

INITIAL STATEMENT OF REASONS

**STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS
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**CALIFORNIA CODE OF REGULATIONS
ADOPTION OF ARTICLE 462 OF TITLE 12
REGARDING PLACEMENT OF MEMORIALS AND MONUMENTS
AT STATE VETERANS CEMETERIES**

INITIAL STATEMENT OF REASONS

INTRODUCTION

The California Department of Veterans Affairs (CalVet) provides a variety of services to California's veterans. Among these services and benefits is burial in a state veterans cemetery. CalVet currently operates State Veterans Cemeteries in Igo and Yountville, and has started construction of a cemetery in Monterey. There is also the proposed state veterans cemetery in Orange County.

California State Veterans Cemeteries are National Shrines regulated by the U.S. Department of Veterans Affairs (USDVA) National Cemetery Administration (NCA). CalVet works closely with NCA to maintain the required national standards referenced in the *VA Design Guide – National Cemetery Administration (revised March 2010)* and the *Guidelines and Requirements for Review and Acceptance of Memorials (dated 12/04/2007)*.

CalVet proposes to adopt the new 12 CCR 462 with regards to monuments and memorials in state veteran cemeteries. This proposal is intended to establish guidelines for designated memorial areas in state veteran cemeteries, a memorial and monuments committee for each cemetery, requirements for the proposal of an intended memorial or monument, the process for approval of a memorial or monument from conception to completion, the final memorial or monument approval by CalVet, and clarification of the approving authority for monuments and memorials in state veteran cemeteries.

PROBLEM STATEMENT AND PURPOSE

Military and Veterans Code (M&VC) Sections 1402(c), 1456(c), and 1414(c) state that CalVet shall adopt regulations for the policies and procedures to be followed with respect to the design, placement, and approval of monuments and memorials placed on the cemetery grounds at the Northern California Veterans Cemetery (NCVC) in Igo, California Central Coast Veterans Cemetery in Monterey, and Southern California Veterans Cemetery in Orange County.

Currently, no regulations exist for the establishment of monuments and memorials or the operation of their related committees at state veteran cemeteries. Without regulations, confusion and frustration has ensued with donors and CalVet over: the requirements and process for the approvals through a proper committee and capital outlay review, who has the authority to officially approve the proposals, providing official response to donors, time frame for responses, and at what point the donor should start construction. This proposed text is to establish regulations to establish clear processes and procedures at every state veterans cemetery. These regulations will guide the public as well as CalVet for future monuments and memorial proposals at any of the state veteran cemeteries.

NECESSITY AND PURPOSE OF EACH ADOPTION

The specific purpose for each proposed adoption is as follows:

Section 462 (a)

The purpose of this subsection is to identify the CalVet Secretary as having the authority to approve monuments and memorials because the M&VC 1402 designates the term “Director” which has led to confusion over whether it refers to the “Cemetery Director” or “Department Secretary”. It is necessary to adopt this subsection because it was unclear in previous regulations and statutes whether the term “Director” referred to the Cemetery Administrator or the CalVet Director/Secretary. This created confusion among the public and CalVet alike on who has the authority to approve monuments and memorials for the cemetery. This subsection will clearly identify the approving authority.

Section 462(b)

The purpose of this subsection is to direct CalVet to establish a Monuments and Memorials Advisory Committee at each state veterans cemetery. It is necessary to adopt this subsection because the M&VC Sections 1402 and 1450 state that a committee should be formed, it is unclear whether this applies to all state veteran cemeteries now and into the future. There has been confusion in the past by CalVet and public on whether there should be a committee for each cemetery, or only certain cemeteries mentioned in code.

Section 462(b.1.)

The purpose of this subsection is to direct the Committee members to abide by the State of California M&VC in regards to what members the committee should be comprised of. The specifications for NCVC committee members are in 1402(c) and the specific members of the CCCVC committee are in 1450(a). The purpose of this subsection is also to direct the committee to abide by NCA standards and requirements for National Cemeteries. It is necessary to adopt this subsection due to misunderstandings in the past regarding specifications for membership as well as the actual requirements for monuments and memorials constructed in state veteran cemeteries. Without anything in statute or regulation, it was up to the Cemetery administrator and members of the community to develop their own criteria and guidelines for memorials that are constructed and placed at the state veteran cemetery.

Section 462(b.2.)

The purpose of this subsection is to give the Cemetery Administrator the authority to appoint the community member co-chair. The Cemetery Administrator shall be the person to appoint the Co-Chair because that person is a representative of CalVet with a knowledge of the cemetery needs and operations as well as a relationship with the community members through events and servicing the veterans and families of the community. It is necessary to adopt this section to avoid the Co-Chair being appointed by someone other than the Cemetery Administrator. In the past, the rules for appointment of the chair were arbitrary and not specific per the statute and lack of regulations.

