COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ___

No. _____

PAULA FISCAL, LARRY P. BARSETTI, REBECCA KIDDER, DANA K. DRENKOWSKI, JOHN CANDIDO, ALAN BYARD, ANDREW SIRKIS, NATIONAL RIFLE ASSOCIATION, SECOND AMENDMENT FOUNDATION, CALIFORNIA ASSOCIATION OF FIREARM RETAILERS, and LAW ENFORCEMENT ALLIANCE OF AMERICA,

Petitioners,

vs.

THE CITY AND COUNTY OF SAN FRANCISCO, SAN FRANCISCO POLICE CHIEF HEATHER FONG in her official capacity and SAN FRANCISCO POLICE DEPARTMENT, and Does 1-25,

Respondents.

PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES; SUPPORTING EXHIBITS

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TABLE OF CONTENTS

TABLE OF CONTENTS (Cont.)

TABLE OF CONTENTS (Cont.)

TABLE OF CONTENTS (Cont.)

Page(s)

TABLE OF AUTHORITIES

Page(s)

STATE CASES

TABLE OF AUTHORITIES (Cont.)

Page(s)

TABLE OF AUTHORITIES (Cont.)

Page(s)

STATUTES & RULES

PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF

Introduction

1. On November 8, 2005, Respondent CITY AND COUNTY OF SAN FRANCISCO (hereinafter "CITY") enacted legislation (hereinafter "the Ordinance") banning possession of handguns by residents of San Francisco and also banning the sale or transfer of all firearms and ammunition in the City. Since it was finalized, Mayor Gavin Newson, Senator Dianne Feinstein, and Law Professor Frank Zimring (a leading gun control proponent) have each publicly acknowledged that the Ordinance is preempted by state law.[1]

2. In this original writ matter, petitioners ask this Court to invalidate the Ordinance, just as it invalidated San Francisco's last attempt to enact a nearly identical handgun ban ordinance in an original writ proceeding in

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[1] *See New York Times* article "San Francisco Gun Vote: Tough Law or Thin Gesture?" November 5, 2005 (quoting Franklin Zimring, the William G. Simon Professor of Law at Boalt Hall, as calling the Ordinance a "triumph of symbolic politics" and a "sure loser" in state court); *San Francisco Chronicle* article "Will voters deem S.F. a no-guns-allowed city? Motion seems poised to pass, but firearm fans prepare for fight," November 5, 2005 ("'It clearly will be thrown out,' said San Francisco Mayor Gavin Newsom on Friday, adding that he planned to vote for the measure anyway to show his opposition to the proliferation of handguns. 'It's so overtly pre-empted. I'm having a difficult time with it, and that's my one caveat. ... It's really a public opinion poll at the end of the day.'"); *San Jose Mercury* article "S.F. Voters Consider Tough Handgun Ban," November 4, 2005 ("In the wake of the 1978 handgun slayings of then Mayor George Moscone and supervisor Harvey Milk, one of Dianne Feinstein's first acts as Moscone's replacement was to enact a handgun ban. It was struck down a couple of years later, however, by the state Supreme Court. Feinstein, now a U.S. senator, is not taking a position on Proposition H, because she feels the state's top court has already ruled, a spokesman said.")

1982. (*Doe v. City & County of San Francisco* (1982) 136 Cal.App. 3d 509 [186 Cal.Rptr. 380].) The Ordinance is attached hereto as Exhibit A (SF0001 to SF004) and incorporated herein.

3. The Ordinance is unlawful for a number of reasons. Among these, it violates various state laws and/or is preempted thereby. It also violates the federal and California guarantees of equal protection. And it interferes with the criminal justice system in ways that contradict, and are inimical to, state law. The Ordinance's language reflects various local policy and legislative choices, and requires various things, which have ruinous effects on policy choices made by the state legislature through state law, and especially on the language and enforcement of the criminal law. California state gun laws are tailored to be inapplicable to criminal justice personnel. In contrast, the Ordinance has only a severely limited and very narrow exemption from the handgun possession ban (section three of the Ordinance) for criminal justice personnel. And there are no exemptions whatever to the Ordinance's firearms and ammunition sale, distribution, or transfer ban (section two of the Ordinance). That section applies fully to both law enforcement agencies and related personnel.

4. In addition to the impact on law enforcement, because the ill-thought-out Ordinance contains no exemptions at all from the ban on the sale or transfer of firearms or ammunition, and no applicable exemptions from the handgun possession ban, essentially no movie, television, or theatrical production involving a firearm can be made in the City. Further, San Francisco museums and non-profit organizations will have to divest themselves of the antique and collectible handguns which their personnel can no longer possess, *e.g.*, the Nineteenth Century pistols of the California Historical Society and the Society of California Pioneers (respectively), the

Marines Memorial Club collection of WWI and WWII military handguns, and the Veteran Memorial Building's collection covering the Civil War to WWII.

5. The San Francisco Opera could perhaps keep its Nineteenth Century rifles, but it could not put on operas involving those rifles since they would have to be transferred between actors and other opera personnel. Operas which can no longer be performed in San Francisco because of the handgun possession or firearms transfer bans include, but are not limited to, "Tosca," "Carmen," "The Girl of the Golden West," "Candide," "HMS Pinafore," "The Death of Klinghoffer," "Lady Macbeth of Mtensk," " Eugene Onegin," and "Der Freischutz." By the same token ACT and other San Francisco playhouses will no longer be able put on Chekhov's "Uncle Vanya," Harold Pinter's "The Dumbwaiter" and many others, including plays by Eugene O'Neill, Sean O'Casey, Lillian Hellman, Arthur Miller, Sam Shepard, Albert Camus, Aaron Sorkin and Tennessee Williams, to name just a few. Likewise, the San Francisco Ballet will be unable to put on ballets such as Mark Morris' "The Hard Nut."

6. This controversy is appropriate for determination as an original writ matter for the same reasons that this Court so determined the issues twenty-three years ago in *Doe* when it granted that writ petition: the legal issues are of great importance for San Francisco, and also for other cities and counties in this appellate district which will predictably be urged to enact the same ordinance. Indeed, speedy and definitive review is even more desirable with the current Ordinance because of its ruinous effects on City's cultural events and on the criminal justice system.

Authenticity of Exhibits

7. All exhibits accompanying this petition are true and correct copies of the original documents. The exhibits are incorporated herein by reference as though fully set out in this petition. The exhibits are consecutively paginated from page SF0001 through page SF0024, and page references in this petition are to the consecutive pagination.

Beneficial Interest of Petitioners

8. Petitioner PAULA FISCAL was one of the petitioners in the *Doe* case. She is a businesswoman and property owner living and having an office in San Francisco, in which locations she keeps handguns for protection. The Ordinance will unlawfully deprive her of her property (the handguns) and would disable her from protecting herself and her property.

9. Petitioner LARRY P. BARSETTI, is a lifelong resident of San Francisco and a handgun owner. Having retired from the San Francisco Police Department as a Lieutenant, he has a special permit to carry handguns issued under Penal Code section 12027. Petitioners contend that that special permit is valid regardless of the Ordinance. Whether CITY deems that its Ordinance overrules state-authorized permits is unclear. In any event, petitioner BARSETTI has standing as a taxpayer and citizen.

10. Petitioner REBECCA KIDDER was born and has lived her entire life in San Francisco, and owns a handgun therein. This property will become illegal, and she will be deprived of it, and left defenseless, upon the effective date of the Ordinance.

11. Petitioner DANA K. DRENKOWSKI, a U.S. Army reserve

officer, is currently on active duty as Chief of Civil and Military Affairs Multilateral Force, Iraq. He resides in San Francisco and stores his extensive collection of handguns there. His handguns would not be exempt under the Ordinance because it has no exemption for the military; and, in any event he is a member of the reserves, not of the regular Army, and his handguns are kept only for his personal use both for defense and as a competitive target shooter and hunter.

12. Petitioner JOHN CANDIDO, a resident of San Franciso, was a police officer with SFPD from 1963 through 1995. He was also a law enforcement officer with the San Francisco Sheriff's Department from 1951 through 1960.

13. Petitioner ALAN BYARD is a San Francisco Patrol Special Police Officer and has been since 1977. He also works for a private security company as a trainer and is a lifelong resident of San Francisco.

14. Petitioner ANDREW SIRKIS, a San Francisco handgun owner, owns real property and also has a business office in San Francisco. The Ordinance deprives him of his property.

15. Each of said petitioners is a citizen of San Francisco who has within the past year paid taxes to CITY and/or for its benefit.

16. Petitioner NATIONAL RIFLE ASSOCIATION (hereinafter "NRA") is a non-profit membership organization founded in 1871 and incorporated under the laws of New York, with headquarters in Fairfax, Virginia and an office in Sacramento, California. The NRA represents several hundred thousand individual members and 850 affiliated clubs and associations in California and tens of thousands of members in CITY,

including police officers.

17. Petitioner SECOND AMENDMENT FOUNDATION is the nation's oldest and largest tax-exempt education, research, publishing and legal action group focusing on the Constitutional right and heritage to privately own and possess firearms. Founded in 1974, the Foundation has grown to more than 600,000 members and supporters and conducts many programs designed to better inform the public about the consequences of gun control.

18. Petitioner CALIFORNIA ASSOCIATION OF FIREARM RETAILERS is a 501(c) non-profit membership organization founded in 2004 and incorporated under the laws of California. The California Association of Firearm Retailers represents firearm retailers throughout California. It operates under the umbrella of the National Association of Firearm Retailers.

19. Petitioner LAW ENFORCEMENT ALLIANCE OF AMERICA ("LEAA") is a nonprofit, non-partisan advocacy organization under section 501, subdivision (c)(4) of the Internal Revenue Code. Its principal offices are in Virginia and its executive director is James J. Fotis, a retired New York police officer. LEAA's members consist of law enforcement professionals and officers, crime victims, and concerned citizens, many of whom reside and/or work in San Francisco and pay taxes thereto. In this action, LEAA represents these members and officers, including deputy sheriffs.

20. In this suit, NRA, SAF, and LEAA (respectively) represent the interests of their thousands of respective members, including police

officers, who reside in the CITY and who are too numerous to conveniently bring this action individually. In addition to their standing as citizens and taxpayers, those members' interests include their ownership and possession of handguns in San Francisco and their desire to purchase and interest in purchasing firearms in San Francisco.

Capacities of Respondents

21. Respondent CITY is an entity duly formed under the laws of California which governs the City and County of San Francisco. CITY is the entity which has enacted, and is beneficially interested in, the enactment hereby challenged.

22. Respondent HEATHER FONG is the chief of the SAN FRANCISCO POLICE DEPARTMENT. Both respondents are charged with enforcing the Ordinance.

Chronology of Pertinent Events

23. On June 28, 1982, CITY adopted an ordinance prohibiting any person within the City from possessing a handgun.

24. This 1982 ordinance became effective on July 28, 1982.

25. This Court invalidated the 1982 ordinance by reason of preemption by state law on October 13, 1982.

26. On November 8, 2005, CITY enacted legislation nearly identical to the 1982 ordinance.

Irreparable Injury

27. The named individual petitioners, and the individuals and entities represented in this action, are irreparably injured by the mere enactment and existence of the Ordinance in the following ways:

28. Whether or not a penalty scheme has been enacted under the Ordinance, those petitioners who own handguns are subject to having their property confiscated by SFPD or SFSD so long as the Ordinance remains on CITY's books;

29. Whether or not a penalty scheme has been enacted under the Ordinance, those petitioners who own firearms cannot sell them – even if the firearms are inoperable antiques which are expressly exempt from regulation by federal and state law;

30. Whether or not a penalty scheme has been enacted under the Ordinance, business enterprises that have a stock of handguns are subject to having that stock confiscated by CITY authorities;

31. Whether or not a penalty scheme has been enacted under the Ordinance, business enterprises which sell firearms in violation of the Ordinance are subject to having their business licenses voided, and to other administrative penalty;

32. Whether or not a penalty scheme has been enacted under the Ordinance, business enterprises which sell firearms will be unable to do so because no one will be willing to buy from them so long as the Ordinance remains on the books;

33. Whether or not a penalty scheme has been enacted under the Ordinance, business enterprises which sell firearms will be deterred from

doing so because, even if the sale is legal under state law, they might be sued for illegal sale of a gun they sold (legally under state law) that is misused or discharged accidentally causing injury to someone;

34. Peace officers who are represented in this suit are irreparably injured by the Ordinance's curtailment of their state law privilege to carry arms (as hereinafter alleged). Whether or not a penalty scheme has been enacted under the Ordinance, these officers are subject to administrative discipline by their department for possessing handguns at times and under circumstances not covered by the uniquely narrow exemption the Ordinance provides as to its handgun ban. And, as alleged herein, such officers are precluded from the proper and necessary performance of their duties by the firearm "transfer" provision of the Ordinance, which has no criminal justice exemption at all;

35. All taxpayer petitioners are irreparably injured by the waste of tax funds which will be spent to add the Ordinance's unlawful provisions to CITY's codes, and to print them in those codes, and by other expenditures of public funds relating to the implementation of the Ordinance.

Public Interest Involved

36. A citizen mandamus action is appropriate because the Ordinance is unconstitutional and unlawful, e.g., by violating Government Code section 53071 and Penal Code section 12026 (b) and for the other reasons hereinafter set out. Government Code section 53071 and Penal Code section 12026 (b) were intended to protect law-abiding, responsible people in the acquisition, possession, and lawful use of firearms.

CLAIMS / CAUSES OF ACTION

First Claim: Preemption/Contradiction of State Law as to Handgun Possession

37. Petitioners reallege all prior paragraphs and incorporate them herein as if set out verbatim.

38. The Ordinance would ban the possession and transfer of handguns, even by persons expressly authorized by state law to have them. The only persons who are entirely exempt from the ban would be persons who either: (a) are within the limited exceptions contained in section three of the Ordinance; or (b) have special permits or authorization under Penal Code sections 12025.5, 12027, 12050 or other state laws which specially authorize or permit handgun possession. Thus, the Ordinance makes handgun possession dependent on special permission or permits/licenses, and operates to create a new class of persons who will be required to obtain licenses in order to possess handguns. That is contrary to Penal Code section 12026 (b), which forbids localities from conditioning handgun possession or sale on possession of a permit or license, as well as Government Code section 53071.

39. In producing what is effectively a licensing or permit requirement to buy or possess a handgun, the Ordinance intrudes upon an area which state law fully occupies. Beyond establishing a permit requirement, the Ordinance violates Penal Code section 12026's implied preclusion of local attempts to ban the possession of handguns by law-abiding, responsible adults whom state law allows to acquire and possess them, and Government Code section 53071's express preclusion of cities

enacting licensing schemes for handguns.

