

An act to add Chapter 11.5 (commencing with Section 1927) to Division 2 of the Fish and Game Code, relating to conservation, and making an appropriation therefor.

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 11.5 (commencing with Section 1927) is added to Division 2 of the Fish and Game Code, to read:

CHAPTER 11.5. WESTERN JOSHUA TREE CONSERVATION ACT

1927. This chapter shall be known, and may be cited as, the Western Joshua Tree Conservation Act.

1927.1. The Legislature finds and declares all of the following:

(a) The western Joshua tree is an iconic and ecologically and culturally important species that is an irreplaceable component of California's natural heritage.

(b) The impacts of climate change are occurring now with more intensity and frequency than previously anticipated, and development, aridification, and the effects of climate change, including drought and wildfire, are threatening the western Joshua tree and could threaten other species in the future.

(c) Species distribution model results for the western Joshua tree suggest a significant loss of areas containing suitable climates for the species by the end of the twenty-first century. Southern and lower elevation portions of the species' range appear particularly vulnerable, with limited areas of climate refugia projected. Suitable habitat is predicted to shift north by the late twenty-first century, and much of the southern portion of the species' range is projected to no longer be suitable. Effective conservation of the western Joshua tree must take into account this projected shift in the species' suitable habitat.

(d) The western Joshua tree occurs across a large portion of California's desert region where renewable energy and housing development are essential for the state.

(e) Due to the widespread distribution of the western Joshua tree across the California desert region, including within incorporated cities and towns, there is a critical need to immediately conserve the species while also ensuring timely and efficient permitting mechanisms for activities within its range.

(f) Making a transition to a carbon-free energy future and providing housing for Californians are among the highest of state priorities.

(g) The Fish and Game Commission (commission) was created by Section 20 of Article IV of the California Constitution and is charged with the designation of species as endangered or threatened under the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3).

(h) The current relative abundance and widespread distribution of the western Joshua tree, in both urban and rural communities, and on both public and private lands, combined with the rapid cumulative effects of climate change pose unique conservation and permitting issues unprecedented in California Endangered Species Act implementation.

(i) At its September 2020 meeting, in response to a petition to list the western Joshua tree as threatened under the California Endangered Species Act, the commission voted to advance the petition for further consideration, affording the species interim protection as a candidate species. As a candidate for listing, the western Joshua tree is currently protected, and any take of the western Joshua tree must be mitigated pursuant to the California Endangered Species Act. At subsequent meetings the commission



has voted several times but not yet reached a decision as to whether to list the species as threatened under the California Endangered Species Act.

(j) The western Joshua tree is deserving of special attention and requires a novel approach to ensure the long-term conservation of the species and alternate protection before it declines further.

(k) The approach taken in this chapter recognizes the critical role renewable energy projects play in reducing greenhouse gas emissions and the negative impacts of climate change, the role public works projects play in providing essential public services, and current housing needs in California, including single-family, multi-family, and mixed-use projects.

(l) The western Joshua tree is of ecological and cultural significance to California Native American tribes, which have coexisted with and stewarded the western Joshua tree and its Mojave Desert habitat since time immemorial. Effective conservation of the western Joshua tree requires incorporation of traditional ecological knowledge and co-management with tribes.

1927.2. For purposes of this chapter, the following definitions apply:

(a) “Accessory structure” means a subordinate structure, the use of which is incidental to an existing or contemporaneously constructed single-family residence, including, an accessory dwelling unit, addition to an existing single-family residence, garage, carport, swimming pool, patio, greenhouse, storage shed, gazebo, septic tank, sewer connection, solar panels, fence, or gravel or paved driveway.

(b) “California Endangered Species Act” means the act established pursuant to Chapter 1.5 (commencing with Section 2050) of Division 3.

(c) “Conserve” or “conservation” means to use, and the use of, methods and procedures that are necessary to bring species listed pursuant to Chapter 1.5 (commencing with Section 2050) of Division 3 to the point at which the measures provided pursuant to Chapter 1.5 (commencing with Section 2050) of Division 3 are no longer necessary, and for species that are not listed to maintain or enhance the condition of the species so that listing will not become necessary.