Section 462(b.3.)

The purpose of this subsection is to specify the 90 day timeframe for which a committee meeting will be held after a proposal is submitted to the cemetery administrator. 90 days sets the expectation for donors to receive a response in a reasonable amount of time, while not requiring the Committee to meet more than quarterly. It is necessary to adopt this subsection to ensure donors, the committee, and CalVet are on the same page regarding the expectations for committee meetings and committee response regarding proposed projects. This section will ensure that projects continue to move forward in a timely manner, and the committee will meet quarterly or as needed based on the proposals received. Without a specific time frame, there has been confusion and frustration as to when or if the committee will provide a response.

Section 462(b.4.)

The purpose of this subsection is to specify the guidelines in which all meetings must be held. It is necessary to establish the Bagley-Keene Open Meetings Act for all Committee meetings, so that all participants are aware of the restrictions and guidelines the committee and any subcommittees must follow to ensure the ability for public participation. Without this section, members would not be aware of the restrictions such as meeting informally to discuss committee matters or posting the agenda 10 days prior to the meeting.

Section 462(c)

The purpose of this subsection is to state the requirements of each proposal submitted to the committee for consideration, and set forth expectations for incomplete proposals that are submitted. This establishes the expectation that the Cemetery Administrator or Co-Chair shall respond within 30 days if the proposal is incomplete—that is a reasonable amount of time for the Cemetery Administrator and Co-Chair to properly evaluate the proposal and respond.

It is necessary to include this section in order to require each proposal to contain specific items in the past the requirements have varied based on who you ask and ultimately confused the donors who are proposing the projects. Proper guidance regarding the NCA requirements were not expressed to donors, which led to frustration and pushback regarding the need to submit all of the items. Upon further review, the capital assets unit of CalVet was not able to substantiate the approvals of proposals that were incomplete. With these guidelines in place, CalVet will be able to accurately evaluate proposals and recommend to the Secretary for approval or denial.

Section 462(c.1.)

It is necessary that donors give CalVet the name and contact information for CalVet to reply as required in this section with requests for change, denial, and approval of their proposal. Without this information, CalVet would not be able to reply.

Section 462(c.2.)

It is necessary for donors to include a detailed description of the monument or memorial in order for the Committee and then CalVet to fully understand the purpose and intent of the memorial. Without a detailed description, the Committee and CalVet would not be able to even conceptually approve the proposed monument and memorial to see if it fits NCA guidelines described in this section. The Committee and CalVet need the description also to ensure that the concept fits within NCA guidelines for the appropriate symbolic and historical representation of the armed forces and service and sacrifice of veterans—in the past, anything could be proposed and considered, including large donation walls showing the names of people who donated to the cemetery. State veterans cemeteries follow NCA guidelines which exist to memorials veterans and service members, not donors.

Section 462(c.3.)

It is necessary for the proposal to fit within NCA guidelines for appearance, size, purpose, and placement within the cemetery. The NCA is strict on the appearance of state veteran cemeteries, and all memorials must stay within the guidelines in order to be considered for future state cemetery grant funding. CalVet expects to submit future grant applications for expanding the cemetery to fill all burial areas as early as 2 years from now. It is also necessary that the proposal show proof that the memorial adhere to the Americans with Disabilities Act because it is a public cemetery and many veterans and family members who visit the cemetery are disabled. Without this section, the Committee nor CalVet can hold donors accountable for adhering to these standards. There have been no guidelines for donors to follow, which has led to frustration by donors when designing their structures. It has also led to the approval of structures that do not adhere to the strict guidelines. The department runs the risk of being out of compliance without this section.

Section 462(c.4.)

It is necessary to state in the regulations that the financial responsibility for the proposed monument or memorial will be accepted by signature by the donor because otherwise the state may be liable for part or whole of the financial responsibility—especially because the monument or memorial becomes the property of the state and the donor has the financial responsibility for ongoing maintenance of the structure. In the past, there have been no regulations or policies for donations, which has led confusion over the responsibilities of both the state and donors. The Committee and CalVet need this signature in order to approve the proposal by understanding the donor’s plan to provide the funding and not rely on state funding.

Section 462(c.5.)

It is necessary to state the potential requirement of other documents, permits, evaluations, certifications, etc. because each monument and memorial is very unique. It is impossible to list all requirements for the proposals prior to them being proposed, and CalVet’s designated capital outlay unit must have specific documents in order to properly evaluate the feasibility and probable success of the proposed structure. In the past, no guidelines were set as to the

expectations CalVet would have in order to properly evaluate a proposal in regards to proper design and engineering, which led to frustration in the community when CalVet would require a specific evaluation in addition to basic designs. This regulation establishes the proper expectation for the donor that if CalVet requires a specific requirement, that they must comply in order for the structure to be considered.

