

11. Executive Order (E.O.) 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

Notice is hereby given that the USFWS has taken the final agency actions within the meaning of 23 U.S.C. 139(l)(1) by issuing the following:

1. A letter dated September 3, 2020, concurring with the effects determinations in the Biological Assessment (BA) and that no further coordination with the USFWS is needed for the species that received a “may affect, not likely to adversely affect” determination and for the northern long-eared bat, which received a “may affect, is likely to adversely affect” determination. The adverse effects for the northern long-eared bat will be addressed through Section 4(d) of the Endangered Species Act.

2. A Biological Opinion (BO) dated December 17, 2020, that the I-69 ORX project is not likely to jeopardize the continued existence of the fat pocketbook and sheepsnose mussels.

3. A Conference Opinion dated December 17, 2020, that the I-69 ORX project is not likely to jeopardize the continued existence of the longsolid mussel.

As part of the BA, the Indiana bat received an effect determination of “may affect, is likely to adversely affect.” The adverse effects for the Indiana bat will be addressed through Kentucky’s latest Statewide Bat Programmatic Agreement. However, additional coordination with the USFWS Indiana Field Office is required during final design to determine the appropriate amount and/or type of conservation to offset the effects of incidental take.

The BA and BO and other project records relating to the USFWS actions, taken pursuant to the Endangered Species Act, 16 U.S.C. 1531–1544, are available by contacting the FHWA, INDOT, KYTC, or USFWS at the addresses provided above. The BA and BO can be viewed in Appendices K-4 and K-5 of the I-69 ORX FEIS.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372

regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Jermaine R. Hannon,
Division Administrator, FHWA, Indianapolis, Indiana.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT)

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, Interstate 10/Jackson Street Interchange between Monroe Street and 0.4 miles west of Golf Center Parkway at PM R54.9/R56.5 in the City of Indio, in Riverside County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before March 4, 2022. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Renetta Cloud, Chief, Environmental Studies “A”, Caltrans District 8, 464 W 4th Street, 6th Floor, MS-823, San Bernardino, CA 92401–1400, Office Hours: 9:00 a.m. to 4:00 p.m., Office Phone: (909) 383–6323, Email: Renetta.Cloud@dot.ca.gov. For FHWA, contact David Tedrick at (916) 498–5024 or email David.tedrick@dot.gov.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(l)(1) by

issuing licenses, permits, and approvals for the following highway project in the State of California: Caltrans proposes to reconstruct and widen Jackson Street at Interstate 10 (I-10) to improve the operational performance of the existing I-10/Jackson Street Interchange within the city limits. The I-10/Jackson Street interchange is located on I-10 between Monroe Street and Gold Center Parkway. The project limits extend from approximately Post Mile (PM) R54.9 to PM R56.6 along I-10 and from Kenner Avenue (south of I-10) to Atlantic Avenue (north of I-10) along Jackson Street. The project site is centrally located within the City of Indio at the crossroads of I-10 and Jackson Street in Riverside County, California. The current I-10/Jackson interchange configuration is a diamond interchange, with signal control at the ramp termini. The interchange is a major access point for existing residential and retail sites. The project proposes to reconstruct and widen Jackson Street at I-10 from one to two lanes in the southbound direction, to construct two new access ramps to the CV Link recreational facility, and to realign and widen the existing I-10 eastbound (EB) and I-10 westbound (WB) on- and off-ramps. The project would also include the construction of a WB auxiliary lane preceding the Jackson Street WB off-ramp, the installation of planned ramp meters on the I-10 EB and WB on-ramps, and construction of the Whitewater River Bridge Structure to accommodate two through lanes, a shoulder, and a sidewalk in each direction.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (EA)/ Finding of No Significant Impact (FONSI) for the project, approved on August 27, 2021, and in other documents in the FHWA project records. The EA/FONSI, and other project records are available by contacting Caltrans at the address provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality regulations;
2. National Environmental Policy Act (NEPA);
3. Moving Ahead for Progress in the 21st Century Act (MAP-21);
4. Americans with Disabilities Act;
5. Department of Transportation Act of 1966;
6. Federal Aid Highway Act of 1970;

7. Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

8. Clean Air Act Amendments of 1990;

9. Noise Control Act of 1970;

10. 23 CFR part 772 FHWA Noise Standards, Policies and Procedures;