Second Claim: Preemption/Contradiction of State Law As to Firearm and Ammunition Sale or Transfer

40. Petitioners reallege all prior paragraphs and incorporate them herein as if set out verbatim.

41. Penal Code section 12026 (b) and Government Code section 53071 were intended to protect the rights to purchase firearms and ammunition therefor. By prohibiting those things, the Ordinance violates state law and intrudes upon areas that are occupied by state law to the exclusion of any local enactment.

Third Claim: Preemption/Contradiction of State Hunting Policy

42. Petitioners reallege all prior paragraphs and incorporate them herein as if set out verbatim.

43. Hunting is socially beneficial and an integral part of the state scheme of managing game. Fish & Game Code section 1801 (e) - (g) declares that state public policy favors hunting as a means of game management to prevent over-population of animals which would result in their depletion and destruction of the environment and, eventually, their cruel death by starvation. Numerous additional laws, regulations and policies provide for and endorse hunting as means of game management. (See, *e.g.*, "A California Plan for Deer" attached hereto as Exhibit B (SF0005 to SF0022).)

44. The Ordinance precludes hunting by San Franciscans because it curtails, and eventually eliminates, the ownership of hunting guns and

hunting ammunition. It bans and confiscates all handguns immediately. Though long guns are not banned immediately, their sale and transfer are banned, making impossible the acquisition of hunting rifles and shotguns and ammunition. Eventually the Ordinance confiscates all hunting rifles and shotguns because after the current owners die, the long guns cannot be transferred to heirs or anyone else in the CITY.

45. Hunting is both facilitated by state law in order to accomplish state goals and declared to be a means of such accomplishment. In banning possession of handguns and the sale of all hunting firearms and ammunition, the Ordinance conflicts with and is inimical to state law and declared policy.

46. Pursuant to Government Code section 53071, the Fish & Game Code's licensing and permit laws and regulations occupy the field of the regulation of hunting firearms and ammunition to the exclusion of local legislation.

Fourth Claim: Equal Protection Rights of City Residents

47. Petitioners reallege all prior paragraphs and incorporate them herein as if set out verbatim.

48. Under the Ordinance, San Francisco residents – but no other persons – are forbidden to possess handguns in the City. The many non-San Franciscans who have an office or shop in the City are free to keep handguns there for their protection. That classification is invalid and contrary to the federal and California guarantees of equal protection.. There is no rational relationship between the residency of the person possessing a

handgun and the dangers of handgun possession in the City.

Fifth Claim: Firearm and Ammunition Sales Bans Preclude the Enforcement of State Criminal Laws

Petitioners reallege all prior paragraphs and incorporate them herein as if set out verbatim.

49. Because it was so poorly thought out, section two of the Ordinance effectively precludes distribution of firearms and ammunition by criminal justice agencies to their officers. It also precludes transfer of arms and ammunition between criminal justice personnel and agencies, and the introduction of crime guns and ammunition into judicial proceedings, as well as seizures and returns of firearms as required by state law.

50. Because of the ruinous effects section two would have on the enforcement and administration of state law and judicial proceedings, section two is inimical to, and preempted by, state law.

Sixth Claim: Equal Protection Right of Peace Officers

51. Petitioners reallege all prior paragraphs and incorporate them herein as if set out verbatim.

52. Peace officers are exempted under state law from a host of gun laws that apply to civilians, particularly including those banning the carrying of concealed or loaded handguns. But CITY's Ordinance abolishes that privilege for San Francisco peace officers who reside in the City. Contradicting the state policy of completely exempting peace officers, the Ordinance allows officers to carry their firearms only as "required" to perform their duties and only while "carrying out the functions of [each

officer's] government employment. . . ."

53. The effect of this exceptionally narrowly-worded exemption is that San Francisco-resident peace officers: (a) must leave their handguns in the station house when they go off duty; (b) cannot keep handguns (including their duty weapon) in their homes while off duty; (c) cannot carry their duty weapon to and from their place of employment, or anywhere else while off duty; and (d) cannot carry a back up weapon.

54. These restrictions do not apply to San Francisco peace officers who reside outside the City. In making this discrimination between San Francisco peace officers based on their residence, the Ordinance is invalid and contrary to the federal and California guarantees of equal protection. There is no rational relationship between the residency of San Francisco peace officers and the dangers of handgun possession by San Francisco peace officers in the City.

Declaratory Judgment Allegations

55. There is an actual and present controversy between petitioners and respondents. Petitioners contend that the Ordinance is unlawful as alleged hereinbefore. Respondents dispute and deny that. Wherefore petitioners request this court to declare that the Ordinance is unlawful, conflicts with state law, and intrudes into an area fully occupied by state law.

PRAYER

Wherefore petitioners pray for the following relief:

1. Issuance of an alternative writ requiring respondents to show cause why the Ordinance ought not to be invalidated;

2. Issuance of a peremptory writ ordering respondents not to enforce the Ordinance, and to remove it from the list of municipal ordinances;

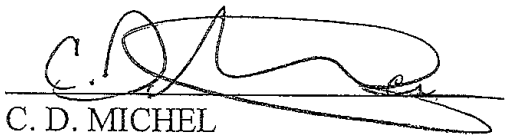
3. A declaration that the Ordinance is invalid;

4. For attorneys' fees as provided by federal and California law, and for the appointment of a master or other mechanism for determining the attorneys' fees to which petitioners are entitled; and

5. Such other relief as may be just and proper.

Dated: November 9, 2005

Respectfully submitted,
TRUTANICH • MICHEL, LLP



C. D. MICHEL
Attorney for Petitioners

VERIFICATION

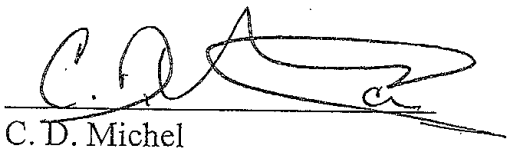
I, C.D. Michel, declare as follows:

I am one of the attorneys for the petitioners herein. I have read the foregoing Petition for Writ of Mandate/Prohibition Or Other Extraordinary Relief and know its contents. The facts alleged in the petition are within my own knowledge and I know these facts to be true. Because of my familiarity with the relevant facts, I, rather than petitioners, verify this petition.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on November 9, 2005, at Long Beach, California.

Dated: November 9, 2005

TRUTANICH • MICHEL, LLP



C. D. Michel
Attorney for Petitioners

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Ordinance challenged here is indistinguishable from a previous SAN FRANCISCO (hereinafter "CITY") handgun ban attempt that this Court invalidated over 20 years ago on grounds similar or identical to those raised here. (*Doe v. City & County of San Francisco* (1982) 136 Cal.App.3d 509, 517-518 [186 Cal.Rptr. 380].)

Significantly, since the *Doe* decision, the law it primarily construed, Penal Code section 12026, has been reenacted *three times* – without change to disavow the *Doe* ruling. Moreover, new state laws regulating handgun possession have been expressly qualified and limited so as maintain *Doe*'s construction of Section 12026.

The current Ordinance also bans "sale, distribution, transfer [etc.]," of all firearms and ammunition. That provision is also preempted by, *inter alia*, the Unsafe Handgun Act (UHA) under which the Department of Justice (DOJ) tests, certifies, and licenses which make and model handguns "may be sold in this state pursuant to this title." (Pen. Code § 12131(a).) By banning the sale of DOJ-approved handguns, the Ordinance directly conflicts with and is preempted by the language of the UHA.[2]

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[2] In fact, following enactment of the UHA, CITY and all but a few other California cities that had them repealed ordinances banning sales of certain *categories* of handguns, e.g., the so-called "Saturday Night Specials," on their own accord or after being sued. The Legislature was well aware that the UHA would preempt such local handgun ordinances, as were local government entities who sought, unsuccessfully, to include language in the UHA to avoid this preemptive impact.

II. THIS COURT DECLARED THE CENTRAL PROVISION OF THE ORDINANCE – OUTLAWING HANDGUNS – INVALID THE LAST TIME SAN FRANCISCO TRIED IT

Based on Penal Code section 12026, exclusive state registration and licensing laws, and Government Code section 53071, this Court concluded that the 1982 handgun ban was preempted on three independent grounds.

First, like the current Ordinance, the 1982 ordinance banned handgun possession for all except a special few people (express or *de facto* permittees). So this court held that the 1982 ban was expressly preempted by Government Code section 53071, declaring state licensing and registration provisions exclusive.

Second, and for the same reason, the 1982 ban conflicted with the plain wording of Section 12026 that "[n]o permit or license . . . shall be required of him." As this Court noted, rather pointedly, the statute does not say "no *State* permit or license" shall be required; it says "no permit or license." The Court emphasized the obvious: "'No permit or license' means 'no permit or license.'" (*Doe, supra*, 136 Cal.App.3d at 518.)

Finally, this Court concluded that, even if the 1982 Ordinance did not impose a "licensing" requirement, the Ordinance would still be invalid because Penal Code section 12026 implicitly precludes local handgun bans and preempts any such ordinance:

> [W]e infer from Penal Code section 12026 that the Legislature intended to occupy the field of residential handgun possession to the exclusion of local governmental entities. A restriction on requiring permits and licenses necessarily implies that possession is lawful without a permit or license. It strains reason to suggest that the state Legislature would prohibit licenses and permits but allow a

ban on possession. (*Id.*)

Thus, it is well settled that CITY cannot ban the handguns that its law-abiding responsible adults own pursuant to state law in the privacy of their own homes or businesses.

A. *Doe*'s Reasoning Has Been Respected, Not Repudiated, in Subsequent Cases on Firearms Preemption

The major post-*Doe* firearm preemption case came when the Second District Court of Appeal upheld a local ban on sale of a few kinds of handguns defined as "Saturday Night Specials." (*California Rifle & Pistol Assn. v. City of West Hollywood* (2nd Dist. 1998) 66 Cal.App.4th 1302 [78 Cal.Rptr.2d 591].) This *CRPA* opinion emphasized its consistency with *Doe*:

> In *Doe v. City and County of San Francisco* (1982) 136 Cal.App.3d 509 [186 Cal.Rptr. 380], San Francisco had enacted a ban on possession of handguns. Exempt from the ban, however, were those who possessed licenses under state law either to carry [Penal Code §§ 12050 *et seq*] or to sell handguns. Thus possession of handguns in the home (which was specifically allowed under Penal Code 12026 without any license or permit) was facially prohibited unless the possessor had a license. The court found that the effect was "to create a new class of persons who will be required to obtain licenses in order to possess handguns." (136 Cal.App.3d at p. 517.) Government Code section 53071, however, expressly preempted the whole field of licensing requirements. The court concluded that CITY had in effect created a licensing requirement for handguns in the home in violation of the express preemption of that field in Government Code section 53071.

> *Doe* also noted that even if it did not consider the ordinance to contain a *de facto* licensing requirement, it would nevertheless find the ordinance impliedly preempted on the theory that Penal Code section 12026 (which preempts local requirements for permits or licenses to possess concealable weapons in the home) reflected a legislative intent to occupy the field of "residential handgun possession." However, the *Doe* court also noted that the decisions "suggest that the Legislature has not prevented local governmental bodies from regulating all aspects of the possession of firearms," and that "[i]t is at least arguable that the state Legislature's adoption of numerous gun regulations has not impliedly preempted *all areas* of gun regulation." (*Doe,* supra, 136 Cal.App.3d at pp. 516, 518.) [*CRPA, supra,* 66 Cal.App.4th at 1316 - emphasis by court.]

In a footnote, *CRPA* went on to emphasize the differences between the West Hollywood ordinance it upheld and the San Francisco ordinance that *Doe* invalidated:

> Plaintiffs nevertheless argue that *Doe* requires a finding of express preemption in this case. CITY's ordinance, however, does not create any *de facto* licensing requirement similar to that involved in *Doe*. Gun dealers in CITY cannot, simply by obtaining a license, avoid the ordinance. Nor is a license required for a person to possess a SNS handgun in the home, place of business, etc. Only the *sale* of SNS's within CITY is prohibited. [Italics by court.] (*CRPA* at 1316, fn. 5.)

Thus, *CRPA* interpreted and accepted *Doe* as precluding exactly the kind of ordinance here challenged.

B. The Legislature Has Doubly Reaffirmed this Court's Reasoning in *Doe*

The Legislature first reaffirmed *Doe* by three times reenacting Penal

Code section 12026 without repudiating *Doe*'s conclusions.[3] The current version of the portion of Section 12026 reads, in pertinent part:

> (b) No permit or license to purchase, own, possess, keep, or carry, either openly or concealed, shall be required of any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Section 12021 or 12021.1 of this code [related to felons and narcotics addicts] or Section 8100 or 8103 of the Welfare and Institutions Code [related to mental disorders], to purchase, own, possess, keep, or carry, either openly or concealed, a pistol, revolver, or other firearm capable of being concealed upon the person within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident. [Penal

---

[3] The 1988 and 1989 amendments altered what is now subsection (a) of § 12026 so as to permit householders and shopkeepers carrying their handguns concealed on their persons in their own homes and offices. In contrast, *Doe* expressly dealt with only the language of what is now subsection (b). (136 Cal. App. 3d at 517.) See Acts of 1988, Ch. 577, § 2 which a court held inadequate in *People v. Melton* (1988) 206 Cal. App. 3d 580, 593-94 [253 Cal.Rptr. 661] and Acts of 1989, Ch. 958, § 1 which both further altered the language and expressly repudiated *Melton* for frustrating the purposes of the 1988 amendment.

A 1995 amendment did substantively change the language *Doe* construed, but without repudiating *Doe*'s implied preemption holding. Acts of 1995, Ch. 322, § 1 clarified that § 12026's guarantee does not give any gun right to persons who have been convicted of violent misdemeanors. (Felons had always been expressly excluded.)

In addition to the foregoing, amendments to § 12026 have subdivided it into subsections with the language *Doe* construed being broken out as subsection (b). This change actually fortifies the *Doe* reading by making it even clearer that the words that are now Penal Code section 12026 (b) constitute a stand-alone command rather than being an exception to the § 12025 ban on carrying concealed handguns.

Code § 12026(b)]

By adopting reenactments made "without changing the interpretation put on that statute by the courts, the Legislature is presumed to have been aware of, and acquiesced in, the courts' construction of that statute." (*Olmstead v. Arthur J. Gallagher & Co.* (2004) 32 Cal.4th 804, 815 [11 Cal.Rptr.3d 298]; *People v. Massie* (1998) 19 Cal. 4th 550, 568 [79 Cal.Rptr.2d 816] (citations omitted).)

The fact that the Legislature has revised the statute without change, not just once but multiple times, emphasizes the presumption that *Doe*'s interpretation of Penal Code section 12026 is one that the Legislature accepts. (*People v. Bouzas* (1991) 53 Cal.3d 467, 475 [279 Cal.Rptr. 847]; *Olmstead, supra,* 32 Cal.4th at 815.)

