

State of California
Fish and Game Commission
Initial Statement of Reasons for Regulatory Action

Add Section 749.14
Title 14, California Code of Regulations
Re: Take of Morro Manzanita During Candidacy

I. Date of Initial Statement of Reasons: June 17, 2025

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing:

Date: June 11, 2025

Location: Sacramento, CA

(b) Discussion Hearing:

Date: August 13, 2025

Location: Sacramento, CA

(c) Adoption Hearing:

Date: October 8, 2025

Location: Sacramento, CA

III. Description of Regulatory Action

(a) Statement of Specific Purpose of Regulatory Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR). All references to “CDFW” or “Department” mean the California Department of Fish and Wildlife. All references to “County” mean San Luis Obispo County, California.

Background

On July 20, 2024, the Fish and Game Commission (Commission) received a petition from Dr. Christopher Kofron and Dr. Claudia Tyler to list Morro manzanita (*Arctostaphylos morroensis*) as an endangered species under the California Endangered Species Act (CESA). On July 30, 2024, the Commission transmitted the petition to the Department for review and recommendation pursuant to sections 2073 2073.5, Fish and Game Code.

FGC Section 2073.5 and Title 14, Section 670.1 requires that the Department evaluate the petition and submit a written evaluation with a recommendation to the Commission, which was received at the Commission’s December 2024 meeting. Based upon the information contained in the petition and other relevant information, the Department determined in its evaluation that there is sufficient scientific information available to indicate that the petitioned action may be warranted, and recommended that the Commission accept the petition for further consideration pursuant to CESA.

The petition evaluation was made available to the public for a 30-day public comment period prior to the Commission taking any action on the petition. Subsequently, on April 16, 2025, the Commission determined that listing may be warranted pursuant to Section

2074.2, Fish and Game Code. Morro manzanita became a candidate species under CESA, effective upon publication of the notice of findings on May 16, 2025 (Office of Administrative Law notice number Z2025-0505-03).

Pursuant to Section 2074.6, Fish and Game Code the Department will undertake a one year status review. With the status review, the Commission makes a final determination whether the petitioned action to list the species as threatened or endangered is warranted, based on the Department's status review and other information in the administrative record (Section 2075.5, Fish and Game Code). Candidate species are protected from take under CESA pursuant to Section 2085, Fish and Game Code during the remainder of the CESA listing.

During candidacy, authority under Section 2084, Fish and Game Code grants the Commission the ability to consider, exemption from the take prohibition for these species. Additionally, the Commission may adopt regulations to authorize take of candidate species, based on the best available scientific information, when the take is otherwise consistent with CESA.

Federal Statutory Background

Morro manzanita has been listed under the Federal Endangered Species Act (ESA) as threatened since 1994. In 2008, 2013, and 2022, the United States Fish and Wildlife Service (USFWS) conducted 5-year reviews for Morro manzanita to ensure that its classification as a threatened species under the ESA provided the appropriate level of protection (USFWS 2008, 2013, 2022). All three USFWS 5-year reviews concluded that Morro manzanita still met the definition of a threatened species under the ESA (CDFW, 2024).

Biology

Morro manzanita is an erect, evergreen shrub in the heath family (Ericaceae). Morro manzanita typically grows from 0.5 m to over 4 m (1.6 to 13.1 ft) tall, with flower petals that are urn-shaped, and white to pink in color. Stems have gray, shredding bark. Unlike other manzanita species, Morro manzanita lacks the presence of basal burl (woody growth), which allows for species to resprout after fire. In lacking basal burl, Morro manzanita relies on seed back in the soil to re-propagate habitat following wildfire (CDFW, 2024).

Morro manzanita is restricted to the northeast side of Morro Bay to the southern end of Montana de Oro State Park, a distance of less than ten miles, and occurs primarily on stabilized sand dunes associated with Baywood fine sand. Approximately 75 percent of its historical habitat has been converted for residential use, resulting in highly fragmented populations. There are several occurrences in and around the town of Los Osos in San Luis Obispo County.

San Luis Obispo County Public Works Project

The County proposes to replace the South Bay Boulevard Bridge (No. 49C-0351) originally constructed in 1966 (hereafter, “South Bay Boulevard Bridge project” or “Project”) which spans Los Osos Creek. South Bay Boulevard is one of the two main access routes in and out of Los Osos and the only direct connector between Los Osos and Morro Bay. As such, South Bay Boulevard is a critical access corridor for local residents and emergency vehicles, as well as for evacuation for the Diablo Canyon Power Plant. The purpose of the Project is to replace the existing 70-year old bridge so that it meets current seismic design standards and maintains safe, reliable service of a critical access corridor for the Los Osos and Morro Bay communities. The new bridge and road approaches will be relocated to the east side of the existing bridge to preserve access during construction, and then the existing bridge demolished once the new bridge is open for use.

