

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

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

I. Dates of Statements of Reasons

- (a) Initial Statement of Reasons Date: June 17, 2025
- (c) Final Statement of Reasons Date: October 20, 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. Update

At its October 8-9, 2025 meeting, the California Fish and Game Commission (Commission) adopted the addition of Section 749.14, as proposed in the notice distributed on July 16, 2025. The addition of Section 749.14 will allow for the county of San Luis Obispo to move forward with the replacement of the South Bay Boulevard Bridge (No. 49C-0351) (hereafter, "South Bay Boulevard Bridge project" or "Project").

In the Initial Statement of Reasons (ISOR) dated June 17, 2025, a reference was made to proposed subsection 749.14(a)(5). This reference was made in error. Subsection 749.14(a)(5) was never included in the proposed regulatory language presented to and adopted by the Commission or noticed to the public.

IV. Additionally, the ISOR states that Section 399 of the Fish and Game Code was included in the authority and reference for the regulation. This was also an error. Section 399 was not included in any version of the proposed regulatory language presented to the Commission or noticed to the public. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations

There were no comments raised in support or in opposition of the proposed action during the public comment period or at any of the Commission's hearings.

V. Description of Reasonable Alternatives to Regulatory Action

- (a) Alternatives to Regulation Change

Another means to allow take of California Endangered Species Act (CESA) candidate species is by Incidental Take Permit (ITP) pursuant to Fish and Game Code Section 2081(b), from the California Department of Fish and Wildlife (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, the issuance of ITPs falls under Department authority and involves a lengthier permit approval process, which is not feasible given this is an approximately \$30 million infrastructure project. All other project approvals are in place, and the Project 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 risks violating CESA due to 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.

(c) Consideration of Alternatives

In view of information currently possessed, no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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 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 ITP process. The approximately \$47,000 for the Department 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 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 Department ITP Application fee with Complexity Fee
- Approximately \$5.295 million for Department 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

Updated 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 California Department of Fish and Wildlife (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. The following documents are incorporated by reference, pursuant to Section 20 "Incorporation by Reference," Title 1, of the California Code of Regulations. It would be cumbersome, unduly expensive, or otherwise impractical to publish the documents in the California Code of Regulations. In the notice of proposed changes in regulations, these documents were made available to the public by referencing their being posted on the Commission's website at www.fgc.ca.gov.

- 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 (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 would establish a regulation permitting the take of Morro manzanita during the CESA candidacy process for the described Project. It outlines 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 Project will be able to be completed within the anticipated time frame and without incurring larger costs. 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.

Update

At its October 8, 2025 meeting, the Commission adopted the regulations as proposed in the notice of proposed action dated July 16, 2025. There have been no other changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the original Notice of Proposed Action.