Secondly, the Legislature implicitly reaffirmed *Doe* by enacting Penal Code section 626.85 (h) and (i), providing that "[n]otwithstanding Section 12026" students may not have firearms in college- or university-managed student housing. In so prefacing those new laws, the Legislature further emphasized that Penal Code section 12026 creates a general right for law-abiding, responsible adults to have handguns in their homes. It is from this *general* right and/or statutory protection that Penal Code section 626.85 (h) and (i) represent a special exception.

Such references in later laws to an earlier one may not be disregarded. (*People v. Superior Court* (1996) 13 Cal.4th 497, 520 [53 Cal.Rptr.2d 789].) Moreover, it must be presumed that the Legislature, in mentioning Section 12026, knew of and accepted *Doe*'s interpretation of that statute. (*Olmstead, supra,* 32 Cal.4th at 815.)

C. The Ordinance Creates a Licensing Requirement Since Its Ban Cannot Apply to Persons Having Express Permission to Possess Handguns

The Ordinance is invalid under *Doe's* third rationale, *i.e.*, that Penal Code section 12026 implicitly precludes handgun bans. But the Ordinance is also invalid under *Doe's* first and second rationales, since the Ordinance's effect is to make handgun possession illegal without a license/permit. *Doe* found the 1982 handgun ban a permit law because it expressly allowed handgun possession by persons to whom state permits had been issued under Penal Code section 12050 *et seq*. Thus the effect of the 1982 ordinance was "to create a new class of persons who will be required to obtain licenses in order to possess handguns." (136 Cal.App.3d at 517.)

This Ordinance has exactly the same effect: San Franciscans will be forbidden to have handguns with a few explicit exceptions contained in the Ordinance (which thereby creates a *de facto* permit/licensing scheme itself) – plus the inherent exception for all who have a state-authorized permit or otherwise have state authority to possess handguns.[4] Petitioners maintain that San Francisco residents authorized to have handguns by these state

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[4] The principal state permit law, as discussed in *Doe*, remains Penal Code section 12050 under which local chiefs of police or sheriffs issue permits whereby permittees can carry (and thereby possess) handguns. State law also provides for sheriffs to issue permits allowing retired California law enforcement officers and retired federal officers to carry. (Pen. C. § 12027.) Also Penal Code sections 12025.5 and 12031(j)(2) authorize loaded carry and concealed carry for women (or men) who reasonably believe they are in grave danger from someone against whom there is a current restraining order based on threat to life or safety.

laws are automatically exempt as a matter of law from the Ordinance's ban on possession of handguns. The laws authorizing them to carry guns represent the Legislature's judgment that possessing a handgun serves some valid purpose for the people and situations these laws cover. Even though the Ordinance appears to be intended to disarm them, it cannot do so because it is axiomatic that an ordinance is preempted if its effect is "penalizing conduct which the state law expressly authorizes ..." (*Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, 397 [20 Cal.Rptr.2d 164].)

So the Ordinance's effect is to ban handgun possession except for those having literal or *de facto* permits / licenses – thereby establishing exactly what Penal Code section 12026 forbids.

Moreover, as *Doe* further ruled, for CITY to effect such a permit requirement, even *de facto*, violates Government Code section 53071, which expressly preempts any local power to license gun ownership or sales.[5]

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[5] Government Code section 53071 provides, in full, "[i]t is the intention of the Legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms as encompassed by the provisions of the Penal Code, and such provisions shall be exclusive of all local regulations, relating to registration or licensing of commercially manufactured firearms, by any political subdivision as defined in Section 1721 of the Labor Code."

D. The Ordinance Imposes Local Standards for Handgun Possession, Something Both Implicitly and Explicitly Contrary to Paramount State Law

A host of California laws limit handgun possession to responsible, law-abiding adults.[6] The Ordinance would impose far more onerous local standards by confining handgun ownership to very limited categories of people. Given that cities have no realistic way to stop handguns from entering their boundaries, establishing statewide standards for those who may legally possess handguns is a matter of statewide importance. The Ordinance falls athwart the cases holding that when state law regulates an area by establishing statewide qualifications, no locality may add its own further or different qualifications.[7]

The third basis on which *Doe* struck down CITY's 1982 ban is that Penal Code section 12026 implicitly precludes localities from banning handguns. To reiterate, as *CRPA* states:

> *Doe* also noted that even if it did not consider the ordinance to contain a *de facto* licensing requirement, it would nevertheless find the ordinance impliedly preempted on the theory that Penal Code section 12026 (which preempts local requirements for permits or licenses to possess concealable weapons in the home) reflected a legislative intent to occupy the field of

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[6] Penal Code §§ 12021, 12072; Welf & Inst. C. §§ 8100 *et seq.*

[7] *Verner, Hilby & Dunn v. City of Monte Sorreno* (1966) 245 Cal.App. 2d 29, 32 [53 Cal.Rptr. 592]: where state has licensed civil engineers and surveyors to operate throughout state, city may not impose regulation setting out more stringent and additional requirements. *Agnew v. City of Los Angeles* (1958) 51 Cal.2d 1, 6 [330 P.2d 385]: LA cannot impose licensing requirements on state licensed electrical contractor.

"residential handgun possession." (*CRPA, supra*, 66 Cal.App. 4th at 1316.)

CITY will doubtless mischaracterize *Doe*'s alternative holding as both wrong and only dictum, though this holding is compelled by the legislative history (discussed *infra*) underlying Penal Code section 12026. But to reiterate, all such argument is superfluous, given the Legislature's multiple ratifications of *Doe's* analysis. For even if *Doe*'s alternative holding were both wrong and dictum, those later reenactments render *Doe* both correct and binding. (See *Peltier v. McCloud River R.R. Co.* (1995) 34 Cal.App. 4th 1809, 1821, fn. 6 [41 Cal.Rptr.2d 182] (refusing to consider arguments that a previous case's interpretation of a statute was wrong, given that statute's reenactment without change to the language interpreted).)

E. The Legislative History of Penal Code Section 12026 Demonstrates its Purpose to Assure Law-Abiding, Responsible Adults the Right to Possess Handguns in Their Homes and Businesses

To understand statutes, courts must "take into account matters such as context, the object in view, the evils to be remedied, the history of the times, and of legislation upon the same subject...." (*Harry Carian Sales v. Agricultural Labor Relations Board* (1985) 39 Cal.3d 209, 223 [216 Cal.Rptr. 688].) Indeed, our Supreme Court has endorsed Justice Holmes' view that "a page of history is worth a volume of logic. . ." (*Santa Clara Local Transport. Authority v. Guardino* (1995) 11 Cal.4th 220, 235 [45 Cal.Rptr.2d 207, 902 P.2d 225].)

Penal Code section 12026 was originally enacted in 1923. To

understand its object and the perceived evil it sought to remedy, suffice it to say that the preceding twenty years had seen the enactment of total handgun bans and of handgun permit laws across the nation and the world.[8] In turn, these anti-gun laws reflected the tumultuous late Nineteenth and early Twentieth Centuries in which assassins had taken or menaced the lives of two U.S. Presidents, the Russian Czar, the Empress of Austria, an Austrian Archduke (which led to WWI) and countless lesser figures including former President Roosevelt, Oliver Wendell Holmes, Attorney General Palmer, Henry Frick, J.P. Morgan and the Mayors of Chicago and New York.

Motivated by fears of political turmoil and labor unrest, gun permit laws appeared in England, Canada, Australia, New Zealand and all through Europe while Germany and a few other nations banned civilian ownership of

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[8] There has never been a federal or state (as opposed to local) handgun possession ban in the United States. Unless otherwise referenced or evident, all facts in this section of the brief derive from: Joyce Lee Malcolm, GUNS AND VIOLENCE: THE ENGLISH EXPERIENCE 141-47 (Harvard, 2002); Stephen P. Halbrook, "Nazi Firearms Law and the Disarmament of the German Jews," 17 AZ. J. INTL. & COMPAR. LAW 483-532 (2000); David B. Kopel, THE SAMURAI, THE MOUNTIE, AND THE COWBOY: SHOULD AMERICA ADOPT THE GUN CONTROL OF OTHER DEMOCRACIES? (1992)(winner of the International Criminology award of the American Society of Criminology); Edward Leddy, MAGNUM FORCE LOBBY: THE NATIONAL RIFLE ASSOCIATION FIGHTS GUN CONTROL (University Press, 1987) 85-89; Don B. Kates, *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 MICH. L. REV. 203, 209-210, fn. 23 (1983); Don B. Kates, History of Handgun Prohibition in the United States, in Kates, RESTRICTING HANDGUNS (1979) 14-20, 29-30; and Lee Kennett & James LaVerne Anderson, THE GUN IN AMERICA: THE ORIGINS OF A NATIONAL DILEMMA, 213 (1976). Lest there be any question of concealment, we note that Prof. Kates is one of petitioners' counsel.

any kind of firearm.[9] The first such Twentieth Century American law was South Carolina's 1903 total ban of handgun sales which the American Bar Association urged other states to emulate. (See ABA JOURNAL (1922) at p. 591.) In 1911, New York enacted the Sullivan Law requiring permits to buy or own a handgun. Over the next twenty years, six more states enacted permit requirements to buy a handgun. Across the nation, total handgun bans or Sullivan-type laws were promoted under the slogan "if nobody had a gun nobody would need a gun." (THE GUN IN AMERICA, supra, at 192.)

> Given this trend, Prof. Leddy writes,
> It soon became clear that if target shooters and other legal gun owners did not want to see the uses of guns totally banned they must become active politically with a program of [less onerous gun control] laws which would both *protect gun ownership* and reduce crime. This program was the "Uniform Firearms Act" [aka the Uniform Revolver Act]... This act was drafted by Karl T. Frederick, a former president of the National Rifle Association....[10]

As the NRA proclaimed, "This law was adopted in 1923 *by California,* North Dakota and New Hampshire.'"[11] The Uniform Firearms Act ("UFA") contained a host of moderate regulations that form the basis of current California law, such as prohibiting handgun possession by persons who had been convicted of felonies and requiring that firearms dealers be licensed, that handguns have serial numbers, that persons carrying them

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[9] See, respectively, Malcolm, supra at 141-47; Kopel, supra 141, 195, and 237; Halbrook, supra; and THE GUN IN AMERICA, supra at 213.

[10] MAGNUM FORCE LOBBY supra at 87, emphasis added.

[11] *Ibid*; see also THE GUN IN AMERICA, supra, at 192-93.

concealed be licensed, etc.

Ironically, California's UFA seems to have been initially sponsored by an anti-gun proponent. As introduced, it featured a permit requirement to either buy or possess a handgun.[12] But the outcome was a dramatic triumph for gun owners: Not only was the permit requirement rejected, it was replaced by Penal Code section 12026's preclusion of permit requirements for law-abiding, responsible adults to buy or possess handguns in home or office.

Thus, context and history imperatively support *Doe's* conclusion that section 12026 precludes localities from banning home or office handgun ownership by law-abiding, responsible adults. That is further confirmed by the only contemporary comments the Legislative Intent Service could find for us on California's 1923 adoption of the UFA, including what is now Penal Code section 12026. As the July 15, 1923 San Francisco Chronicle reported, "It was largely on the recommendation of R.T. McKissick, president of the Sacramento Rifle and Revolver Club, that Governor Richardson" signed the 1923 Act.[13] The Chronicle quoted McKissick's description of the Act as "frankly an effort on the part of those who know something about firearms to forestall the flood of fanatical legislation intended to deprive all citizens of the United States of the right to own and

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[12] A copy of the Act as introduced appears at 14 AM. INST. CRIM. L & CRIMINOLOGY 135ff. (1923-24). The permit requirement to possess or buy a handgun was the second section set out on p. 135 of the volume.

[13] "New Firearms Law Effective on August 7" (July 15, 1923) *San Francisco Chronicle*. A copy of this article is attached as Exhibit C (SF0023 to SF0024).

use" handguns. (As to the admissibility of such statements see *Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211, 219, fn. 9 [185 Cal.Rprt. 270] (letter urging that Governor sign the bill); *County of San Bernardino v. City of San Bernardino* (1997) 15 Cal.4th 909, 917, 926 [64 Cal.Rptr.2d 814] (supporting letters by advocates of bill); and *People v. Tanner* (1979) 24 Cal.3d 514, 547-549 [156 Cal.Rptr. 450] (news article to same effect).)

F. The Language as Well as the Legislative History of Penal Code section 12026 Show its Inconsistency with a Ban on Handgun Possession by Law-Abiding, Responsible Adults

The forgoing addresses each of the four factors *Harry Carian Sales*, *supra*, 39 Cal.3d at 223, says courts should take into account to understand statutes: As to "the history of the times," it was a period in which either bans on handgun possession or sales, or permit requirements to buy or possess handguns, were being enacted in other states and all over the world.

As to the context for Penal Code section 12026's preclusion of such legislation, it turns out that Section 12026 was enacted instead of – and in contradiction to – a permit requirement to possess a handgun.

As to "the object in view," that object was to protect gun ownership by law-abiding, responsible adults.

And as to "the evil to be remedied," that evil was proposals to ban handguns or require a permit to buy or to possess them in home or office.

Thus, *Doe* rightly concluded that Penal Code section 12026 precludes any local handgun ban – for "[i]t strains reason to suggest that the state Legislature would prohibit licenses and permits but allow a ban on

possession." (136 Cal. App. 3d at 518.) [14]

Note the inconsistency between the Ordinance and the UFA's rationale as discussed by the National Conference of Commissioners on Uniform State Laws. The Conference promoted the UFA against "the wrong emphasis on more pistol legislation," *i.e.* laws "aimed at regulating pistols in the hands of law abiding citizen;" in contrast, the UFA's correct approach is "severely punishing criminals who use pistols.... [with] a program of laws which would both *protect gun ownership* and reduce crime."[15]

The conflict between CITY's Ordinance and the UFA is clear. Section 12026's context and history shows a purpose to safeguard the law-abiding, responsible adults against laws that would ban their having handguns.

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[14] Though we rely extensively on *Doe*, the case is somewhat erroneous in deeming Penal Code section 12026 a "preemption law" in the ordinary sense. As the Attorney General has pronounced it, section 12026 is "the Legislature's recognition of the right [of law-abiding, responsible adults] to possess handguns on private property." (77 Ops.Cal.Atty.Gen. 147, 152 (1994).) Section 12026 is not addressed to localities. It creates a right applicable against any level or agency of government until the Legislature see fit to alter it.

Admittedly, however, section 12026 is a preemption law in the sense of preempting local handgun bans because they are "contradictory to" Penal Code section 12026. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 898 (local laws preempted if contrary to state law).)