Section 462(d)

The purpose of this subsection is to establish the timeframe and expectations for the required departmental review, approval, request for change, and denial process of a proposal package. It is necessary to adopt this subsection so that all parties have clear direction and expectations for the review and approval process, as well as a response to the donor. Without this described in detail, concern has been raised as to the responsiveness and responsibilities of CalVet and frustration by the public about not knowing what the process is. This subsection is necessary for transparency of the process and understanding by CalVet well into the future as to what is expected.

Section 462(d.1.)

The purpose of this subsection is to establish the process for CalVet review and specific response regarding proposals that have been approved by the Committee. 30 days has been established as reasonable for the amount of time the donor has to agree to changes required by CalVet, or the application be denied. This ensures that the proposal continues to move forward or is no longer in the proposal process, for the sake of both parties.

It is necessary to adopt this subsection to make the donor and department aware of the requirement for departmental approval of the monument or memorial proposal. In the past, there has been confusion between the proposal and the design phases—and which phase has been approved by CalVet. Approval by CalVet of the proposal is not approval to start construction. The approval is only to move forward with the working drawings, design, and engineering. Also, there currently is no formal response process in place by CalVet—so a verbal approval of some kind could indicate the group could move forward with construction. This has led to confusion and controversy over what projects have been approved and started without proper departmental approval.

Section 462(d.2.)

The purpose of this subsection is to establish the required elements for design packages submitted to CalVet. It is necessary to adopt this subsection because in the past, the package elements have been up to the donor's discretion and decision. The department has received pushback from donors regarding whether certain elements are required, but CalVet needs everything listed in this section to make an accurate and educated decision on whether the structure is sound and will be successful over time through various weather elements and other factors.

Section 462(d.3.)

The purpose of this subsection is to establish the process for review and response regarding design packages. 30 days has been established as a reasonable time period for the CalVet-designated capital outlay unit to respond to a donor with feedback, and for a donor to respond again with changes to the design package. Without this time period established, the donor or CalVet would wait an indefinite amount of time for response from the other party. This ensures that there are expectations and requirements for response by both parties to decrease frustration and keep the project moving.

It is necessary to adopt this subsection to make the donor and department aware of the requirement for departmental approval of the design package. In the past, there was no formal process for approval—donors would forward the proposal to the Secretary in various ways, and if the Secretary gave any indication of approval (many times informally), the donor would proceed with construction. This has led to frustration, including loss of funding used on unapproved designs with the donors and misunderstandings within CalVet. This subsection also requires CalVet to ensure the monuments and memorials adhere to NCA guidelines and then provide a formal Proceed to Bid; this will clarify for the donor exactly when they are approved by CalVet to move forward with construction. Until then, it should be clear that they should not start any construction and know that they are not officially approved yet.

Section 462(e)

The purpose of this subsection is to require the donor to obtain the necessary permits and reviews by applicable parties and agencies for the construction project. It is necessary to adopt this subsection because there is not currently anything in place to require the donor to obtain the necessary permits and approvals from parties such as the Fire Marshall and a certified architect. CalVet cannot hold the donor accountable for following these requirements unless it is stated in regulation.

Section 462(f)

The purpose of this subsection is to require the donor to provide progress reports that include the current budget status of the project and advise the Cemetery Administrator of any changes to the proposal to CalVet no less than annually. It is necessary to adopt this subsection so that CalVet remains updated on the status of the proposal and is made aware of any changes to the project that may require additional review and approval. Without this subsection, the donor would be allowed to change the project at any time and without notifying CalVet or allowing CalVet to reevaluate the project.

Section 462(g.)

The purpose of this subsection is to establish that the monument or memorial donation becomes property of the State of California once it has been constructed and placed at the cemetery, so the State has full authority over the structure that is constructed on State property. This is not addressed in any existing law. It is necessary to adopt this subsection so that all parties involved in the monument or memorial project have a clear understanding that once the monument or memorial is placed on the cemetery grounds it becomes the property of the State of California. The current process is ambiguous and places the State at risk of law suits because this subsection was not in regulation.

Section 462(h.)

The purpose of this subsection is to establish the authority for CalVet to designate a monument and memorial section at each state veterans cemetery, and require all future memorials to be placed within that section instead of all over the cemetery grounds. It also establishes that the Cemetery Administrator will approve the placement of monuments and memorials within predetermined plots of the established memorial section.

It is necessary to adopt this subsection because CalVet is currently not in compliance with NCA guidelines and must be in compliance moving forward: *VA Design Guide – National Cemetery Administration (revised March 2010)* and the *Guidelines and Requirements for Review and Acceptance of Memorials (dated 12/04/2007)*. In the past, proposals have been submitted that request placement of a memorial in locations at the cemetery that are not in designated areas for memorials, and CalVet must be clear in establishing

This requirement is aligned with the NCA Design Guide Section 5 revised March 10 and NCA regulations, *Guidelines and Requirements for Review and Acceptance of Memorials 12/04/2007*, 4.4 Location guidelines and requirements, which state each cemetery should have an area or areas, separate and distinct from interment areas for the collective display of memorials donated by various recognized veterans groups.