Project Mitigation

An Initial Study/ Mitigated Negative Declaration was prepared by the Public Works Department of San Luis Obispo County (SCH 2021070094) and adopted by the County in August of 2021, which calls for a mitigation monitoring plan strategy, and specifies mitigation measures for biological resources (San Luis Obispo County, 2021).

The County has been updating a Habitat Mitigation and Monitoring Plan (HMMP) since its original draft (November 2020) to consolidate the project impacts for federal, state, and county jurisdictional requirements from the Project (San Luis Obispo County, 2024). Temporary construction impacts in uplands would include approximately 0.6 acre of upland historic fill area that has been colonized by Morro manzanita, and the area is proposed to be restored at a 1:1 mitigation ratio after temporary construction impacts are complete (San Luis Obispo County, 2024). For issuance of a Coastal Development Permit, the California Coastal Commission additionally requires a 2:1 mitigation ratio for temporary construction impacts. Permanent impacts to Morro manzanita habitat are estimated at 0.24 acre based on the project footprint, and mitigation is proposed at a 3:1 replacement ratio (for a total of 2.52 acres of Morro manzanita chaparral habitat needing replacement) (San Luis Obispo County, 2024). The proposed temporary and permanent impact areas contain approximately 23 and 30 individual shrubs, respectively, that may be removed by the project (for a total of 113 shrubs requiring mitigation). Morro manzanita plantings will be planted in a spread pattern with adequate spacing to best simulate the species’ natural distribution (approximately 10 to 15 ft). (San Luis Obispo County, 2024)

The creation of the Morro manzanita mitigation site will be a benefit to recovery by increasing the total area occupied by Morro manzanita within its range by 0.48 acre. The restoration and mitigation areas will be managed under the HMMP finalized in collaboration with the Service. Further, the County will be developing and documenting improved techniques for removal, storage, and reinstallation of Morro manzanita individuals. More knowledge about Morro manzanita preservation and propagation will be a valuable tool to offset future impacts to Morro manzanita throughout its range and support its recovery

Proposed Regulations

There are no existing regulations pertaining to the listing of Morro manzanita as threatened or endangered under CESA. The proposed addition of Section 749.14 to Title 14, CCR aims to create a special order allowing take of Morro manzanita during the CESA candidacy process for the described Project. The proposed addition of Section 749.14 represents the cumulation of the Department internal discussions with the County Public Works Department staff.

The proposed regulations are as follows:

Section 749.14. Special Order Relating to Take of Morro Manzanita (*Arctostaphylos morroensis*) During Candidacy Period.

749.14 (a): This subsection names the proposed Project for the exemption from the take prohibition during candidacy under CESA as authorized by subsection 2084(b), Fish and Game Code. This subsection also lists the prerequisites for compliance for the exemption from the take prohibition to be granted:

749.14(a)(1): This paragraph names the USFWS Biological Opinion and Incidental Take Statement (2022-0025695-S7) that includes the terms, conditions, and measures required for compliance with ESA for the Project. It also mentions the HMMP to be finalized in coordination with USFWS as the design plans approach 100% to prepare for groundbreaking. This paragraph is necessary to provide the direct reference to the documents which prescribe the terms, conditions, and measures for compliance, to ensure that actions to minimize, avoid, and mitigate for Morro manzanita are included (by reference) in the regulation.

749.14(a)(2): This paragraph names the Initial Study/ Mitigated Negative Declaration (SCH 2021070094) that includes the mitigation measure required to mitigate identified impacts to a less-than-significant impact. This paragraph is necessary to provide the direct reference to another document which prescribes measures for compliance.

749.14(a)(3): This paragraph names the Coastal Development Permit issued by the California Coastal Commission issued in July 2023 that includes the terms, conditions, and measures required for compliance with the Project breaking ground in the coastal zone. This paragraph is necessary to provide the direct reference to an additional document that prescribes measures for compliance.

749.14(a)(4): This paragraph requires that the County provide Department staff with copies of required reports or notices pursuant to the USFWS Biological Opinion, Incidental Take Statement, and final HMMP. An email address is provided at which to receive the reports for Habitat Conservation Planning staff. This paragraph is necessary to ensure that the County keeps Department staff informed of Project developments and status as it relates to CESA compliance as well as directing the County how to contact the Department.