[15] Leddy, supra, quoting the Commissioners' statement (emphasis added).

III. THE ORDINANCE IS PREEMPTED BECAUSE OF ITS CATASTROPHIC EFFECT ON POLICE OPERATIONS AND THE ENFORCEMENT OF STATE CRIMINAL LAW

The handgun possession ban (Ordinance section three) apparently does not apply to criminal justice agencies and does have a very narrow exemption for on-duty peace officers. In contrast, there is no exemption whatever to section two, which *does* apply to criminal justice agencies and which categorically bans any transfer of firearms or ammunition within city limits. If the ordinance were to be applied literally, the catastrophic effects on criminal justice administration would include, but not be limited to:

- For decades SFPD and SFSD practice has been to distribute firearms and ammunition to their officers. By reason of the Ordinance's "sale" and "transfer" ban, the SFPD and SFSD can no longer purchase firearms or ammunition from any retailer or wholesaler within the city. The Ordinance's "transfer" ban precludes their buying guns or ammunition elsewhere and having them shipped by UPS or other carriers. Receipt of guns or ammunition from a carrier would constitute a "transfer" categorically forbidden by the Ordinance, which lacks any exemption for peace officers or criminal justice agencies.

- If SFPD or SFSD somehow acquired firearms and ammunition, these could not be distributed to their officers. Section two bans "distribution" and lacks any exemption for peace officers or criminal justice agencies.

- Neither could any officer transfer any firearm to departmental armorers for examination or repair. Nor in training officers or putting them

through shooting exercises could trainers take possession of any other officer's firearms(s) for the purpose of evaluation or training. Those would be "transfer[s]" forbidden by section two, which lacks any exemption for peace officers or criminal justice agencies.

• If a firearm is found abandoned at the scene of a gun murder, a peace officer might be able to seize it. But even so, the officer could not transfer the seized gun to the officer's department. All such firearm transfers are categorically forbidden by section two, which lacks any exception for criminal justice agencies or peace officers.

• For the same reason crime guns seized by peace officers could not be transferred to (or between) police laboratory personnel, consultants and expert witnesses or deputy district attorneys. Once again, those would be firearm transfers categorically forbidden by section two, which lacks any exception for criminal justice agencies or personnel.

• More importantly, deputy district attorneys could not introduce crime guns in judicial proceedings because the Ordinance forbids all transfers and lacks any exception for criminal justice activities or personnel. If a deputy district attorney attempted to introduce a firearm as evidence, defense counsel could move to preclude the firearm's introduction and, if the motion were denied and the defendant convicted, seek to invalidate the conviction on appeal. In any event, criminal defense lawyers could end the practice of making such transfers by initiating a taxpayer's suit to enjoin it from occurring in the future, and would be entitled to injunctive relief.

• If introduced in judicial proceedings, crime guns could not be handled even momentarily by court personnel, counsel for either side,

witnesses or jurors because section two forbids all transfers and lacks any exception for criminal justice activities or personnel. Again, any such transfer could be objected to by defense counsel, who would also be entitled to bring taxpayers' suits and enjoin such transfers.

State law requires that criminal justice agencies return stolen guns to their legitimate owners (Pen. C. § 12028(c)), authorizes peace officers to temporarily seize firearms in domestic disturbances and certain other situations (Pen. C. § 12028.5), and requires the return of seized firearms under certain situations. (Pen. C. 12021.3; Pen. C. 12028.5; Welfare & Institutions Code 8102(d); Code of Civ. Proc. § 527.9(e).) The section two ban forbids all of these transfers in San Francisco.

Section two is invalid because its effect is "inimical" to enforcement of state laws and accepted criminal justice procedures. (*Sherwin-Williams*, *supra*, 4 Cal.4th at 898.)

IV. THE ORDINANCE VIOLATES EQUAL PROTECTION

A. The Distinction Between Residents (Who Cannot Possess Handguns in San Francisco) and Non-Residents (Who Can) Is Patently Irrational

Only San Francisco residents are forbidden handguns. The many non-San Francisco residents who have an office or shop in the city and commute to work are free to keep handguns in the city for their protection. The Legislature has taken pains to allow shopkeepers to not only keep handguns

on their premises, but to carry them therein on their persons.[16] Hundreds, if not thousands, of people who own San Francisco businesses keep protective handguns therein.

Various reasons may be imagined for CITY to ban business owners from keeping protective handguns in their businesses. What cannot be imagined, however, is a rational relationship between any of those reasons and a ban that only applies if the shop owner is a San Francisco resident. Are the dangers of handgun possession somehow less if the owner is a non-resident? Could CITY rationally have found, for instance, that its residents *as a class* are worse shots or more likely to shoot unjustifiably than are non-residents? Or in the case of a wrongful shooting will the victim be more injured if the shooter is a resident than a non-resident? Or is it that a wrongful shooting victim's life and welfare is less valuable if the shooter is a non-resident of San Francisco?

The irrelevance of the resident/non-resident distinction to any rational purpose is illustrated by the actual effect – or lack thereof – of that distinction. If San Francisco-resident business owners want to keep (and carry) a gun in their San Francisco business all they have to do is move across

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[16] The 1988, Penal Code section 12025's prohibition on carrying a concealed handgun could be construed as applicable even to proprietors carrying concealed handguns in their own stores. In 1988, the Legislature amended section 12026 (a) to specifically provide that handguns could be carried in home or office, notwithstanding the section 12025 prohibition. (Acts of 1988, Ch. 577, § 2.) And when a judicial decision nullified it, the Legislature formally denounced that decision and clarified that law-abiding, responsible adults may carry concealed handguns in office or home. (Stats 1989, ch. 958, uncodified sec. 2.) *In and of itself, this history suggests that the Ordinance conflicts with state law.*

the Golden Gate to Marin County.

Even under minimal scrutiny, a classification violates the federal and California equal protection clauses "'unless it rationally relates to a legitimate state [or in this case, city] purpose.'" (*Cooper v. Bray* (1978) 21 Cal.3d 841, 847 [148 Cal.Rptr. 148] (quoting prior caselaw)). "[J]udicial review under that standard, though limited, is not toothless." (*Young v. Haines* (1986) 41 Cal.3d 883, 899 [226 Cal.Rptr. 547].)

"Under the traditional, rational relationship equal protection standard, what is required is that the court conduct a serious and genuine judicial inquiry into the correspondence between the classification and the legislative goals." (*Elysium Institute, Inc. v. County of Los Angeles* (1991) 232 Cal.App.3d 408, 427-428 [283 Cal.Rptr. 688] (citing *Newland v. Board of Governors* (1977) 19 Cal.3d 705, 711 [139 Cal.Rptr. 620, 566 P.2d 254]); see also *Daniels v. McMahon* (1992) 4 Cal.App.4th 48 [5 Cal.Rptr.2d 404], *People v. Edwards* (1991) 235 Cal.App.3d 1700 [1 Cal.Rptr.2d 631].)

A city "may not rely on a classification whose relationship to the asserted goal is so attenuated as to render the distinction arbitrary or irrational." (*Elysium Institute, supra*, 232 Cal.App.3d at 427-428.) The classification made by the Ordinance cannot withstand scrutiny even under the minimal scrutiny test.

B. The Distinction the Ordinance Draws Between Non-Resident and Resident Peace Officers Violates Equal Protection

Many San Francisco police officers and deputy sheriffs do not live in San Francisco. But for those who do, the effect of the Ordinance is that they

cannot have their duty weapon (or any other handgun) while off duty; cannot leave it in their home or carry it back and forth from home to duty; and cannot carry a "back-up gun." San Francisco-resident officers and sheriffs may have handguns only as "*required* for professional purposes," which are specifically defined as being limited to "*carrying out* the functions of his or her government employment...." (Ordinance, sec. 3, emphasis added.)

Note how different this is from state law which allows peace officers to have loaded handguns with them or in their homes at all times, whether on or off duty.[17] California and other states allow officers to have handguns while off-duty on the theory that they will not have to go to the station house to pick up their weapon if called to emergency duty. But the Ordinance's extremely narrow wording does not allow that because it is not "required" to perform the officers' general duties. Being armed while off-duty is clearly not "required" to be a peace officer. Vast numbers of off-duty officers throughout the United States do not carry guns while off duty, or do not regularly do so. Moreover, having dinner off-duty with one's spouse does not come within the other element of the exception, *i.e.*, that an officer may carry *only* when "carrying out the functions of his or her government employment...."

Likewise, while many on-duty law enforcement officers throughout the U.S. do carry back up guns, many others do not. So, once again, carrying a back up gun does not fit within the narrow exception for situations in which the gun is "required for professional purposes."

Thus, the Ordinance discriminates between San Francisco-resident law

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[17] Pen. C. §§ 12027, 12031.

enforcement officers and non-resident officers. This discrimination is just as arbitrary and capricious as the discrimination between civilian San Francisco residents and non-residents as to keeping a handgun in the city.

V. CITY MAY NOT BAN FIREARM OR AMMUNITION SALES AND TRANSFERS

A. Penal Code section 12026 Protects the Right to Purchase Handguns

To reiterate, in *Doe* this court recognized that Penal Code section 12026 precludes handgun bans – an interpretation the Legislature has since affirmed on multiple occasions. Section 12026 also expressly protects handgun "purchase[s]." Thus the Ordinance's ban of firearm sales is invalid at least in application to handguns.

B. The UHA Preempts Local Bans on Handgun Purchasing

The UHA covers the entire area of the licensing of handgun sales. *Inter alia,* Penal Code section 12131(a) charges the Department of Justice with conducting handgun testing and issuing a roster of handguns that "may be sold in this state pursuant to this title." On its face, the Legislature's choice of this language precludes CITY from enacting an Ordinance under which handguns so approved by DOJ nevertheless may *not* be sold. Thus, the Ordinance's ban on the sale of handguns that have been licensed by inclusion on the DOJ roster is invalid since its effect is "penalizing conduct which the state law expressly authorizes ..." (*Bravo Vending, supra,* 16 Cal.App. 4th at 397). *See generally,* Government Code § 53071, which expressly preempts the area of the licensing of firearms sales.

C. Bans on Sale of Ammunition Violate Penal Code § 12026, Given its Purpose to Protect the Right to Own *and Use* Handguns

To an inquiry as to the legality of a municipal ban on sale of ammunition the Attorney General replied:

> Clearly what the Legislature had in mind when it enacted section 12026 was the possession of a handgun that could be used for its intended purpose. Accordingly, we conclude that the language of sections 12026 and 12304, construed together, precludes a local entity from prohibiting the sale of handgun ammunition. [77 Ops.Cal.Atty.Gen.147, 152 (1994)]

Besides the deference courts normally accord to Attorney General opinions, this Opinion is supported by the fact that since it was issued Penal Code section 12026 has been reenacted without change to disavow the Opinion. (Stats. 1995, ch. 322.) So the Opinion enjoys the "presum[ption] that the Legislature was cognizant of the Attorney General's [statutory] construction and would have taken corrective action if it disagreed with that construction." (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 104 [61 Cal.Rptr.2d 134]; *California Ass'n. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 21 [270 Cal.Rptr. 796].)

As discussed above, the legislative history indicates the Legislature sought to preclude "legislation intended to deprive all citizens of the United States of the right to own *and use* handguns."[18] Obviously a ban on sale of

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[18] Emphasis added; statement of supporter who persuaded governor to sign the Act as reported in the June 15, 1923 SAN FRANCISCO CHRONICLE. As to the admissibility of such statements see *Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211, 219, fn. 9 [185 Cal.Rptr. 270] (letter urging that Governor sign the bill), *County of San*

ammunition would contravene "what the Legislature had in mind when it enacted section 12026," *i.e.*, ammunition bans would prevent a handgun being "used for its intended purpose" (quoting the Attorney General Opinion *supra*).

VI. STATE HUNTING POLICY PRECLUDES LOCAL BANS ON HANDGUNS OR ON FIREARM OR AMMUNITION PURCHASING

Firearms have multiple uses. While survey research shows 45% of handguns are owned for protection, many owners also list hunting and target shooting as primary or secondary reasons for having handguns. While the primary reason for owning long guns is hunting, protection is also cited as a reason for ownership by long gun owners.[19]

Whatever CITY's ostensible reasons, the Ordinance's actual effect is to preclude hunting by San Franciscans. Handguns are banned and neither hunting arms nor ammunition may be purchased. Long guns must be surrendered after the current owners' deaths since transfer to anyone else is

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Bernardino v. City of San Bernardino (1997) 15 Cal.4th 909, 917, 926 [64 Cal.Rptr.2d 814] (supporting letters by advocates of bill), and *People v. Tanner* (1979) 24 Cal.3d 514, 547-49 [156 Cal.Rptr. 450] (news article to same effect).

[19] Survey research shows the primary and secondary reasons for having guns, inclide "hunting, protection; sport or target shooting, and gun collection.... most owners of guns in general, and long gun owners in particular, own them primarily for recreational reasons, ... but about half of handgun owners, and some long gun owners as well, own guns mainly for protection." Gary Kleck, TARGETING GUNS: FIREARMS AND THEIR CONTROL 74-75 (1997).

forbidden.

A. The Ordinance Contravenes, and Is Inimical To, State Law and Public Policy Which Expressly Endorses and Promotes Hunting

The *declared general policy* of this state endorses hunting as a means of game management to prevent over-population of animals which would result in their depletion and destruction of the environment and, eventually, their cruel death by starvation. (Fish & Game C. § 1801 (e) - (g).) For instance, the California Department of Fish and Game has prescribed hunting as the solution to the endless problem of deer overpopulation. (See, e.g., the Department's "Plan for California Deer" attached as Exhibit B (SF0005 to SF0022), especially the section on "utilization" at SF0019 to SF0020.)

Beyond general regulation of hunting (specification of seasons and hunter licensing) special laws expressly authorize: agency proclamation of special hunting seasons for eradication or reduction of "excess game" in species whose overpopulation has become a nuisance or danger (Fish & Game C. § 325); and special licensing to permit people in an area being ravaged by destructive species to invite hunters onto their property to eradicate animals whose existence or overpopulation renders them a nuisance or danger to persons or property. (Fish & Game C. §§ 4180-4188).

In sum, hunting is both facilitated by statutes as a means of accomplishing state objectives and declared by statutes to be such a means. By banning the sale of hunting arms and ammunition, the Ordinance conflicts with and is inimical to these statutes and their declared policy. Local legislation inimical to state law and policy, or to the effectuation

thereof, is preempted. (*Sherwin-Williams*, supra, 4 Cal.4th at 898.)