(d) “Desert native plant specialist” means an arborist certified by the International Society of Arborists, or an individual with at least five years of professional experience with relocation or restoration of native California desert vegetation.

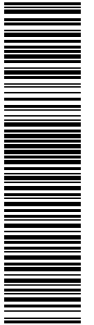
(e) “Fund” means the Western Joshua Tree Mitigation Fund as described in Section 1927.6.

(f) “Mitigation fee” means the elective fee described in subdivisions (d) and (e) of Section 1927.4, which is to be deposited into the Western Joshua Tree Mitigation Fund.

(g) “Public works project” means a project involving the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(h) “Relocated” or “relocation” means the removal of a living western Joshua tree and a sufficient portion of its root mass from the ground and transplanting it.

(i) “Single-family residence” means a single detached building that has been, or will be, constructed and used as living facilities, including provisions for sleeping, eating, cooking, and sanitation, as required by the California Building Code, for not more than one household.



(j) “Western Joshua tree” means *Yucca brevifolia*, an evergreen, tree-like plant that has been treated as a member of the asparagus family (*Asparagaceae*).

1927.3. (a) No person or public agency shall import into this state, export out of this state, or take, possess, purchase, or sell within this state, a western Joshua tree or any part or product of the tree, except as authorized pursuant to this chapter.

(b) During any period in which the western Joshua tree has been designated by the commission as a candidate for listing under the California Endangered Species Act, or if the commission decides to list the western Joshua tree as endangered or threatened pursuant to the California Endangered Species Act, any person or public agency seeking a take authorization for the western Joshua tree may elect to satisfy the mitigation requirements of both the California Endangered Species Act and this chapter by obtaining a take authorization as provided by this code, other than this chapter, or by electing to pay the mitigation fees set forth in Section 1927.4.

(c) The provisions of the Native Plant Protection Act (Chapter 10 (commencing with Section 1900)), and the California Desert Native Plants Act (Division 23 (commencing with Section 80001) of the Food and Agricultural Code), shall not apply to the western Joshua tree.

(d) This section shall not preclude the department from authorizing, by permit or memorandum of understanding, the taking, possession, purchase, or sale within the state of a western Joshua tree to aid the conservation and recovery of the western Joshua tree, or entering into memoranda of understanding with California Native American tribes to provide for the taking and possession of western Joshua trees for tribal cultural purposes, or as otherwise required by applicable law.

(e) Any authorization issued by the department pursuant to Section 2081 or 2084, before the enactment of this chapter, to import, export, take, possess, purchase, or sell a western Joshua tree shall be valid and remain in effect after the enactment of this chapter and without regard to any change in the status of the western Joshua tree under the California Endangered Species Act.

1927.4. (a) The department may authorize, by permit, the taking of a western Joshua tree if all of the following conditions are met:

(1) The permittee submits to the department for its approval a census of all western Joshua trees on the project site, including photographs, that categorize the western Joshua trees according to the following size classes:

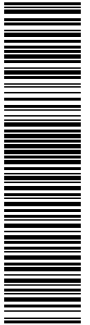
(A) Less than one meter in height.

(B) One meter or greater but less than five meters in height.

(C) Five meters or greater in height.

(2) The permittee avoids and minimizes impacts to, and the taking of, the western Joshua tree to the maximum extent practicable. Minimization may include trimming, encroachment on root systems, relocation, or other actions that result in detrimental but nonlethal impacts to a western Joshua tree.

(3) The permittee mitigates all impacts to, and taking of, the western Joshua tree. The measures required to meet this obligation shall be roughly proportional in extent to the impact of the authorized taking of the species. When various measures are available to meet this obligation, the measures required shall maintain the permittee’s objectives to the greatest extent possible. All required measures shall be capable of successful implementation. The permittee shall ensure adequate funding to implement the mitigation measures. In lieu of completing the mitigation obligation on its own,



the permittee may elect to satisfy this mitigation obligation by paying mitigation fees, pursuant to the fee schedule in subdivision (d) or (e), for deposit into the fund.