ECONOMIC IMPACT ASSESSMENT

(Government Code Section 11346.3(b))

The proposed regulation clarify and interpret California M&VC Section 1402(c) for CalVet to implement and administer policies and procedures to be followed with respect to the design, placement, and approval of monuments and memorials to be placed on the cemetery grounds. The purpose of the regulations is to establish guidelines for CalVet and donors in the placement of monuments and memorials in a State Veterans Cemetery from concept, design, approval, construction, final approval, and placement on State Cemetery grounds. The proposed regulation will clarify who has approval authority for monuments and memorials in a State Cemetery and ensure NCA Guidelines and Requirements for Review and Acceptance of Memorials and Monuments are followed.

In accordance with Government Code Section 11346.3(b), CalVet has made the following assessments regarding the proposed regulation:

CREATION OR ELIMINATION OF JOBS WITHIN THE STATE OF CALIFORNIA

The proposed regulation is designed to provide guidelines for the design, placement, and approval of monuments and memorials to be placed on the cemetery grounds. No jobs within the State of California will be eliminated by this proposed regulation because this regulation serves only to provide guidance to CalVet and monument and memorial donors in respect to placement in a State Veterans Cemetery. The workload of CalVet may be impacted to some degree as a result of complying with this regulation, but the extent of the impact as a result of the regulatory action is absorbable by existing CalVet staff at the current rate.

CREATION OF NEW OR ELIMINATION OF EXISTING BUSINESSES WITHIN THE STATE OF CALIFORNIA

The proposed regulation is designed to provide guidelines for the design, placement, and approval of monuments and memorials to be placed on the cemetery grounds and not intended to impact any private business. It is estimated that no businesses within the State of California will be created or eliminated as a result of this proposed regulation because it serves only to provide guidance to CalVet and monument and memorial donors in respect to placement in a State Veterans Cemetery.

EXPANSION OF BUSINESSES WITHIN THE STATE OF CALIFORNIA

The proposed regulation is designed to provide guidelines for the design, placement, and approval of monuments and memorials to be placed on the cemetery grounds. Due to the small number of structures that businesses may be contracted with to design and construct, it is not expected that any existing businesses within the State of California will be significantly expanded or prevented from expansion as a result of this proposed regulation.

BENEFITS OF THE REGULATION TO THE HEALTH AND WELFARE OF CALIFORNIA RESIDENTS, WORKERS SAFETY, AND THE STATE'S ENVIRONMENT

By providing CalVet and monument and memorial donors with guidance for the design, placement, and approval of monuments and memorials to be placed on the cemetery grounds, the proposed regulation will provide for the efficient flow of information between CalVet and donors and create a transparent review and approval or denial process. The proposed regulation will ensure that both CalVet and donors will have a clear understanding of the process for placement of a monument or memorial within a state veterans cemetery from concept, design, approval, construction, final approval, and placement making the process more efficient and consistent. Additionally, the proposed regulation will clarify who has approval authority for monuments and memorials in a state veteran cemetery.

OTHER REQUIRED SHOWINGS

Studies, Reports, or Documents Relied Upon

CalVet used the State M&VC, NCA Facilities Design Guide, U.S Department of Veterans Affairs, and NCA Guidelines March 2010, and Requirements for Review and Acceptance of Memorials and Monuments in National Cemeteries December 4, 2007, in the proposing the adoption of this regulation.

Reasonable Alternatives Considered

CalVet has determined that no reasonable alternative has been identified or brought to its attention. This regulation was required by State M&VC Sections 1402(c), 1456(c), and 1414(c) and NCA Guidelines and Requirements for Review March 2010, and Acceptance of Memorials and Monuments in National Cemeteries December 4, 2007.

Initial Determination of the Economic Impact Assessment

The regulation will not have a significant adverse impact upon business. Monuments and memorials are established through privately donated funds for placement at a State Cemetery and not through CalVet regular business activities.

Cost Impacts on Representative Person or Business

CalVet is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action. Monuments and memorials are established through privately donated funds for placement at a State Cemetery and not through CalVet regular business activities.

Business Report

Monuments and memorials are established through privately donated funds for placement at a State Cemetery and not through CalVet regular business activities.

Reasonable Alternatives That Would Lessen the Impact on Small Businesses

CalVet has determined that there is no significant impact on small businesses. Monuments and memorials are established through privately donated funds and not through CalVet regular small business activities. The number of small businesses that may potentially contract with the donors for the design and construction of the structures is very small.