B. As Section 12026 Precludes Handgun Purchase Bans, So Government Code Section 53071 Precludes Bans on Purchasing of Any Kind of Firearm

Galvan v. Superior Court (1969) 70 Cal.2d 851 [76 Cal.Rptr. 642] held that Section 12026 dealt only with handgun bans and did not preclude San Francisco from requiring handgun registration. The Legislature quickly responded with Government Code section 53071 which: (a) abrogated *Galvan* as to registration; and (b) protected long guns. Government Code section 53071 reads:

> It is the intention of the Legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms as encompassed by the provisions of the Penal Code, and such provisions shall be exclusive of all local regulations, relating to registration or licensing of commercially manufactured firearms, by any political subdivision as defined in Section 1721 of the Labor Code.

Government Code section 53071 preempts and precludes the Ordinance insofar as it seeks to ban the sale of firearms or ammunition for them.

C. The Electorate Would Not Have Wanted the Ordinance's Long Gun Sales or Transfer Ban to Continue as a Separate Facet if this Court Invalidates the Handgun Possession and Purchasing Bans

We anticipate that if this court invalidates the Ordinance's handgun and handgun sales bans, CITY will argue that its ban on the sales of rifles and shotguns should nevertheless be upheld. But if a municipal initiative

ordinance has been partially invalidated the remainder should not be upheld when it is "by no means clear that the electorate would have approved" that result. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 174 [130 Cal.Rptr. 465].) Here there is excellent reason to believe the electorate would not want that result.

What would happen if this court invalidated the handgun sales and possession bans? Obviously there are people who ordinarily would buy a long gun but if that choice is closed would buy handguns instead.[20] Diverting buyers from long guns to handguns contradicts the electorate's purposes in enacting the Ordinance. If anything is clear, it is that the electorate did *not* want people buying handguns since it approved a ban on handgun possession and sale. Thus to uphold the long gun sales ban when the handgun provisions are voided would produce the opposite of the effect the electorate wanted. It would likely increase handgun ownership, rather than reduce it.

The point becomes even clearer when the context is considered. For over 30 years anti-gun proponents have focused on handguns, arguing that handguns are much more problematic than long guns.[21] So far as we

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[20] The substitution of handguns for long guns would occur because the two serve many of the same purposes. (See discussion in Kleck, TARGETING GUNS at footnote 19, *supra.*)

[21] See, e.g, Jervis Anderson, GUNS IN AMERICAN LIFE 100 (1984) ("anti-gunners, [though desiring to ban handgun ownership or severely regulate it] do not wish to proscribe the rights of long gun owners."), Franklin Zimring & Gordon Hawkins, THE CITIZEN'S GUIDE TO GUN CONTROL 38-39, 1987).

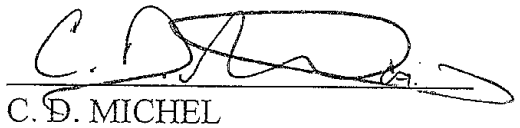
can determine, ***no one*** *has ever argued for a ban on the sale of long guns while leaving handgun sales untouched.* Yet that would be the anomalous result if this court were to strike down the Ordinance's handgun bans as contrary to Penal Code section 12026 but uphold the long-gun sale ban.

CONCLUSION

For the reasons stated, petitioners respectfully request this Court to grant extraordinary writ relief.

Dated: November 9, 2005

Respectfully Submitted,
TRUTANICH • MICHEL, LLP



C. D. MICHEL
Attorney for Petitioners

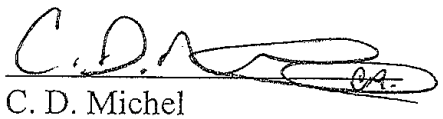
CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 14(c)(1))

The text of this brief consists of 11025 words as counted by the Corel WordPerfect version 12 word-processing program used to generate the brief.

Dated: November 9, 2005

TRUTANICH • MICHEL, LLP



C. D. Michel
Attorney for Petitioners

TABLE OF EXHIBITS

Exhibit A

SAN FRANCISCO
FILED
2002 DEC 14 PM 3:56
DEPARTMENT OF ELECTIONS

[Prohibiting firearms distribution and limiting handgun possession.]

Initiative ordinance prohibiting the sale, manufacture and distribution of firearms in the City and County of San Francisco, and limiting the possession of handguns in the City and County of San Francisco.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings

The people of the City and County of San Francisco hereby find and declare:

1. Handgun violence is a serious problem in San Francisco. According to a San Francisco Department of Public Health report published in 2002, 176 handgun incidents in San Francisco affected 213 victims in 1999, the last year for which data is available. Only 26.6% of firearms were recovered. Of all firearms used to cause injury or death, 67% were handguns.
2. San Franciscans have a right to live in a safe and secure City. The presence of handguns poses a significant threat to the safety of San Franciscans.
3. It is not the intent of the people of the City and County of San Francisco to affect any resident of other jurisdictions with regard to handgun possession, including those who may temporarily be within the boundaries of the City and County.
4. Article XI of the California Constitution provides Charter created counties with the "home rule" power. This power allows counties to enact laws that exclusively apply to residents within their borders, even when such a law conflicts with state law or when state law is silent. San Francisco adopted its most recent comprehensive Charter revision in 1996.

5. Since it is not the intent of the people of the City and County of San Francisco to impose an undue burden on inter-county commerce and transit, the provisions of Section 3 apply exclusively to residents of the City and County of San Francisco.

Section 2. Ban on Sale, Manufacture, Transfer or Distribution of Firearms in the City and County of San Francisco

Within the limits of the City and County of San Francisco, the sale, distribution, transfer and manufacture of all firearms and ammunition shall be prohibited.

Section 3. Limiting Handgun Possession in the City and County of San Francisco

Within the limits of the City and County of San Francisco, no resident of the City and County of San Francisco shall possess any handgun unless required for professional purposes, as enumerated herein. Specifically, any City, state or federal employee carrying out the functions of his or her government employment, including but not limited to peace officers as defined by California Penal Code Section 830 et seq. and animal control officers may possess a handgun. Active members of the United States armed forces or the National Guard and security guards, regularly employed and compensated by a person engaged in any lawful business, while actually employed and engaged in protecting and preserving property or life within the scope of his or her employment, may also possess handguns. Within 90 days from the effective date of this section, any resident of the City and County of San Francisco may surrender his or her handgun at any district station of the San Francisco Police Department, or to the San Francisco Sheriff's Department without penalty under this section.

Section 4. Effective Date

This ordinance shall become effective January 1, 2006.

Section 5. Penalties

Within 90 days of the effective date of this section, the Board of Supervisors shall enact penalties for violations of this ordinance. The Mayor, after consultation with the District Attorney, Sheriff and Chief of Police shall, within 30 days from the effective date, provide recommendations about penalties to the Board.

Section 6. State Law

Nothing in this ordinance is designed to duplicate or conflict with California state law. Accordingly, any person currently denied the privilege of possessing a handgun under state law shall not be covered by this ordinance, but shall be covered by the California state law which denies that privilege. Nothing in this ordinance shall be construed to create or require any local license or registration for any firearm, or create an additional class of citizens who must seek licensing or registration.

Section 7. Severability

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications or this ordinance which can be given effect without the invalid or unconstitutional provision or application. To this end, the provisions of this ordinance shall be deemed severable.

Section 8. Amendment

By a two-thirds vote and upon making findings, the Board of Supervisors may amend this ordinance in the furtherance of reducing handgun violence.

Exhibit B

A PLAN FOR CALIFORNIA DEER*

State of California

The Resources Agency

DEPARTMENT OF FISH AND GAME

March 1976

LDA

COPY

*Supported by Federal Aid in Wildlife Restoration
Project W-51-R, "Big Game Investigations Project"

contents

The Department of Fish and Game extends its appreciation to the University of California's Cooperative Extension Program at Davis for the use of graphics on pages 4, 8, 9 and 12.

preface

Deer have always had a special place in the history of man. Pictures, carvings and descriptions of deer in literature have come down to us from the earliest times. Perhaps the best explanation for this is that both deer and man, along with a myriad other creatures, have lived in habitat featured by the greatest diversity of plant life. As such there was a direct relationship between deer and man in the normal food chain. This has been true in all the northern hemisphere and in South America. Other species share this relationship in the food chain such as the wolf and its relatives and the large cats such as the mountain lion.

For people, who are at the top of the food chain, deer have been one of the most visible of creatures, a source of food, easy to hunt, and easy to photograph. In California, man sees them as the most popular of the game species. Everyone wants to be assured that deer are still very much a part of the wildlife scene. In some ways, they are the most symptomatic of how things are going in the diverse habitat in which they are found.

Wild animals, including deer, tend to fill the habitat available to them. Some small species will reproduce more than once to bring off additional young when habitat conditions are very good and will produce fewer offspring in years when conditions are poor. Likewise, under good conditions, deer tend to have a higher fawn survival and fetal rate. Under poor conditions, fewer fawns survive.

From year to year, depending on habitat and feed conditions, many animal populations can range from seemingly nonexistent to dense. In nearly every case, the fluctuations constitute a direct response to the environment in which the animal species exists.

Weather is an important variable in this picture. At times it is a dominant factor in the condition of deer habitat. Recent studies comparing past weather data to fluctuations in deer numbers seem to indicate that seasonal distribution of precipitation is a critical factor in determining if deer forage is available when and where they need it most. Adverse weather can affect fawn survival and over-winter survival.

Deer populations respond to environmental conditions, but not as rapidly as smaller wildlife species. Most of the response appears in the number of fawns that survive. Under ideal conditions, deer can multiply until they almost literally eat themselves out of habitat. Heavy deer-use tends to suppress plant species favored by deer. This gives an advantage to unpalatable plants, and the deer themselves become a factor in running down the ranges. Then the population is overtaken by starvation, disease and other factors. This makes them more vulnerable to adverse weather. Under these conditions, the habitat will eventually come back, but the deer will not respond until the habitat recovers.

When European man first came to California, there were fewer deer than there are now and they were found primarily in chaparral and oak woodlands of the coast ranges. Some populations were also found in similar habitat along the Sierra foothills.

Although the Spanish had little visible effect on deer populations, habitat began to change with the introduction of annual grasses and livestock. Wholesale changes in the habitat and general environment in which deer were found began with the arrival of the gold seekers. Since that time, human impact on deer and other animals has been accelerating. Deer were hunted for food and hides in marketable quantities and considerable habitat was impacted in irreversible ways.

Hunting impact came under increasing regulation from 1852 up to modern times, but man's impact on the habitat and on deer and other wildlife continued unabated and at a rate consonant with the increasing population.

BUCK

introduction

This general plan for deer is in direct response to a concern over declining populations of deer in most of California. While declines in deer numbers may be alarming in itself, it becomes more alarming when considered as a symptom of a common malady affecting wildlife in general. As stated earlier, deer are one of the most visible creatures in the whole animal community. What affects one most certainly has an impact on the rest of the community. Any plan to manage one member of the community -- in this case, deer -- can be expected to have an impact on the rest of the wildlife community.

General management of deer in California wasn't subject to written policy until 1950. But almost a century earlier management began when hunting was regulated and restricted to six months of the year. By 1903, market hunting had been prohibited, the season had been reduced to two months, antlerless deer had come under protection, and a bag limit of three bucks had been established. Refinements in these regulations continued.

Enforcement of hunting regulations wasn't truly effective until after the turn of the century, when the hunting licensing system began providing money for enforcement of those regulations.

During this growth period for wildlife management, California's human population has boomed -- from 379,000 in 1860 to an estimated 21,000,000 today. Technological advances have increased the effect of the human population on wildlife. Most important of these have been fire suppression techniques, silvicultural methods, urbanization, intensive agricultural practices, use of off-road vehicles and the ability to build roads anywhere.

With the growth of our human population, deer and other wildlife came under increasing pressure. During the last half of the 19th century, deer were hunted for food and hides without bag restrictions. They were subject to a series of extremely harsh winters. Their range was overgrazed by a booming livestock industry, and a no-holds-barred timber industry otherwise disrupted existing deer habitat.

At the same time, however, natural predators other than man, coyotes and mountain lions were vigorously hunted in an attempt to protect domestic livestock and game animals alike.

The effect of the campaign against predators where deer are concerned was uncertain. But exploitive timber practices and numerous wildfires opened up new habitat, while vegetative changes brought about because of large-scale livestock operations proved an eventual advantage to deer populations. Deer also were protected by law and better law enforcement. All this led to increases in deer numbers from 1900 through the 1940s. During the decade of the forties, however, signs of overpopulation became manifest when incidents of starvation, disease, parasites, damage to range and crops, and occasional die-offs occurred.

The California Fish and Game Commission deer policy of 1950 attempted to counter these problems. The policy called for creation of better deer habitat, work with other land-use agencies to point up and achieve recognition and preservation of high priority deer range, and hunting practices that would keep deer in healthy balance with their habitat.

As a part of the adopted policy, either-sex deer hunting was proposed as a means of utilizing surplus deer on depleted ranges so the ranges could recover. Except for limited areas the policy was not fully implemented. Within five years, 20,000 deer were reported taken in specially managed hunts for antlerless or either-sex deer. A total of 320,000 bucks were taken in regular season hunting during this period. Regrettably, habitat preservation and improvement projects were limited.

In 1956 the Fish and Game Commission, at the request of the Department of Fish and Game, adopted general either-sex hunts in most of the state.

That very season early snows came to many parts of the late season range, deer came out of the high country during the special hunt, and there was an unexpectedly large kill of antlerless deer in some locations. This was all very visible, and a public outcry immediately followed. However, the hunt appeared to have reached its objective of healthier, more productive herds. The best fawn production and the largest buck kills followed in 1959 and 1960, but the die was cast. The public outcry from the 1956 either-sex season resulted in legislation in 1957 that effectively prevented any more general either-sex hunts and generally dampened the plans laid under the 1950 policy.

Continual human population and technological growth and accompanying increased demands for land use in California have drastically altered the wildlife picture since 1950. Land that was once good deer habitat has since become living or farming space for man or at least come under more active human control. Range and forest

conditions have changed through succession, better fire control methods and changing weather conditions. Deer, being among the most visible of wildlife species, have also become the most visible losers.

Some examples of human impact on deer are such projects as the development of Trinity Lake, where a major portion of an entire deer herd was lost because key winter range areas were inundated by the new lake. Interstate 80 from Donner Summit to the east seriously reduced the size of the Verdi herd (part of the Truckee-Loyalton herd) because the freeway crosses normal migration routes. Finally, suburban developments have had negative effects on deer herds -- the San Diego, Railroad Flat and Oakhurst herds, to mention just a few.

It should be noted here that impacts on wildlife resulting from logging, fires and livestock grazing can be either beneficial or detrimental to deer ranges. Effects will vary with location, degree and time of year of their impact.

Controlled grazing can be a valuable tool in suppressing grasses and favoring browse species to the benefit of deer. Overgrazing, however, can destroy both deer food and cover.