749.14(a)(5): This paragraph requires a blanket compliance with all other laws and regulations to make clear that there are no other exemptions for take granted aside from those specified in this section. This sentence is necessary to make clear that there are

no other exemptions for any other state laws or regulations granted with this exemption from the CESA take prohibition.

749.14(b): This subsection states that no project or activity approval is granted by the proposed regulation. This paragraph is necessary to make it clear to the project proponent that they are fully responsible for project approvals by other agencies and that this regulation in itself does not approve a single project.

(b) Goals and Benefits of the Regulation

The goal of this regulation is to allow the County to proceed with its project to replace the South Bay Boulevard Bridge so that the bridge meets current seismic design and safety standards. The County is going out to bid for construction between summer and fall 2025. This project, while not an emergency, has strict timelines for compliance and to ensure that construction can commence for public safety reasons. The Department considers the restoration and mitigation measures laid out in the HMMP to adequately compensate for impacts to Morro manzanita from the South Bay Boulevard Bridge project. This regulation benefits the County by allowing them to proceed with the South Bay Boulevard Bridge project and may benefit Morro manzanita by creating a Morro manzanita mitigation site which, if successfully implemented, will increase the total area occupied by Morro manzanita.

(c) Authority and Reference Sections from Fish and Game Code for Regulation

Authority cited: Sections 399 and 2084, Fish and Game Code. Reference: Sections 399 and 2084, Fish and Game Code.

(d) Specific Technology or Equipment Required by Regulatory Change: None

(e) Identification of Reports or Documents Supporting Regulation Change

California Coastal Commission, Coastal Development Permit 3-22-0826, Issued to San Luis Obispo County Public Works Department, for South Bay Boulevard Bridge (July 17, 2023).

California Department of Fish and Wildlife (CDFW). 2024. Report to the Fish and Game Commission, petition evaluation for Morro manzanita (*Arctostaphylos morroensis*). California Natural Resources Agency, Sacramento CA. 16 pp. Available from: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=227348&inline>

San Luis Obispo County, Public Works Department, 2021. South Bay Boulevard Bridge Replacement Project Mitigated Negative Declaration – SCH 2021070094 adopted 8-24-2021 Available from <https://www.slocounty.ca.gov/departments/public-works/forms-documents/environmental-determinations/south-bay-boulevard-bridge-mnd>

San Luis Obispo County, Public Works Department, 2024. South Bay Boulevard Bridge Replacement Project Habitat Mitigation and Monitoring Plan. February 2024 draft.

(f) Public Discussions of Proposed Regulations Prior to Notice Publication

The public receipt of petition occurred at the Commission's August 14-15, 2024 meeting. The Commission approved Department's request for 30-day extension October 9-10, 2024. The Commission received Department's 90-day evaluation report dated November 14, 2024. The discussion to determine whether the petitioned action may be warranted was heard at the Commission's February 12-13, 2025 meeting. At the February 2025 meeting, Supervisor Gibson presented concerns regarding the potential listing of Morro manzanita. To allow time for the Department to have conversations with the county about its concerns and to allow the county additional time to bring certain information to the attention of the Commission, the "may be warranted" decision was postponed until the April 16-17, 2025 meeting. A verbal update regarding a path forward for the county was presented at the April 2025 meeting.

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

Another means to allow take of CESA candidate species is by Incidental Take Permit (ITP) pursuant to FGC Section 2081, subdivision (b), from the Department. An ITP allows a permittee to take CESA listed or candidate species if such taking is incidental to, and for the purpose of, carrying out an otherwise lawful activity. However, issuance of ITPs falls under Department authority and involves a more lengthy permit approval process, which is not feasible given this is an approximately \$30 million infrastructure project, and all other project approvals are in place, and serves to replace a critical transportation corridor in the Morro Bay and Los Osos community for safety reasons.

(b) No Change Alternative

Without the proposed changes, the County would risk being in violation of CESA for the candidacy of Morro manzanita. Failure to adopt the proposed regulation could force the County to pursue taking Morro manzanita via the ITP process. Pursuing an ITP through the Department is more costly and time consuming than the discretionary take approach proposed by these regulations and would add costs to and delay the Project.

V. Mitigation Measures Required by Regulatory Action

The proposed regulatory action is consistent with the mitigation and reinforces the terms, conditions and measures authorized by the USFWS Biological Opinion, the Initial Study/Mitigated Negative Declaration, the HMMP, and the Coastal Development Permit.