(4) The department may require the permittee to relocate one or more of the western Joshua trees. The permittee shall comply with any other reasonable measures required by the department to facilitate the successful relocation of the western Joshua trees.

(b) For purposes of this section, each western Joshua tree stem or trunk arising from the ground shall be considered an individual tree requiring mitigation, regardless of its proximity to any other western Joshua tree stem or trunk.

(c) The department may enter into an agreement with any county or city to delegate to the county or city the ability to authorize the taking of a western Joshua tree associated with developing single-family residences, accessory structures, and public works projects concurrent with its approval of the project, if all of the following conditions are met:

(1) The county or city adopts an ordinance that requires as a condition of any approval or permit issued under the authority of an agreement entered into pursuant to this subdivision satisfaction of the requirements of this chapter.

(2) Except as provided otherwise in this subdivision, the county or city ensures that the permittee satisfies all of the requirements of subdivision (a) of this section.

(3) The project will take no more than 10 individual western Joshua trees on the project site where the project proponent proposes to construct a single-family residence or accessory structure, or no more than 40 individual western Joshua trees on the project site on which a public agency proposes to undertake a public works project.

(4) The county or city shall collect any mitigation fees for permits issued and remit them quarterly to the fund as directed by the department.

(5) The county or city entering into an agreement pursuant to this subdivision may impose a reasonable fee to cover the administrative costs of issuing the permit.

(6) The department retains express authority to suspend or revoke the county or city's take authorization in the event the department determines the county or city has violated the terms of the agreement, or this chapter, the county or city fails to implement or enforce the terms of the agreement or this chapter, or the department determines that the local population of western Joshua trees within, or in the vicinity of, that county or city needs further protection.

(7) The county or city shall be required to submit to the department quarterly reports documenting the number of permits issued, the number and size class of western Joshua trees authorized to be taken, the number of western Joshua trees encroached upon, the number of western Joshua trees lethally removed, the number and location of western Joshua trees relocated, the amount of mitigation fees collected, and other information required by the department in the agreement.

(d) Any person or public agency receiving a take authorization pursuant to this chapter for a project that meets the criteria set forth in paragraph (1) may elect, in lieu of satisfying the mitigation obligation provided for in paragraph (3) of subdivision (a), to pay mitigation fees in the amounts provided in paragraph (2) for deposit into the fund.

(1) (A) Any project in the area bounded by the intersection of Highway 58 and Interstate 5, then east along Highway 58 to the intersection of Interstate 15, then north along Interstate 15 to the intersection of Highway 247, then south along Highway 247



to the intersection of Highway 18, then west along Highway 18 to the intersection of Highway 138, then west and north along Highway 138 to the intersection of Interstate 5, then north along Interstate 5 to Highway 58.

(B) Any project within an incorporated city or town, regardless of location, that has entered into an agreement with the department pursuant to subdivision (c).

(2) (A) One thousand dollars (\$1000) for each western Joshua tree five meters or greater in height.

(B) Two hundred dollars (\$200) for each western Joshua tree one meter or greater but less than five meters in height.

(C) One hundred twenty-five dollars (\$125) for each western Joshua tree less than one meter in height.

(e) Any person or public agency receiving a take authorization pursuant to this chapter for a project that meets the criteria set forth in paragraph (1) may elect, in lieu of satisfying the mitigation obligation provided for in paragraph (3) of subdivision (a), to pay mitigation fees in the amounts provided in paragraph (2) for deposit into the fund.

(1) (A) Notwithstanding paragraph (1) of subdivision (d), any project within two miles of Joshua Tree National Park, or any unit of the state park system.

(B) Any project that does not meet the criteria set forth in paragraph (1) of subdivision (d).

(2) (A) Two thousand five hundred dollars (\$2,500) for each western Joshua tree five meters or greater in height.

(B) Five hundred dollars (\$500) for each western Joshua tree one meter or greater but less than five meters in height.