Although there is much about the 1950 deer policy that still is useful, times and conditions have changed. It is necessary that the Department review its practices to meet both the social and wildlife needs of today.

Current information about deer is more sophisticated and complete than it was in the late forties. There is much more public concern with interrelationships involving all wildlife and the total wildlife environment than there was 30 years ago.

The Fish and Game Department has responded to the public concern in recent years with more effort on a greater variety of species and on the environment itself. While this effort has had many benefits, it has tended to fragment any concentrated or cohesive effort on behalf on deer.

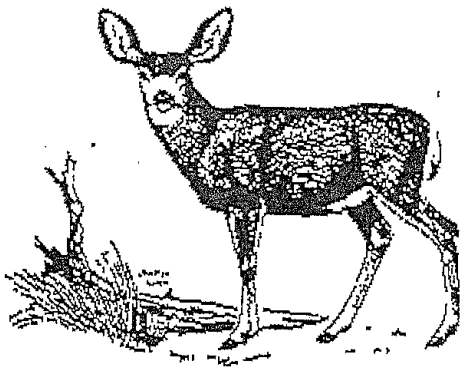
In making its new plan, the Department solicited contributions of ideas from as broad a base as possible. Departmental meetings were held in every section of the state to include wildlife biologists, fisheries biologists, wardens and other interested disciplines.

The difficulty of building a plan for a dynamic creature of nature was compounded by human differences, diversity of disciplines and the geographical diversity these disciplines represented. Each contributor had a different way of looking at or thinking about the "deer problem."

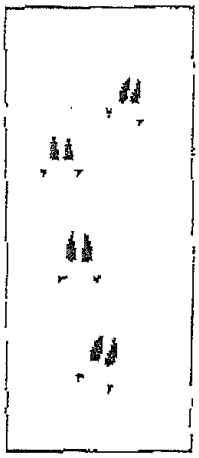
The final step was to obtain public input. This was done at a series of public meetings where comment was received from many members of the public, including special interests such as deer hunters, resource managers, private land managers, the Sierra Club and the Fund for Animals.

Both within and without the Department there was nearly unanimous approval of the criteria by which the Department proposed to manage deer; that is, on a herd basis. There was also general agreement that the loss of habitat was a basic problem for deer. However, there were differences as to how the problems might be solved.

The new plan includes seven different elements: (1) investigative; (2) habitat; (3) law enforcement; (4) utilization; (5) control of mortality; (6) information; and (7) periodic review. The plan's objective is to restore and maintain healthy deer herds in the wild state of California and to provide for high quality diversified use of deer in the state. It is a statewide plan covering problems associated with deer, including factors that might be expected to have an impact on deer and social needs and problems that relate to deer. Specific plans for individual herds will be developed from this plan.



DOE



Typical tracks made while running

plan objectives

1. *Restore and maintain healthy deer herds in the wild state in California.*

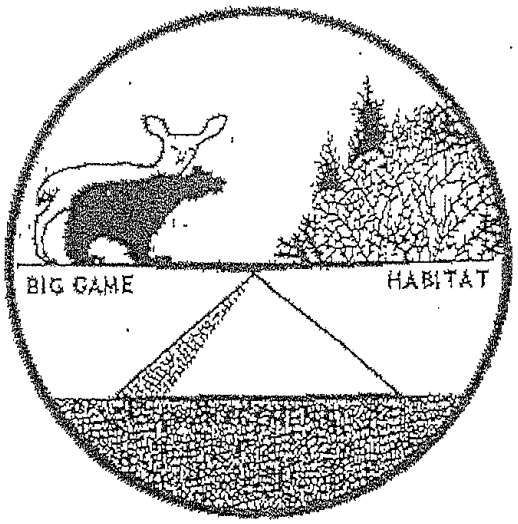
2. *Provide for high quality and diversified use of deer in California.*

Discussion

Establishing an objective with something as dynamic as populations of wildlife is difficult at best. If there weren't so many variables -- weather patterns, changing land use, succession of plant growth, interaction of wildlife species themselves -- a definite quantifiable objective might be possible. But the variables are real; the objective difficult to pin down.

The two objectives of the deer plan reflect public desire. Objective number one states that the deer populations will be "restored." However, the degree of restoration is not specified since irreversible habitat changes in some areas have made restoration of herd numbers to those of a former year impractical, if not impossible. Even so, for many deer herds restoration to population levels seen in 1965 would be a reasonable goal. Therefore, wherever possible, individual herd plans will attempt to restore herds to 1965 levels.

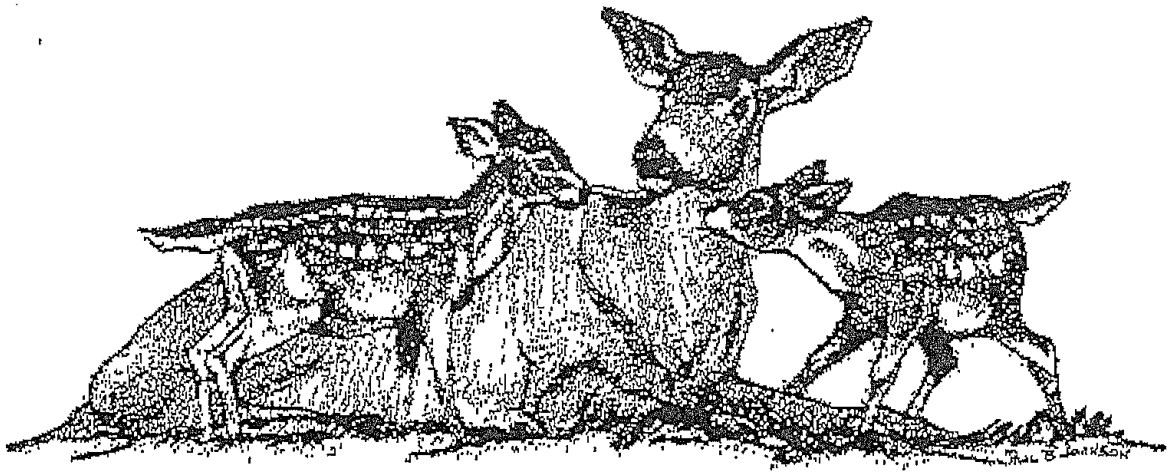
Successful attainment of the first objective is not a benefit to deer alone, for restoration and maintenance of healthy deer herds will require habitat conditions beneficial to many other forms of wildlife.



Management ensures that the animals and their habitat remain in balance.

It should be recognized here that there are wildlife species that thrive in deep forest habitat only, where deer do not thrive. In the eagerness to benefit the wildlife associated with interspersed habitat, care must be taken to keep an eye on the deep forest species. Among these are many well-known wildlife species such as the wolverine, fisher, marten, spotted owl and others. Other actions will be taken to see that healthy populations of these species are maintained.

Successful attainment of the second objective means that not only hunting but other uses such as viewing and photography will be considered as uses of deer.

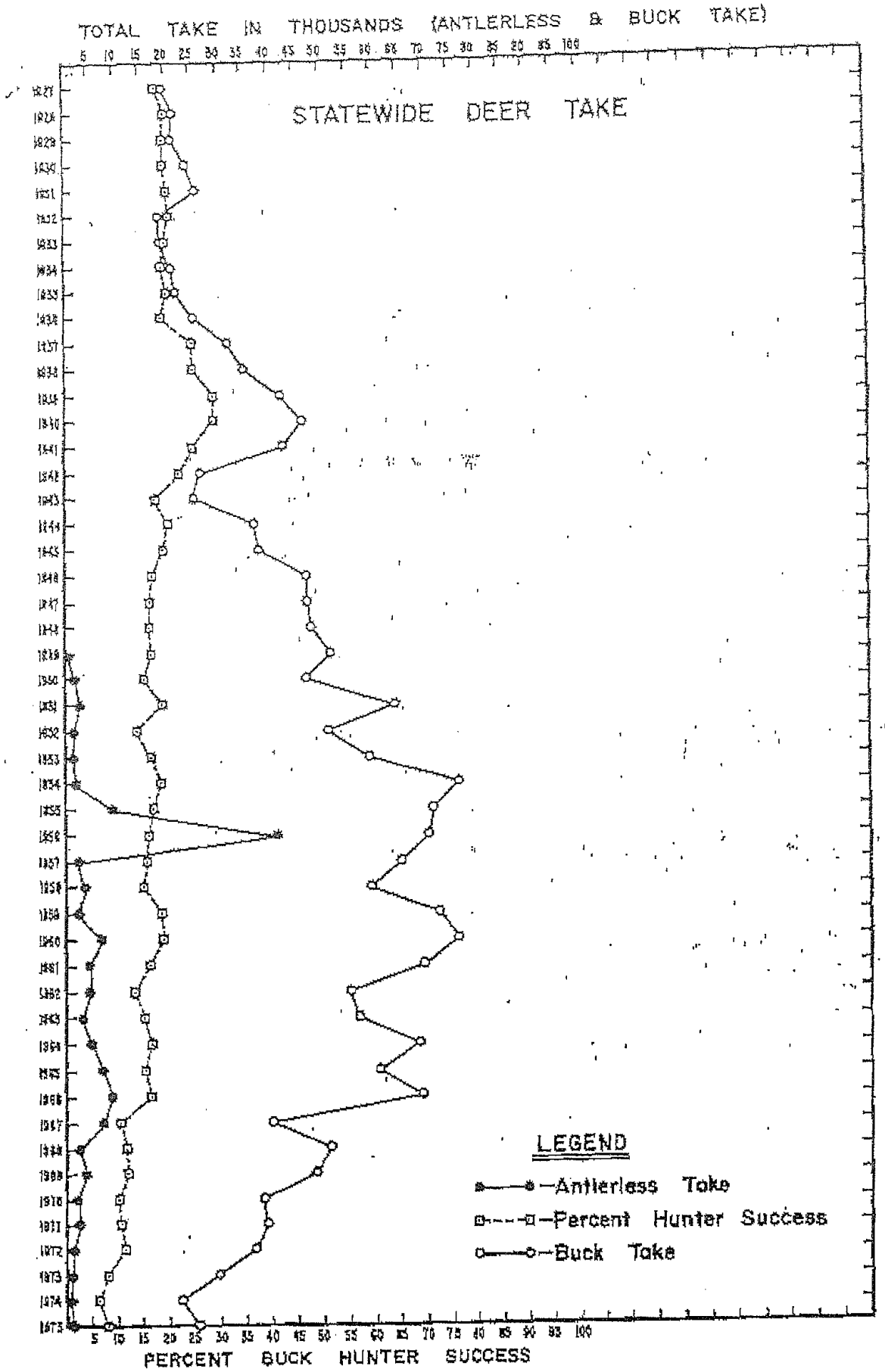


criteria for obtaining objectives

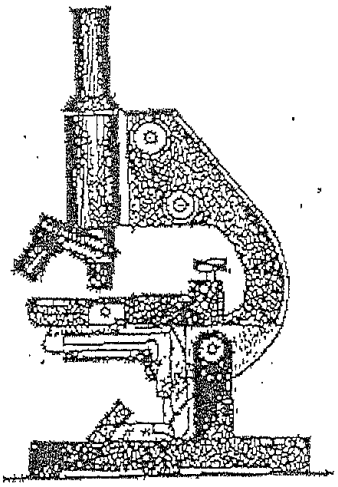
Because of California's diversity, geographically, climatologically and sociologically, there are no specific statewide answers which can be applied to the problems of all deer or most other wildlife. The problems and their solutions can be expected to differ quite radically from one end of the state to the other.

The common ground for these problems may be found in terms of individual herds, since these herds form natural units of animals that inhabit the same area, depend on the same food supply, and endure the same weather. *Accordingly, problems confronting deer will be ascertained, objectives will be set, activities toward solutions for the problems will be undertaken, and criteria for measurement of success will all be established on a herd-by-herd basis.*

In general, herd management success will be measured against deer herd populations known to exist in 1965. In those cases where irreversible impacts on habitat have occurred and/or locally expressed needs are not conducive to deer herd rehabilitation, the 1965 herd levels cannot be used to indicate the degree of management success. Nevertheless, all management elements contained in the plan are to be included in the herd plans in order to maximize wildlife values.


TOTAL TAKE IN THOUSANDS (ANTLERLESS & BUCK TAKE)
STATEWIDE DEER TAKE
LEGEND
—Antlerless Take
—Percent Hunter Success
—Buck Take
PERCENT BUCK HUNTER SUCCESS

investigative element



Background

There has been a substantial study of deer in California, and study is still underway in many parts of the state. But a number of factors make yesterday's facts suspect and today's facts gathered in one part of the state suspect in another part of the state. These factors are: diversity of climate, human impacts, actual habitat conditions, and continual change involving all three. To solve problems for deer within their complex environment, it is necessary to know and understand the depth and dimensions of those problems.

Problems, Needs

There is a saying that "the more we know, the more we need to know." So it must be with deer. For purposes of a deer management program in today's changing world one finds, for example, that while much of the available information on deer is basic, quite a bit remains uncorrelated and there is still much that is unknown.

For instance, it has become apparent that the main reason for the decline in most deer herds is poor fawn survival, and more research is needed to determine the causes. The does are being bred and the fawns are being born, but shortly after birth and again in the fall there are serious losses. In some cases, these losses may be attributable to the condition of the adult and then, in turn, to range and feed deficiencies. These problems need to be examined in all their aspects, including identification of such critical habitats as fawning areas herd by herd and correlation of this information with existing information.

In addition, many herd boundaries may need to be re-examined. Not enough is known about all mortality factors, and there is still quite a bit to be learned about seasonal nutritional needs. Information on predator-prey relationships between coyotes and deer is thin in most areas. Information on the profile of illegal shooting of deer and its effects on the herds is not available. Public attitudes aren't precisely known. Much of this information must be obtained.

Goal

Assemble and analyze existing information and develop programs to obtain missing information necessary to carry out deer management on a herd basis.

Action Program

Where needed on a herd basis:

Obtain information on herd boundaries and herd migration.
Identify fawning areas.
Identify holding (concentration) areas.
Identify migration routes.
Investigate effects of weather.
Determine the need for such habitat requirements as water, escape cover and others.
Identify critical mortality factors.
Identify key public attitudes on a local basis.
Identify key summer and winter range.

On a statewide or herd basis as needed:

Assemble, organize and correlate existing information on deer.
Obtain information on nutritional needs.
Obtain information on predator-prey relationships through a full cycle of poverty and plenty.
Obtain information on a profile of illegal killing and its effect on deer herds.
Identify broad-based public and organizational attitudes.