VI. Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States

The Commission does not anticipate any adverse economic impacts to businesses that would affect their ability to compete with businesses from other states as a result of these regulations to allow for the discretionary take of Morro manzanita. The proposed regulations impose no costs that would create an adverse economic impact.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The Commission does not anticipate any adverse cost impacts to the creation or elimination of jobs within the state, the creation or elimination of businesses within the state, or the expansion of businesses within the state as a result of these regulations to allow for the discretionary take of Morro manzanita.

(c) Cost Impacts on a Representative Private Person or Business

The Commission does not anticipate any adverse cost impacts to a representative private person or business within the state as a result of these regulations to allow for the discretionary take of Morro manzanita. There are no anticipated costs or reporting requirements imposed by the allowance for discretionary take that would affect a private person or business.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The Commission does not anticipate any costs or savings to state agencies or any costs or savings in federal funding to the State as a result of these regulations to allow for the discretionary take of Morro manzanita. There are no anticipated changes in enforcement activities for the Department or other state agencies that would increase costs, nor are there any fees that would increase revenue.

Failure to adopt, however, would force San Luis Obispo County to pursue taking Morro manzanita via the Incidental Take Permit (ITP) process. The approximately \$47,000 for the CDFW ITP Application fee with Complexity Fee would cover most of the Department's costs for processing the permit application; however, this would still leave the Department with a deficit of approximately \$12,359.68 that would need to be absorbed in the existing budget.

(e) Nondiscretionary Costs/Savings to Local Agencies:

While the Commission does not anticipate any nondiscretionary costs or savings to local agencies as a result of the proposed regulations, failure to adopt them could force the County to pursue taking Morro manzanita via the Incidental Take Permit (ITP) process, which is more costly and time consuming than the discretionary take approach proposed by these regulations. The ITP process would add costs of approximately \$5.342 million to the County's project and would delay the \$30 million infrastructure

project to improve the seismic safety of the Morro Bay and Los Osos transportation corridor. The \$5.342 million breaks down to the following:

- Approximately \$47,000 for the CDFW ITP Application fee with Complexity Fee
- Approximately \$5.295 million for CDFW required security for Habitat Management Lands Mitigation
- Lake and Streambed Standard Agreement fee of approximately \$6,698

Additionally, County staff indicate that failing to adhere to the project's current timeline due to a delay would cost the project \$27 million in programmed Federal funding, as well as increase the costs of the project by approximately \$5.45 million. The cost increase associated with a 3-year delay would be as follows:

- Inflationary cost increases: 4.89% of \$33 Million for 3 years equaling approximately \$5.1 million
- Project manager labor costs to coordinate Federal funding revisions and to coordinate project revisions: \$90,000
- Environmental consulting labor costs to update permits, agency authorizations, and update environmental commitment record: \$80,000
- Consultant costs to update plans and specifications to latest Caltrans versions: \$180,000

Combined total cost impact to the County from failing to adopt these regulations would be approximately \$10.792 million.

(f) Programs Mandated on Local Agencies or School Districts: None

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None

(h) Effect on Housing Costs: None

VII. Economic Impact Assessment

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State

The Commission does not anticipate any adverse cost impacts to the creation or elimination of jobs within the state as a result of these regulations to allow for the discretionary take of Morro manzanita. Failure to adopt these regulations, however, could lead to the county pursuing ITPs, which could directly cost the project and potentially cause the County to delay the bidding process for the project and affect contracted jobs.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State

The Commission does not anticipate any adverse cost impacts to the creation or elimination of businesses within the state, or the expansion of businesses within the

state as a result of these regulations to allow for the discretionary take of Morro manzanita.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State

The Commission does not anticipate any adverse cost impacts to the creation or elimination of businesses within the state, or the expansion of businesses within the state as a result of these regulations to allow for the discretionary take of Morro manzanita.

(d) Benefits of the Regulation to the Health and Welfare of California Residents

The Commission does not anticipate impacts on the health and welfare of California residents.

(e) Benefits of the Regulation to Worker Safety

The Commission does not anticipate impacts to worker safety as a result of the proposed regulations.

(f) Benefits of the Regulation to the State's Environment

The Commission anticipates benefits to the state's environment by allowing the County of San Luis Obispo to proceed with the South Bay Boulevard Bridge project and may benefit Morro manzanita by creating a mitigation site which, if successfully implemented, will increase the total area occupied by Morro manzanita. The project also prompted the County Public Works Department to conduct a seed germination study for Morro manzanita as part of the mitigation requirements, further contributing to the scientific research for propagation of this rare species.