11. Department of Transportation Act of 1966, Section 4(f);

12. Clean Water Act of 1977 and 1987;

13. Safe Drinking Water Act;

14. Executive Order 12088, Federal Compliance with Pollution Control;

15. Flood Disaster Protection Act;

16. Executive Order 11988, Floodplain Management;

17. Federal Endangered Species Act of 1973;

18. Migratory Bird Treaty Act;

19. Fish and Wildlife Coordination Act;

20. Executive Order 11990, Protection of Wetlands;

21. Executive Order 13112, Invasive Species;

22. Antiquities Act of 1906;

23. National Historic Preservation Act of 1966, as amended;

24. Historic Sites Act of 1935;

25. Farmland Protection Policy Act;

26. Resource Conservation and Recovery Act of 1976;

27. Comprehensive Environmental Response, Compensation and Liability Act of 1980;

28. Toxic Substances Control Act;

29. Community Environmental Response Facilitation Act of 1992;

30. Occupational Safety and Health Act;

31. Executive Order 12898, Federal Actions to Address Environmental Justice and Low-Income Populations; and

32. Title VI of the Civil Rights Act of 1964.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139(l)(1))

Issued on: September 30, 2021.

Rodney Whitfield,

Director, Financial Services, Federal Highway Administration, California Division.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0104]

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted on September 17, 2019, by Mr. Edward Chen (the petitioner), requesting that the Agency “initiate a Defect Investigation into the recent set of software updates, including software updates 2019.16.1 and 2019.16.2 and all subsequent updates issued by Tesla, Inc. to its Model S and Model X vehicles, which have been alleged to be issued by Tesla in response to the alarming number of car fires that have occurred worldwide.” On October 1, 2019, ODI opened Defect Petition DP19-005 to evaluate the petitioner’s request. After reviewing the information provided by the petitioner, information provided by Tesla in response to an information request letter from NHTSA, and field data regarding non-crash vehicle fires in model year (MY) 2012 through 2019 Tesla Model S and Model X vehicles, NHTSA has concluded that the issues raised by the petition do not warrant a defect investigation at this time. Accordingly, the Agency has denied the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Kareem Habib, 202-366-8703, Vehicle Defects Division—D, Office of Defects Investigation, NHTSA, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

1.0 Introduction

Pursuant to 49 CFR 552.1, interested persons may petition NHTSA requesting that the Agency initiate an investigation to determine whether a motor vehicle or an item of replacement equipment fails to comply with applicable motor vehicle safety standards or contains a defect that relates to motor vehicle safety. Upon receipt of a properly filed petition, the Agency conducts a technical review (49 CFR 552.6) of the petition, material submitted with the petition, and any appropriate additional information. After the technical review and considering appropriate factors, which may include, among others, Agency priorities, and the likelihood of success in litigation that might arise from a determination of noncompliance or a defect related to motor vehicle safety, the Agency will grant or deny the petition (49 CFR 552.8).

2.0 The Petition

In a September 17, 2019 letter, the petitioner requested that the Agency

“initiate a Defect Investigation into the recent set of software updates, including software updates 2019.16.1 and 2019.16.2 and all subsequent updates issued by Tesla, Inc. to its Model S and Model X vehicles, which have been alleged to be issued by Tesla in response to the alarming number of car fires that have occurred worldwide.” The petitioner’s letter alleges that Tesla “is using over-the-air software updates to mask and cover-up a potentially widespread and dangerous issue with the batteries in their vehicles.” He associated the updates with a loss of range and requested that the investigation include model year (MY) 2012 through 2019 Tesla Model S and Model X vehicles:

“The fact pattern for most, if not all, of the affected owners is the same and begin in or around late May 2019, where Tesla issued its 2019.16.1. and 2019.16.2 software updates. For most owners, it was shortly discovered after updating their cars that the cars had suffered from a sudden and significant decrease in the amount of rated miles available. On average, affected owners have reported losing anywhere between 25–30 miles, with 50 miles of range loss at the higher end of the spectrum.”

“There is evidence to suggest that Tesla issued these updates in response to an increasing number of battery fires that have occurred worldwide. Tesla has taken the position and made statements to the public regarding the same, that the updates were issued in order to promote the health and longevity of their batteries. Additionally, despite some media coverage and news outlets having covered the issue and taking interest in the litigation, it is clear that there is widespread confusion and uncertainty regarding the true purpose of the software updates in question and the safety of the affected vehicles.”^{1 2 3}

In a class action lawsuit complaint submitted as an attachment to the petition, the petitioner cited five non-crash fires in Tesla vehicles summarized in Table 1.⁴

¹ <https://www.reuters.com/article/tesla-battery/tesla-hit-by-lawsuit-claiming-thousands-of-owners-lost-battery-capacity-after-software-update-idUSL2N25418A>.

² <https://electrek.co/2019/08/08/tesla-owner-range-slashed-software-update-class-action-lawsuit/>.

³ <https://insideevs.com/news/364347/tesla-model-s-update-lawsuit/>.

⁴ *Rasmussen v. Tesla*, 5:19-cv-04596, United States District Court for the Northern District of California, filed August 7, 2019.