(C) Three hundred fifteen dollars (\$315) for each western Joshua tree less than one meter in height.

(f) Upon request, the department may authorize a reduction in the amount of the mitigation fees prescribed by subdivisions (d) and (e) for any western Joshua tree conserved by a project proponent through the acquisition of compensatory habitat mitigation land otherwise required by law for the project.

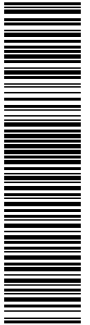
(g) Unless specifically required by written agreement, a landowner that agrees in writing to allow western Joshua trees to be relocated onto land it owns shall not be liable for the continued survival of the western Joshua trees, shall not be required to manage or maintain the translocated western Joshua trees, and shall not be required to change existing land use practices, provided that the land use practices do not result in the taking, possession, sale, or further translocation of the western Joshua trees.

1927.5. (a) The department may issue a permit to authorize either the removal or trimming of dead western Joshua trees or the trimming of live western Joshua trees.

(1) Upon receipt of a permit and payment of any applicable administrative fees, a property owner or its agent may remove a detached dead western Joshua tree or the detached limb of a western Joshua tree. All other removals and all trimming of western Joshua trees authorized by permits issued pursuant to this subdivision shall be completed by a desert native plant specialist.

(2) The department may issue permits pursuant to this section, without payment of mitigation fees or other mitigation, provided that the dead western Joshua trees or any limbs to be removed meet one of the following:

(A) Have fallen over and are within 30 feet of a structure.



(B) Are leaning against an existing structure.

(C) Create an imminent threat to public health or safety.

(3) A property owner seeking a permit pursuant to this subdivision shall submit a permit request to the department on a form to be provided by the department that requires the following information:

(A) The name, telephone number, mailing address, and email address of the property owner seeking the permit.

(B) The street address of the property on which the western Joshua trees to be removed or trimmed are located. If no street address is available, the property owner shall include the assessor's parcel number.

(C) Photographs of the western Joshua trees that visually depict the dead trees or the trees to be trimmed and that demonstrate that the western Joshua tree meets one or more of the requirements of paragraph (2).

(4) (A) Within 30 days of receipt of a request for a permit pursuant to subparagraph (A) or (B) of paragraph (2), the department shall either issue a permit allowing for the removal or trimming, or deny the request if the request does not demonstrate a permit can be issued pursuant to this section.

(B) Within 10 days of receipt of a request for a permit pursuant to subparagraph (C) of paragraph (2), the department shall either issue a permit allowing for the removal or trimming, or deny the request if the request does not demonstrate a permit can be issued pursuant to this section.

(C) If the department issues a permit, it shall provide the property owner 60 days in which to complete the removal or trimming. The department may extend this 60-day period in writing at its discretion.

(D) If the department denies the permit request, the property owner may resubmit the request with additional information and photographs. Resubmissions pursuant to this subdivision shall be processed as new permit requests.

(5) Within 30 days of completing the removal or trimming of one or more western Joshua trees in accordance with a permit issued pursuant to this section, the property owner shall submit, by mail or email, photographs of the site at which the western Joshua trees were removed or trimmed pursuant to the permit.

(b) The department may enter into an agreement with any county or city to delegate to the county or city the ability to authorize the removal or trimming of dead western Joshua trees or the trimming of live western Joshua trees, provided that the county or city ensures that all permits issued satisfy the requirements of subdivision (a). The county or city shall be required to submit to the department quarterly reports documenting the number of permits issued, the number and size class of western Joshua trees authorized to be removed or trimmed, and any other information specified in the agreement with the department. A county or city entering into an agreement pursuant to this subdivision may impose a reasonable fee to cover the administrative costs of issuing the permit.

1927.6. (a) The Western Joshua Tree Mitigation Fund, created by the commission pursuant to Section 749.10 of Title 14 of the California Code of Regulations, is hereby continued in existence by this chapter, and notwithstanding Section 13340 of the Government Code, any moneys in the fund are continuously appropriated to the department solely for the purposes of acquiring and conserving western Joshua tree mitigation lands and completing other mitigation activities to offset



the impacts of projects receiving take authorization for a western Joshua tree as described in subdivision (c) of Section 1927.7.

