

California Fish and Game Commission
Notice of Findings for Lime Ridge Eriastrum (*Eriastrum ertterae*)

September 18, 2024

NOTICE IS HEREBY GIVEN that the California Fish and Game Commission (Commission), at a meeting on October 11-12, 2023, found pursuant to California Fish and Game Code Section 2075.5, that the information contained in the petition to list the species Lime Ridge eriastrum (*Eriastrum ertterae*) and other information in the record before the Commission, warrants adding Lime Ridge eriastrum to the list of endangered species under the California Endangered Species Act (CESA; Fish and Game Code, Section 2050 et seq.). (See also California Code of Regulations, Title 14, Section 670.1, subsection (i))

NOTICE IS ALSO GIVEN that, at its October 9-10, 2024, meeting, the Commission adopted the findings herein outlining the reasons for its determination.

I. Background and Procedural History

Petition History

On July 6, 2021, Christopher McCarron submitted a petition to the Commission to list Lime Ridge eriastrum as endangered under CESA. The Commission reviewed the petition for completeness, and pursuant to Section 2073 of the California Fish and Game Code, referred the petition to the California Department of Fish and Wildlife (Department) on July 15, 2021 for evaluation. The Commission gave public notice of receipt of the petition on August 6, 2021 (California Regulatory Notice Register 2021, No. 32-Z, p.1022). The Department transmitted to the Commission the Department's petition evaluation on November 10, 2021 and, on December 15, 2021, the Commission publicly received the Department's petition evaluation as part of its meeting materials.

At its February 16-17, 2022 meeting, the Commission determined that listing may be warranted, and subsequently provided notice regarding the Lime Ridge eriastrum's status as a candidate species (California Regulatory Notice Register 2022, No. 9-Z, p. 237).

Status Review Overview

The Commission's action, designating Lime Ridge eriastrum as a candidate species, triggered the Department's process for conducting a status review to inform the Commission's decision on whether to list the species.

On June 28, 2023, the Department transmitted to the Commission the Department's report to the Commission, *Status Review of Lime Ridge eriastrum (Eriastrum ertterae) Report to the Fish and Game Commission*, dated August 2023. The Commission publicly identified receipt of the Department's status review report as part of the Commission's August 22-23, 2023 meeting materials. On October 11, 2023, the Commission found that the information contained in the petition to list Lime Ridge eriastrum and other information in the record before the Commission warranted listing Lime Ridge eriastrum as an endangered species under CESA.

Species Description

Lime Ridge eriastrum is an inconspicuous slender annual herb in the phlox family. Lime Ridge eriastrum typically grows between 1.5 and 20 cm (0.6–7.9 in) tall, but sometimes grows as tall

as 25 cm (9.8 in). The stems and leaves of Lime Ridge *eriastrum* are light green with a surface of soft woolly hairs, but the stems can become reddish-brown with age as the hairs wear away. The leaves often have a reddish tip. The range of Lime Ridge *eriastrum* is very small. It is only found within Lime Ridge Open Space, which is a 496-ha (1,226-acre) park within the City of Walnut Creek in Contra Costa County, California. Lime Ridge *eriastrum*'s distribution consists of five small groupings of plants (colonies) within Lime Ridge Open Space. The combined area of these colonies is approximately 47 m² (500 ft²), which is an area that is smaller than four average vehicle parking spaces.

II. Statutory and Legal Framework

The Commission, as established by the California State Constitution, has exclusive statutory authority under California law to designate endangered, threatened, and candidate species under CESA (California Constitution, Article IV, Section 20, subdivision (b); Fish and Game Code Section 2070). The CESA listing process for this species began in the present case with a petition submitted to the Commission. The regulatory and legal process that ensued is described in some detail in the preceding section, along with related references to the Fish and Game Code and controlling regulations. The CESA listing process generally is also described in some detail in published appellate case law in California, including:

- Natural Resources Defense Council v. California Fish and Game Commission (1994) 28 Cal.App.4th 1104;
- Mountain Lion Foundation v. California Fish and Game Commission (1997) 16 Cal.4th 105;
- California Forestry Association v. California Fish and Game Commission (2007) 156 Cal.App.4th 1535;
- Center for Biological Diversity v. California Fish and Game Commission (2008) 166 Cal.App.4th 597;
- Central Coast Forest Association v. California Fish and Game Commission (2017) 2 Cal.5th 594;
- Central Coast Forest Association v. California Fish and Game Commission (2018) 18 Cal.App.5th 1191; and
- Almond Alliance of California v. California Fish and Game Commission (2022) 79 Cal.App.5th 337.

The “is warranted” determination stems from Commission obligations established by Fish and Game Code Section 2075.5. Under the provision, the Commission is required to make one of two findings for a candidate species at the end of the CESA listing process; namely, whether listing a species is warranted or is not warranted. Here, the Commission made the finding under Section 2075.5, subdivision (e)(2) that listing is warranted.

The Commission was guided in making its determinations by statutory provisions and other controlling law. The Fish and Game Code, for example, defines an endangered species under CESA as “a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease” (Section 2062). Similarly, the Fish and Game Code defines

a threatened species under CESA as “a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by this chapter” (Section 2067).

The Commission also considered California Code of Regulations, Title 14, Section 670.1, subsection (i)(1)(A), in making its determination. The provision provides, in pertinent part, that the Commission will list the species or subspecies as endangered or threatened under CESA if the Commission determines that its continued existence is in serious danger or is threatened by any one or any combination of six factors:

1. Present or threatened modification or destruction of its habitat,
2. overexploitation,
3. predation,
4. competition,
5. disease, or
6. other natural occurrences or human-related activities.

