30/2021		
58	Declaration - Other (of Mia Marvelli ISO Opposition) filed.	12/27/2021	California Building Standards Commission(Respondent)	96
57	Declaration - Other (of Andrew Martens ISO Opposition) filed.	12/27/2021	California Office Of Administrative Law(Respondent)	6
56	Declaration - Other (of Kevin D. Hull ISO Opposition) filed.	12/27/2021	California Office Of Administrative Law(Respondent)	6
55	Opposition (to the Verified Petition) filed.	12/27/2021	California Office Of Administrative Law(Respondent)	23
54	Opposition (to the Verified Petition) filed.	12/27/2021	California Building Standards Commission(Respondent)	27
53	Proof of Service filed.	12/27/2021	International Code Council, Inc.(Intervenor); National Fire Protection Association, Inc.(Intervenor)	4

ROA#	ROA Entry	Filed Date	Filed By	Pages
52	Declaration - Other (Second Declaration of Christian Dubay) filed.	12/27/2021	International Code Council, Inc.(Intervenor); National Fire Protection Association, Inc.(Intervenor)	7
51	Declaration - Other (of Mark Johnson ISO Intervenor's Brief in Opposition to the Petition for a Writ of Mandate) filed.	12/27/2021	International Code Council, Inc.(Intervenor); National Fire Protection Association, Inc.(Intervenor)	6
50	Declaration - Other (of Bryan H. Heckenlively) filed.	12/27/2021	International Code Council, Inc.(Intervenor); National Fire Protection Association, Inc.(Intervenor)	44
49	Opposition (Intervenor's Brief in Opposition to the Petition for Writ of Mandate) filed.	12/27/2021	International Code Council, Inc.(Intervenor); National Fire Protection Association, Inc.(Intervenor)	29
48	Notice of Hearing (Amended) filed.	11/10/2021	Public.Resource.Org, Inc.(Petitioner)	4
47	Correspondence filed.	11/04/2021	Public.Resource.Org, Inc.(Petitioner)	1
46	Proof of Service filed.	11/02/2021	Public.Resource.Org, Inc.(Petitioner)	3
45	Notice of Lodging filed.	11/02/2021	Public.Resource.Org, Inc.(Petitioner)	3
44	Trial Brief (Opening Brief) filed.	11/02/2021	Public.Resource.Org, Inc.(Petitioner)	10
43	Notice of Hearing filed.	11/02/2021	Public.Resource.Org, Inc.(Petitioner)	2
42	Proof of Service - MAILING filed.	08/31/2021	International Code Council, Inc.(Intervenor); National Fire Protection Association, Inc.(Intervenor)	3
41	Answer (In Intervention) filed.	08/31/2021	International Code Council, Inc.(Intervenor); National Fire Protection Association, Inc.(Intervenor)	13
40	Clerk's Certificate of Service By Mail (Minute Order) generated .	08/27/2021		1
39	Minutes finalized for Motion - Other - Writ of Mandate heard on 08/27/2021 10:00:00 AM .	08/27/2021		1
38	Tentative Ruling: Motion to Intervene; Applications to as Counsel Appear Pro Hac Vice	08/25/2021		6
	Public.Resource.Org v. Office of Administrative Law, et al.--motion to intervene	08/25/2021		6
37	Proof of Service - MAILING filed.	08/20/2021	International Code Council, Inc.(Intervenor); National Fire Protection Association, Inc.(Intervenor)	4
36	Reply (ISO Motion To Intervene By National Fire Protection Association, Inc. And International Code Council) filed.	08/20/2021	International Code Council, Inc.(Intervenor); National Fire Protection Association, Inc.(Intervenor)	14
35	Opposition (To National Fire Protection Association, Inc. And International Code Council, Inc.'s Motion To Intervene) filed.	08/16/2021	Public.Resource.Org, Inc.(Petitioner)	17
34	Application to Appear as Counsel Pro Hac Vice (Notice Of Hearing And Motion For Jane W. Wise To Appear As Counsel Pro Hac Vice) filed.	08/03/2021	International Code Council, Inc.(Intervenor); National Fire Protection Association, Inc.(Intervenor)	8
33	Application to Appear as Counsel Pro Hac Vice (Notice Of Hearing And Motion For J. Kevin Fee To Appear As Counsel Pro Hac Vice) filed.	08/03/2021	International Code Council, Inc.(Intervenor); National Fire Protection Association, Inc.(Intervenor)	8
32	Motion - Other - Civil Special Sets scheduled for 08/27/2021 at 10:00:00 AM in Department 27 at Gordon D Schaber Courthouse .	07/26/2021		
31	Petition for Writ of Mandate - Writ of Mandate scheduled for 12/17/2021 at 10:00:00 AM in Department 27 at Gordon D Schaber Courthouse .	07/23/2021		
30	Petition for Writ of Mandate - Writ of Mandate rescheduled to 12/17/2021 at 10:00:00 AM in Department 27 at Gordon D Schaber Courthouse .	07/23/2021		
29	Notice - Other submitted by National Fire Protection Association, Inc. rejected on 07/02/2021 .	07/02/2021	National Fire Protection Association, Inc.(Intervenor)	1
28	Notice of Change of Address/Telephone No. filed.	06/03/2021	Public.Resource.Org, Inc.(Petitioner)	4
23	Lee, Louis Y. added as a effective 05/24/2021 .	05/25/2021		
22	Heckenlively, Bryan H. added as a effective 05/24/2021 .	05/25/2021		