(g) Other Benefits of the Regulation

None.

Informative Digest/Policy Statement Overview

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

Morro manzanita (*Arctostaphylos morroensis*) is an erect, evergreen shrub in the heath family (Ericaceae). Morro manzanita is restricted to the northeast side of Morro Bay to the southern end of Montana de Oro State Park, a distance of less than ten miles, and occurs primarily on stabilized sand dunes associated with Baywood fine sand. Approximately 75 percent of its historical habitat has been converted for residential use, resulting in highly fragmented populations.

Morro manzanita has been listed under the Federal Endangered Species Act (ESA) as threatened since 1994. On July 20, 2024, the Fish and Game Commission (Commission) received a petition to list Morro manzanita as an endangered species under the California Endangered Species Act (CESA). Based upon the information contained in the petition and other relevant information, the Department determined that there is sufficient scientific information available to indicate that the petitioned action may be warranted and recommended that the Commission accept the petition for further consideration pursuant to CESA. On April 16, 2025, the Commission determined that listing may be warranted pursuant to Section 2074.2, Fish and Game Code. Morro manzanita became a candidate species under CESA, effective upon publication of the notice of findings on May 16, 2025 (Office of Administrative Law notice number Z2025-0505-03). With the one-year status review pursuant to Section 2074.6, Fish and Game Code, the Commission makes a final determination whether the petitioned action to list the species as threatened or endangered is warranted.

Under Section 2084, Fish and Game Code, CESA provides that the Commission may adopt regulations to authorize take of candidate species, based on the best available scientific information, when the take is otherwise consistent with CESA.

San Luis Obispo County Public Works Project

The County of San Luis Obispo proposes to replace the South Bay Boulevard Bridge (No. 49C-0351) ("Project") which spans Los Osos Creek so that it meets current seismic design standards and maintains safe, reliable service of a critical access corridor for the Los Osos and Morro Bay communities. The new bridge and road approaches will be relocated to the east side of the existing bridge to preserve access during construction, and then the existing bridge will be demolished once the new bridge is open for use.

Environmental review has completed on the Project, and it is going out to bid for construction to start in early 2026.

- An Initial Study/ Mitigated Negative Declaration was prepared by the Public Works Department of San Luis Obispo County (SCH 2021070094) and adopted by the County in August of 2021, which calls for a mitigation monitoring plan strategy, and specifies mitigation measures for biological resources.

- The County has been updating a Habitat Mitigation and Monitoring Plan (HMMP) since its original draft (November 2020) to consolidate the project impacts for federal, state, and county jurisdictional requirements from the Project.
- The California Coastal Commission is currently extending its authorization via the Coastal Development Permit 3-22-0826, Issued to San Luis Obispo County Public Works Department, for South Bay Boulevard Bridge (July 17, 2023).
- Biological Opinion issued by U.S. Fish and Wildlife Service for the South Bay Boulevard Bridge Replacement Project, San Luis Obispo County, California, 2022-0025695-S7

Proposed Regulations

The proposed addition of Section 749.14 to Title 14, CCR aims to create a special order allowing take of Morro manzanita during the CESA candidacy process for the described Project and lists the prerequisites for compliance for the exemption from the take prohibition to be granted. Additionally the regulation states that no project or activity approval is granted by the proposed regulation.

Benefit of the Regulations:

The creation of the Morro manzanita mitigation site will be a benefit to recovery by increasing the total area occupied by Morro manzanita within its range by 0.48 acre. The restoration and mitigation areas will be managed under the HMMP finalized in collaboration with the Service. Further, the County will be developing and documenting improved techniques for removal, storage, and reinstallation of Morro manzanita individuals. More knowledge about Morro manzanita preservation and propagation will be a valuable tool to offset future impacts to Morro manzanita throughout its range and support its recovery

Consistency and Compatibility with Existing Regulations:

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, of the state Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and wildlife as the Legislature sees fit. The Legislature has delegated to the Commission the power to adopt regulations governing the candidacy of species under CESA (California Fish and Game Code sections 2080 *et seq.*). No other state agency has the authority to adopt regulations governing exemption from the take prohibition of candidate species under CESA. The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the CCR for any regulations regarding the adoption of regulations for the exemption from the take prohibition from CESA; therefore, the Commission has concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.