Fish and Game Code Section 2070 provides similar guidance, providing that the Commission shall add or remove species from the list of endangered and threatened species under CESA only upon receipt of sufficient scientific information that the action is warranted. Similarly, CESA provides that it is the policy of the state, not specific to the Commission per se, that all state agencies, boards, and commissions shall seek to conserve endangered and threatened species and shall utilize their authority in furtherance of the purposes of CESA (Fish and Game Code Section 2055). The statutory guidance does not compel a particular determination by the Commission in the CESA listing context. Nevertheless, “[l]aws providing for the conservation of natural resources’ such as the CESA are of great remedial and public importance and thus should be construed liberally.” (*California Forestry Association v. California Fish and Game Commission*, supra, 156 Cal.App.4th at pp. 1545-1546, citing *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 601; Fish and Game Code sections 2051 and 2052.)

Finally, in considering the six identified factors, CESA and controlling regulations require the Commission to actively seek and consider related input from the public and any interested party (see, e.g., Fish and Game Code, sections 2071, 2074.4 and 2078; California Code of Regulations, Title 14, Section 670.1, subsection (h)). The related notice obligations and public hearing opportunities before the Commission are also considerable (Fish and Game Code sections 2073.3, 2074, 2074.2, 2075, 2075.5 and 2078; California Code of Regulations, Title 14, Section 670.1, subsection (c), (e), (g) and (i); see also California Government Code Section 11120 et seq.). The referenced obligations are in addition to the requirements prescribed for the Department in the CESA listing process, including an initial evaluation of the petition, a related recommendation regarding candidacy, and a review of the candidate species’ status, culminating with a report and recommendation to the Commission as to whether listing is warranted based on the best available science (Fish and Game Code sections 2073.4, 2073.5, 2074.4 and 2074.6; California Code of Regulations, Title 14, Section 670.1, subsections (d), (f) and (h)).

III. Factual and Scientific Bases for the Commission’s Final Determination

The factual and scientific bases for the Commission’s determination that designating Lime Ridge eriastrum as an endangered species under CESA is warranted are set forth in detail in the Commission’s record of proceedings, including the petition; the Department’s petition evaluation report; the Department’s status review report; written and oral comments received from members of the public, the regulated community, tribal entities, and the scientific community; and other evidence included in the Commission’s record of proceedings, which is incorporated herein by reference.

The Commission determines that the continued existence of Lime Ridge eriastrum in the state of California is in serious danger or threatened by one or a combination of six factors as required by California Code of Regulations, Title 14, Section 670.1, subsection (i)(1)(A):

1. Present or threatened modification or destruction of its habitat,
2. overexploitation,
3. predation,
4. competition,
5. disease, or
6. other natural occurrences or human-related activities.

The Commission also determines that the information in the Commission’s record constitutes the best scientific information available and establishes that designating Lime Ridge eriastrum as an endangered species under CESA is warranted. Similarly, the Commission determines that Lime Ridge eriastrum is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease.

The items highlighted here and detailed in the following threats section represent only a portion of the complex issues aired and considered by the Commission during the CESA listing process for Lime Ridge eriastrum. Similarly, the issues addressed in these findings represent some, but not all, of the evidence, issues, and considerations affecting the Commission’s final determination. Other issues aired before and considered by the Commission are addressed in detail in the record before the Commission.

Background

The Commission bases its “is warranted” finding for Lime Ridge eriastrum most fundamentally on its rarity. Lime Ridge eriastrum’s small range and low abundance is a significant factor influencing the ability of the species to survive and reproduce.

Threats

Lime Ridge eriastrum is endangered due to:

- Present or threatened modification or destruction of its habitat (see, e.g., Department’s status review report at page 32 and references cited therein) including impacts associated with the following:

- Recreational use of the public land where Lime Ridge eriastrum occurs (see, e.g., Department’s status review report at pages 21-23, 32, and 34, and references cited therein);
- Wildfire response activities (see, e.g., Department’s status review report at pages 23, 32, and 34, and references cited therein); and
- Utility right-of-way management (see, e.g., Department’s status review report at pages 23-24, 32, and 34, and references cited therein).
- Competition and other impacts from invasive and non-native plants (see, e.g., Department’s status review report at page 24-26, 32 and 34, and references cited therein).
- Other natural occurrences or human-related activities. In particular, natural occurrences or human-related activities of significance include:
 - Small population size (see, e.g., Department’s status review report at pages 20-21 and 34, and references cited therein); and
 - Climate change (see, e.g., Department’s status review report at pages 26-28, 32, and 34, and references cited therein).

The Commission finds these factors to result in a significant threat to the continued existence of Lime Ridge eriastrum as explained in the Department’s status review report. This finding and the Department’s explanation are supported by the whole of the record before the Commission.

IV. Final Determination by the Commission

The Commission has weighed and evaluated the information for and against designating Lime Ridge eriastrum as a threatened or endangered species under CESA, including scientific and other general evidence in the petition; the Department’s petition evaluation report; the Department’s status review report; the Department’s related recommendations; written and oral comments received from members of the public, the regulated community, various public agencies, and the scientific community; and other evidence included in the Commission’s record of proceedings.

Based upon the evidence in the record, the Commission has determined that the best scientific information available indicates the continued existence of Lime Ridge eriastrum is in serious danger or threatened by modification or destruction of the species’ habitat, competition, or other natural occurrences or human-related activities, where such factors are considered individually or in combination (see, generally, California Code of Regulations, Title 14, Section 670.1, subsection (i)(1)(A); Fish and Game Code sections 2062 and 2067).

The Commission determines that there is sufficient scientific information to indicate that designating Lime Ridge eriastrum as an endangered species under CESA is warranted, and that, with adoption and publication of these findings, Lime Ridge eriastrum shall be listed as endangered for purposes of its legal status under CESA.