Discussion

Much of the investigative effort will be conducted and completed at local and regional levels. But some of the specific and complex needs for data can be expected to involve the Department of Fish and Game headquarters level and the help of colleges and universities. Some will require effort at all levels.

habitat

Background

Habitat is that combination of food, water and cover that allows wildlife -- or any life -- to live out a normal existence.

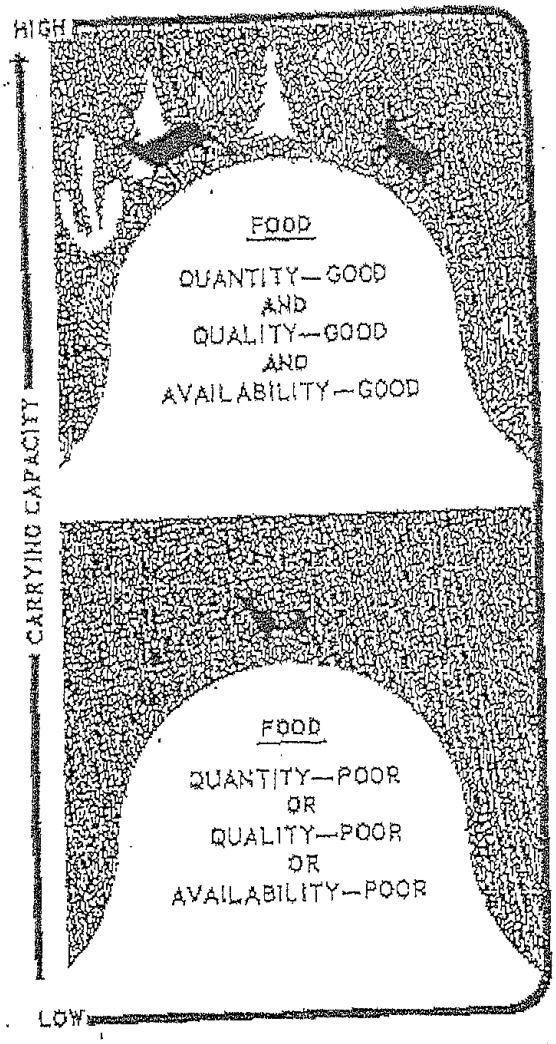
The habitat of particular concern in this program is featured by an interspersion and diversity of vegetation. This is habitat for deer and a wide range of other species, including man. Unfortunately, this same vegetative zone in California has become a zone of intense human activity to the detriment of most wildlife, including deer. Man uses this zone for agriculture, raising livestock, reservoirs, houses, shopping centers and freeways.

Large-scale burning in the late 1800s and early 1900s, sometimes by livestock people, proved of considerable benefit to deer by opening up dense forest and brush lands. Since then, effective fire suppression methods have reduced the amount of deer habitat originally opened up. The natural process of rejuvenation of plant species that fire affords has been slowed or arrested. What was once prime deer habitat has in many areas become so densely overgrown that it is capable of supporting only small numbers of deer and many of the other species, or it has been preempted by man for living space, agriculture or other resource use.

As a consequence of the overgrown nature of much of the habitat, wildfires that eventually occur often burn large areas that subsequently are not fully usable by deer. In any event, uncontrolled wildfires can be damaging to many natural resources.

Prescribed burning can be an effective and economical means of improving deer habitat in some areas. Obviously, the beneficial use of this tool requires careful planning, preparation and execution. There has been a decline in prescribed burning due largely to the fear of liability for damages and suppression costs. Additional factors contributing to the decline are added restrictions for air pollution and changing ownership patterns.

Livestock often compete with deer for habitat. However, grazing can be used as a tool to favor browse species such as deer by putting grazing pressure on competing grass. Livestock can be used to prune browse species in desired shapes and to stimulate their growth. The degree of grazing, season of use, type of livestock and many other factors are important in determining the effect of grazing on deer habitat.



The quantity, quality and availability of food determine carrying capacity of the habitat.

Man's early-day logging activities created many good deer ranges. Brush species usually follow the opening of the forest canopy. However, some forestry practices shorten the beneficial effects of logging. This is particularly true when programs are carried out to remove brush in favor of tree plantations.

Problems, Needs

The deterioration and disappearance of habitat for deer and other wildlife is continuing at an alarming rate on both public and private land. Some of this habitat is

gone for the foreseeable future. Some can never be restored but may be compensated for. Some of the deterioration is reversible through changes in land use practices.

As a step toward fulfilling the objectives of the deer plan, the disappearance and deterioration of deer habitat in the state must be slowed or halted. Where possible, deterioration should be reversed and disappearance mitigated.

Objective

Develop programs to maintain and, where possible, increase the quality and quantity of deer habitat on both public and private lands.

Action Program

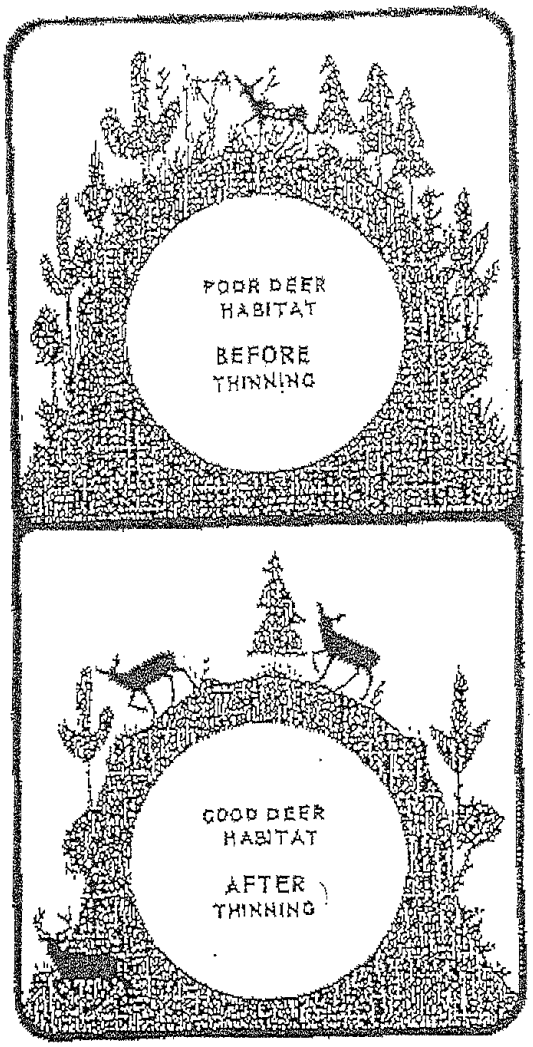
This element is directed at both public and private lands.

For private lands habitat:

- Consider legislation to provide incentives to landowners to preserve and improve deer habitat.
- Call attention to significantly adverse impacts on deer habitat caused by developments and land use changes, and actively oppose the developments or recommend alternatives or mitigating measures.
- Implement effective fish and wildlife protection and good conservation measures in timber management operations consonant with the intent of the 1973 "Z'berg-Nejedly Forest Practices Act."
- Encourage increased use of controlled burning as a means of habitat rejuvenation.
- Consider establishment of an extension service to advise private landowners on deer habitat.
- Work with the California Department of Conservation, Division of Forestry, to determine long-term impacts on deer range from silvicultural practices, fuel management and reforestation practices.
- Acquire key deer range where and when feasible.

For public lands:

- Establish agreements between Department of Fish and Game and public landowners in the areas of prescribed burning, fire control policies, silviculture, logging, grazing, reforestation, forage improvement, mitigation, identification and correction of harmful land management practices, land acquisition, and an increase of quality habitat through new land use plans.

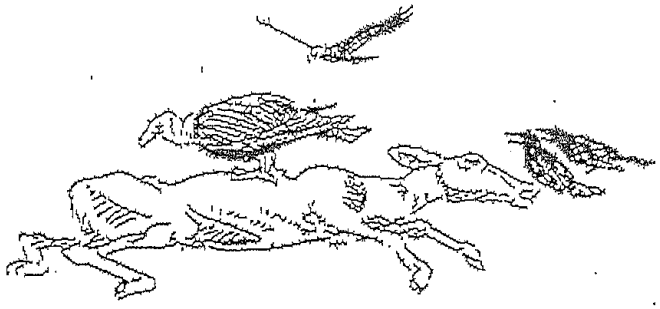


Habitat improvement includes thinning dense stands of brush and trees.

Discussion

Public agencies should be able to negotiate agreements dealing with habitat retention and improvement. It would appear that private land holders would need both protection and incentive to manage portions of their land for deer and the other wildlife in the same habitat. Incentives for the private landowners might include such things as tax benefits for habitat improvement, economic return from good habitat management, insurance to encourage prescribed burning for habitat improvement, and zoning laws to protect deer habitat. Work on public lands has already started in some places, and agreements should be expanded to facilitate a schedule for habitat improvement and retention on those lands. However, different public land managements have different priorities, and deer are not always in the high priorities. Differences about these priorities should be resolved. Those that remain unresolved will be brought to public attention. Legislation and ultimate action on private holdings can be expected to take longer.

mortality control



Background

It is axiomatic that all wild creatures die violently. Whether these deaths are untimely is moot. Before European man came to the Pacific Coast, deer were natural prey to mountain lions, coyotes, bobcats and indigenous man. Deer also died of disease and starvation.

Deer still die violently as prey to mountain lions, coyotes, bobcats, man, disease and starvation. But man, increasing in numbers and with increased technological skills, has complicated the old picture and added a few wrinkles. Deer now also die violently in encounters with fast-moving motor vehicles and railroad trains and in canals. Packs of wild and domesticated dogs take their toll as well. Man, of course, continues to take deer, legally and illegally. His greatest impact, though, is in altering or taking and using deer habitat, a much more serious cause of mortality.

The lions, coyotes and bobcats have been objects of stringent control measures by both ranchers and the Department of Fish and Game in the past. But public concern about all wildlife, including the big predators, and the preponderance of evidence that predator control is not always ecologically sound, has diminished or stopped the effort in several respects. Only the control of coyotes in protection of private property (livestock) is of major consequence today.

Problems, Needs

Man has been the cause of an imbalance in the scheme of things where deer are concerned, mostly through habitat alteration. Much of this habitat alteration is permanent and irreversible (i.e., highways, canals, railroads, and subdivisions).

Public concern about *all* wildlife and basic wildlife management principles constitutes widespread constraints on predator control programs. Illegal killing of deer has proved a vexing and persistent problem.

Objective

Develop programs to reduce mortality where reduction of mortality is critical to meeting individual herd plan objectives.

Action Program

As needed, and on a herd basis, reduce incidents of illegal killing of deer. (See law enforcement element.)

Where habitat conditions are an important factor in death through starvation, disease and parasites, take appropriate measures to improve habitat and, where appropriate, temporarily reduce deer numbers. (See habitat and utilization elements.)

To protect deer from canals, highway and railroad deaths, provide or encourage building of specialized fencing, underpasses, overpasses, canal coverings and other appropriate devices.

Where predation is identified as a primary cause of low deer populations, and when proposed controls have a good chance of succeeding and have public support, take measures to reduce predator populations directly identified as responsible factors in herd decline.

Where foot rot is a factor, alter or fence off summer mudholes associated with outbreaks of the disease.

Discussion

As indicated, two of the special action programs are actually activities in other elements of this plan. The law enforcement activities are directly aimed at illegal killing of deer. Quantity and quality of habitat (habitat element) can be expected to have an effect on most disease and parasite problems. Most of these organisms are always with deer but only become harmful factors if there are also habitat or nutritional problems. Direct action against disease and parasites is impractical; habitat work remains the key activity directed at a solution to the problem. Foot rot is an exception since some direct action is possible. Nutrition appears to have a major bearing on the predator problem because weak, poorly nourished animals are particularly susceptible to predation. Protective cover is also tied to predation as deer in areas of deficient in cover are particularly susceptible to predation.

law enforcement

Background

No one knows exactly how many deer are killed illegally each year. Some have suggested that the illegal kill may exceed the legal kill.

Relationships among time, place, local circumstances and illegal kill are not precisely understood. It is popularly assumed that economic stress and high meat prices accelerate poaching of deer.

Depending on geographical location, the Department's wardens necessarily become involved in enforcement of laws dealing with exotic species, water pollution, issuing of permits, handling of citizen requests or complaints, streambed alteration problems, and other activities made mandatory under law besides the enforcement of hunting regulations. They are also expected to cover an area that is usually difficult in terms of accessibility and size.

Problems, Needs

The demands of the warden's job have grown over the years in relation to the available men and time to do the job. The warden deals with a large number of citizen complaints or requests, issues permits, checks for law violations relating to exotic species both living and dead, and performs a host of other required services. All of this is done within a framework of the forty-hour week, made mandatory by federal and state regulation.

Within these constraints, means should be found to intensify law enforcement pressure on illegal deer killing in areas where it is necessary in order to bring the deer herd back to desirable levels. The need and justification for such action will be developed in the herd management plans.

In those areas where enforcement problems are most vexing, means must also be found to gain more public involvement to increase the effectiveness of the enforcement effort.

Objective

Develop programs to reduce illegal take of deer.

Action Program

A study of time and place of illegal kills is recommended in the investigative element of this plan, which may lay the groundwork for this action plan.
Where needed, reallocate patrol hours to deer based on the needs of individual herd plans.
Assist with herd plan development, public information programs and other action programs.
Where needed, temporarily commit additional manpower to overcome specific problems.
Explore new and different approaches to law enforcement.
Through the public information element, gain public and sportsman help and involvement.
Establish closer liaison with sheriffs' offices and other allied agencies to obtain assistance and involvement in Fish and Game Code enforcement.
When appropriate consult with local judicial councils to gain appropriate and uniform enforcement at the court level.
As needed, mix all the above alternatives for hard hitting enforcement.

Discussion

Application of law enforcement techniques against illegal taking of deer would depend on the herd and the amount of illegal activity. Enforcement decisions over and above existing enforcement activity should be made only if conditions warrant. One form of assistance is liaison with the County Sheriff's office.

Finally, acquainting the judicial council with long-term objectives has proved fruitful on occasion in relation to local court decisions.

Where enforcement of deer poaching laws are the most effective, a system of public assistance has been developed. These successful programs will be analyzed and applied elsewhere when situations warrant.