ROA#	ROA Entry	Filed Date	Filed By	Pages
21	International Code Council, Inc. added as a Intervenor effective 05/24/2021 .	05/25/2021		
20	National Fire Protection Association, Inc. added as a Intervenor effective 05/24/2021 .	05/25/2021		
27	Proof of Service (By Fedex) filed.	05/24/2021	International Code Council, Inc.(Intervenor); National Fire Protection Association, Inc.(Intervenor)	3
26	Declaration - Other (Of Mark Johnson ISO Motion To Intervene) filed.	05/24/2021	International Code Council, Inc.(Intervenor); National Fire Protection Association, Inc.(Intervenor)	5
25	Declaration - Other (Of Christian Dubay ISO Motion To Intervene) filed.	05/24/2021	International Code Council, Inc.(Intervenor); National Fire Protection Association, Inc.(Intervenor)	4
24	Motion for Leave to Intervene filed.	05/24/2021	International Code Council, Inc.(Intervenor); National Fire Protection Association, Inc.(Intervenor)	28
19	Petition for Writ of Mandate - Writ of Mandate scheduled for 11/19/2021 at 10:00:00 AM in Department 27 at Gordon D Schaber Courthouse .	05/11/2021		
18	Petition for Writ of Mandate - Writ of Mandate rescheduled to 11/19/2021 at 10:00:00 AM in Department 27 at Gordon D Schaber Courthouse .	05/11/2021		
16	Petition for Writ of Mandate - Writ of Mandate scheduled for 10/08/2021 at 10:00:00 AM in Department 27 at Gordon D Schaber Courthouse .	05/06/2021		
15	Motion - Other - Writ of Mandate scheduled for 08/27/2021 at 10:00:00 AM in Department 27 at Gordon D Schaber Courthouse .	05/04/2021		
12	Randles-Little, Laura A added as a effective 04/23/2021 .	04/26/2021		
14	Answer (To The Verified Petition For Preemptory Writ Of Mandate Ordering Compliance With The California Public Records Act) filed.	04/23/2021	California Office Of Administrative Law(Respondent)	15
13	Answer (To The Verified Petition For Preemptory Writ Of Mandate Ordering Compliance With The California Public Records Act) filed.	04/23/2021	California Building Standards Commission(Respondent)	13
11	Proof of Service (By Substitute Service) filed.	04/20/2021	Public.Resource.Org, Inc.(Petitioner)	2
10	Proof of Service (By Substituted Service) filed.	04/20/2021	Public.Resource.Org, Inc.(Petitioner)	2
9	Proof of Service - PERSONAL filed.	04/20/2021	Public.Resource.Org, Inc.(Petitioner)	1
8	Proof of Service - PERSONAL filed.	04/20/2021	Public.Resource.Org, Inc.(Petitioner)	1
7	Notice - Other (Of Supplemental Authority ISO Petition For Writ Of Mandate) filed.	04/20/2021	Public.Resource.Org, Inc.(Petitioner)	29
6	Proof of Service (By Substituted Service) filed.	03/25/2021	Public.Resource.Org, Inc.(Petitioner)	2
5	Proof of Service (By Substituted Service) filed.	03/25/2021	Public.Resource.Org, Inc.(Petitioner)	2
4	Case initiation form printed .	03/18/2021		1
3	Case assigned to Department 27 .	03/17/2021		
2	Civil Case Cover Sheet filed.	03/17/2021	Public.Resource.Org, Inc.(Petitioner)	1
1	Petition for Writ of Mandate filed.	03/17/2021	Public.Resource.Org, Inc.(Petitioner)	82

Document received by the CA 3rd District Court of Appeal.