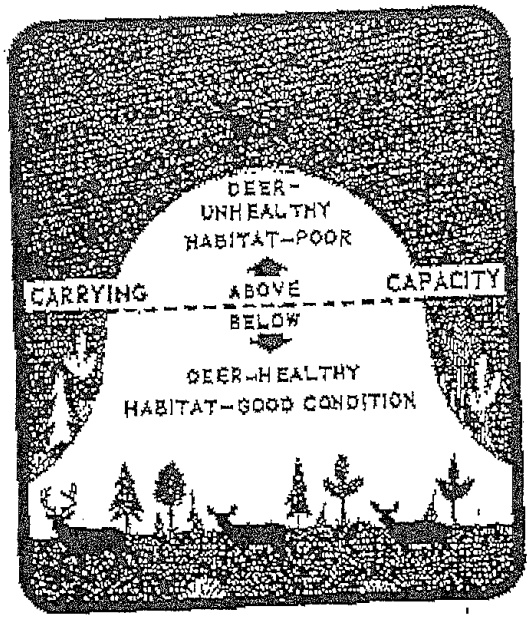
utilization

Background

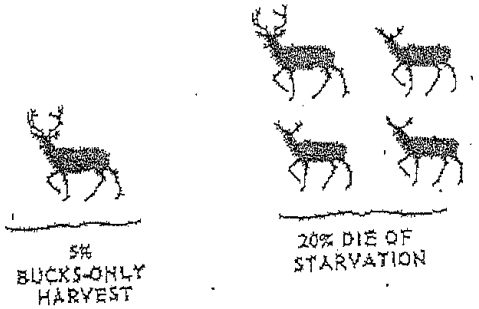
As discussed in the preface, deer have been a close part of the human experience at least as far back as recorded history. When the Spaniards first arrived in California, Indians were taking deer for meat and hides and the Spaniards followed suit.

The big impact on deer populations, though, came with the Gold Rush. Deer hunting for food and hides became big business almost instantly and was so profitable that some miners left mining for commercial hunting.

Regulations were promulgated to restrict hunting in terms of season lengths, starting with six months in 1850, but there is no evidence that these regulations had any effect, because of the lack of enforcement. In fact, commercial deer camps were scattered throughout the state, and volume was such that in 1880 one Redding firm alone shipped 35,000 deer hides.



The deer and their habitat become unhealthy when the number of deer exceeds the carrying capacity of the habitat.



Each year about 25 percent of a deer population are excess animals. Hunting removes only 5 percent of this excess. The other 20 percent die of starvation.

A bucks-only hunting law was passed in 1889, a deer season of six weeks was set beginning in 1893, and a bag limit of three bucks per season was set in 1901 along with a prohibition on the sale of deer meat and hides. But enforcement of these regulations was still largely ineffective.

The big change came in 1907 when hunting licenses were required. Revenue from the sale of these licenses was used to enforce the game laws. In turn, this improvement in law enforcement, coupled with major habitat changes, resulted in an increase in deer numbers from that time to about 1920. Further limitations were placed on hunting and bag limits later but were only refinements on the 1901 actions.

Following many years of bucks-only hunting, the first either-sex deer hunting was tried under controlled conditions on Catalina Island during the winter of 1949-50. The number of these hunts was increased through the winter of 1954-55 and 1955-56, all under controlled conditions in various parts of the state. Then, in the winter of 1956-57 a general either-sex hunt was tried. Public reaction to this hunt made it a public relations disaster. Legislation was passed in 1957 which effectively ended the possibility of any more statewide antlerless hunts and severely restricted the number of such hunts anywhere. It provided that hunts would have to be held on a unit-by-unit basis and only after extensive biological justification, commission hearings and, in those counties with veto power, with approval by boards of supervisors.

Antlerless hunting, however, is a recognized use of the resource in most other major deer hunting states in the country, including Nevada, Idaho, Montana, Wyoming, Utah, Colorado, Oregon, Maine, Wisconsin, Pennsylvania, Virginia and Texas.

Problems, Needs

Buck hunting has become synonymous with deer hunting in California. Although there are a few special either-sex hunts in the state each year, there is still significant resistance to the practice. At the same time, those who look at the practice from a biological aspect point out that the eventual outcome of a "bucks only" policy results in a substantial drop in the number of bucks compared to the number of does.

Any change in the present deer hunting practice in California may engender considerable resistance from some sectors of the public.

In some places, deer pressure on the habitat is a problem.

The need exists for a policy that regulates hunting to fit the herd and the capacity of the habitat to produce on a sustained yield basis.

A need also exists for public involvement and support in setting that policy.

Objective

Within a herd's ability to produce, develop programs for diversified recreational use of deer, including both hunting and nonhunting programs.

Action Program

Establish seasons to provide a diversity of hunting opportunities.
Establish harvest levels based on the habitat's capacity to produce and the herd's size and composition.
Where appropriate, consider limiting the number of hunters to levels consonant with quality hunting.
Reexamine the use of open and closed areas for the purpose of either providing additional protection for deer or for providing additional recreational opportunity in conformance with deer management objectives. These areas might include fire closures, legislative refuges, commission closures and other use restrictions.
In certain cases, consider recommendations for closure of secondary or spur roads where these extensive road networks have contributed to the loss of quality hunting.
Encourage hunting away from roads.
Provide opportunities for viewing of deer in their natural habitat.
Provide informational and interpretive programs for viewers at suitable locations.
Provide information to schools, youth groups and others about deer, their requirements and their environment.

Discussion

The hunting programs will be based on the precept that hunting is an acceptable use of the deer resource, consistent with the wildlife management objective, and will emphasize the recreational and aesthetic experience of hunting and the need for ethical behavior by hunters in the field.

Almost everyone wants to be assured that deer are doing well. Practically all people enjoy wildlife viewing or being in areas where deer are found. Some hunt with a camera, others simply enjoy seeing deer in the wild state. These activities will be included in the herd management plans, and attempts will be made to meet the needs of these growing groups.

All deer herds may not be managed with the same objectives. Individual herd plans may include such diverse objectives as trophy buck hunting, maximum harvest or low density use to provide solitude.

information

Background

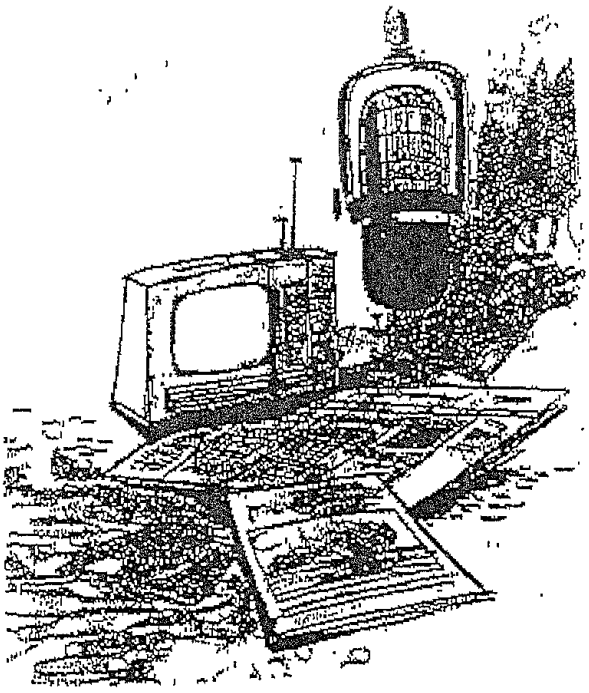
When one talks about management of deer and other associated wildlife, one is in reality talking about people. Without the people-induced problems of the last 175 years, no one would be talking about wildlife in the alarming terms all too familiar today.

The success of a deer management plan depends as much on public understanding as it does appropriate application of biological knowledge. It involves the entire spectrum of public information activities from the use of mass media to individual contact.

There is a concerned public that cares very much about what is done to help deer and all wildlife. It is important that the public's need to know and need for involvement be met.

Following adoption of a deer policy in 1950, an information program was implemented that used mass media, some personal contact, and a series of speaking engagements to explain to hunters -- primarily -- what actions would be taken in the field of deer management. No apparent attempt was made to gain public involvement early in the plan.

That information program was not fully successful.



Problems, Needs

There is much emotion and concern about deer and deer management in California. And there is both indifference and lack of understanding. These are important factors in any information plan about wildlife, including deer.

Without support and acceptance from the public, major wildlife programs often meet with opposition or fail altogether. An information program must be devised to meet the public's need to know and understand.

Objective

Develop programs to keep various publics informed of the status of deer and to help facilitate appropriate management of deer on a herd basis.

Action Program

Involve the local public in the management processes through individual contacts, local participation, community meetings and contacts with the local, regional and special media. Involve this public in developing the individual deer herd plans and keep it informed of results, progress and processes.

Through use of special media, speaking engagements and individual contacts, keep the hunting public advised of progress and results and appropriately involve them in processes leading to utilization of deer.

Through periodic use of mass media, inform the general public of broad environmental benefits of successful management for deer and of progress and results of the management plan.

When and where appropriate hold hearings and information meetings in herd management areas and elsewhere to obtain input from the public.

Discussion

It should be noted here that the Department of Fish and Game is committed to making all significant information on California's wildlife available to the public and that the above actions will take place within this general criterion.

Some of the information activities may be directly related to other elements in the plan but will be handled under this one. They include: the need for public involvement in law enforcement, the need for public involvement in planning for appropriate utilization, and the need for public involvement in habitat work.

periodic review

Background

So much effort goes into the development of a document such as a deer management plan that there is a tendency upon the part of a governmental body to try to live with the document longer than is prudent. At the same time, there may be a reluctance to peer very far into the future to anticipate changes and to modify plans accordingly.

Need

It is imperative that the Department of Fish and Game build into this deer plan a process for annual review. If this deer plan is to be viable it must contain provisions for reacting quickly and positively to new information and changing conditions.

Objective

Review annually and modify as necessary the statewide deer plan and the individual herd plans.

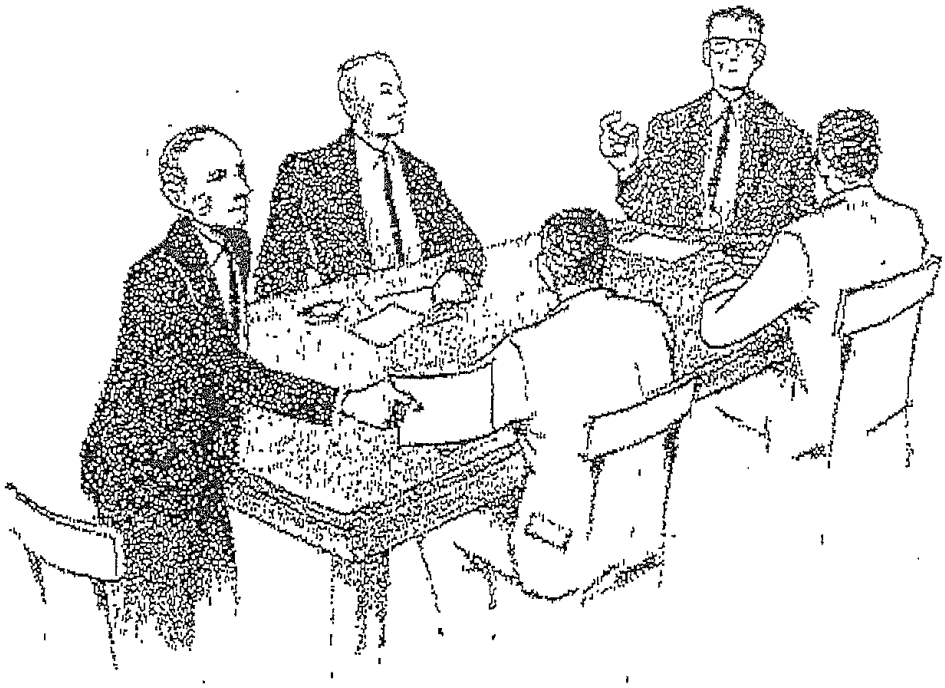


Exhibit C

NEW FIREARMS LAW EFFECTIVE ON AUGUST 7

French Colony Celebrates Fall of the Bastile

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Existing Licenses Inoperative After Dec. 31, 1924; Uniform System

IS AIMED AT LAWLESS

Possible Unconstitutionality of Clause Provided for in Drafting

Stringent regulations against carrying concealed firearms or explosives, and prohibition against possession of other deadly weapons become effective on August 7, under the Hawes bill signed by Governor Richardson.

The new measure will install a uniform licensing system for carrying concealed weapons. Licenses now in existence will become inoperative December 31, 1924.

O. K. URGED

Aimed at disarming the lawless, the bill provides exemptions and exceptions to preserve the rights of those using firearms for competition or hunting or for protection in outing trips. It was largely on the recommendation of R. T. McKissick, president of the Sacramento Rifle and Revolver Club, that Governor Richardson approved the measure.

McKissick classes it as a measure that introduces "an element of sanity into firearms legislation, so as to provide adequate punishments upon an increasing scale for the habitual gunman and, at the same time, permit law-abiding citizens to continue to own firearms for home defense and other legitimate uses."

BILLS SIMILAR

The bill, according to McKissick follows almost literally one offered in the United States Senate by Senator Capper and advocated by associations interested in the manufacture, sale and legitimate use of pistols and revolvers, as a model for a uniform bill to be introduced in each State. "It is frankly," he says, "an effort upon the part of those who know something about firearms to forestall the flood of fanatical legislation intended to deprive all citizens of the United States of the right to own and use, for legitimate purposes, firearms capable of being concealed upon the person."

The new measures change existing law by making the carrying of barred weapons such as blackjacks, a felony instead of a misdemeanor. The provision against carrying explosive also is new.

ACT EXPLAINED

Possible unconstitutionality of the provision against possession of weapons by non-naturalized residents was admitted in McKissick's letter to the Governor urging signing of the bill, but he pointed out that if this clause should be held invalid the rest of the act will not be affected and that if it can be sustained that it will have a "salutary effect in checking tong wars among the Chinese and vendettas among our people who are of Latin descent."

The provision for additional sentences where weapons are used in committing a felony is one with a sliding scale. The first time the added penalty is from five to ten years; the second from ten to fifteen; the third from 15 to 25 years, and only on the fourth offense it is possible to add more than 25 years to the sentence imposed for the crime itself.

APPENDIX C: 1923 Examiner on CCW

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200, California, 90802.

On November 9, 2005, foregoing document(s) described as
PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES; SUPPORTING EXHIBITS
on the interested parties in this action by placing

[ ] **the original**

[X] **a true and correct copy**

thereof enclosed in sealed envelope(s) addressed as follows:

Nidio Gonzalez
OFFICE OF THE MAYOR
1 Dr. Calrton B. Goodlett Place
San Francisco, CA 94102
(Accepting Service on Behalf of the City and County of San Francisco and the San Francisco Police Department)
VIA PERSONAL SERVICE

Ed Martinez
San Francisco Police Department
850 Bryant Street, #575
San Francisco, CA 94103
(Accepting Service on Behalf of the San Francisco Chief of Police Heather J. Fong)
VIA PERSONAL SERVICE

Attorney General
1300 "I" Street
Sacramento, CA 95814

Clerk of the Court
California Supreme Court
350 McAllister Street
San Francisco, CA 94102
(4 Copies)

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on November 9, 2005, in Long Beach, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Claudia Ayala