(b) All mitigation fees remitted to the department pursuant to this chapter shall be deposited into the fund.

1927.7. (a) The department shall develop and implement a western Joshua tree conservation plan in collaboration with the commission, governmental agencies, California Native American tribes, and the public. The conservation plan shall incorporate a description of management actions necessary to conserve the western Joshua tree and objective, measurable criteria to assess the effectiveness of such actions. The conservation plan shall also include guidance for the avoidance and minimization of impacts to western Joshua trees and protocols for the relocation of western Joshua trees. The department shall present a complete draft conservation plan at a public meeting of the commission, for its review and approval, by December 31, 2024. The commission shall take final action on the conservation plan by June 30, 2025. The department and commission shall, if necessary, periodically update the conservation plan to ensure the conservation of the species.

(b) When developing the conservation plan, the department shall consult with California Native American tribes, include co-management principles in the plan, provide for the relocation of western Joshua trees to tribal lands upon a request from a tribe, and ensure traditional ecological knowledge is incorporated into the plan.

(c) The department, pursuant to Section 1927.6, shall use any mitigation fees deposited into the fund for the purpose of addressing threats to the western Joshua tree, including, but not limited to, acquiring and conserving western Joshua tree mitigation lands to offset the impacts of the permits issued pursuant to this chapter. The department shall prioritize mitigation actions and acquiring mitigation lands that are identified as appropriate for western Joshua tree conservation in any department approved conservation plan, including, but not limited to, the conservation plan required by subdivision (a), a natural community conservation plan, regional conservation assessment, regional conservation investment strategy, or conceptual area protection plan.

(d) (1) The department may retain one or more consultants to assist in locating, acquiring, and conserving mitigation lands and completing other mitigation actions to implement subdivision (c).

(2) Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code, Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, and Part 5.5 (commencing with Section 14600) of Division 3 of Title 2 of the Government Code, Division 13 (commencing with Section 21000) of the Public Resources Code shall not apply to any action by the department to implement subdivision (c).

1927.8. By January 31 of each calendar year, the department shall submit an annual report to the commission detailing the number of permits issued, the number and size class of western Joshua trees authorized to be taken, the number of western Joshua trees lethally removed, the number and location of western Joshua trees relocated, the type of mitigation measures undertaken by permittees, the amount of mitigation fees paid in lieu of mitigation measures, the amount of all expenditures from the fund to benefit western Joshua tree conservation, the mitigation projects and actions



funded by expenditures from the fund, the adequacy of the mitigation fees in mitigating for the take and other impacts to the western Joshua tree resulting from permits issued pursuant to this chapter, actions taken pursuant to the conservation plan, and other relevant information. The department's annual report shall summarize the information provided by counties and cities pursuant to agreements entered into pursuant to subdivision (c) of Section 1927.4 and subdivision (b) of Section 1927.5.

1927.9. (a) Beginning in 2026, the commission shall annually review the status of the western Joshua tree and the effectiveness of the conservation plan in conserving the species at a public meeting to be held prior to August 31 of each calendar year. Concurrent with each annual review pursuant to this section, the department shall make recommendations to the commission, as necessary, for amendments to the conservation plan to ensure the conservation of the western Joshua tree.

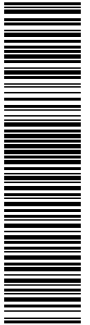
(b) The department shall annually adjust the mitigation fees provided for in Section 1927.4 pursuant to Section 713. By December 31, 2026, and every five years thereafter, the department shall adopt and subsequently amend regulations pursuant to Section 702 adjusting the mitigation fees as necessary to ensure all take and other impacts to the western Joshua tree resulting from permits issued pursuant to this chapter to permittees who elect to pay mitigation fees are mitigated to ensure the conservation of the species.

1927.10. By December 31, 2024, the department shall submit to the commission, and make available to the public, a report addressing issues related to the conservation and regulation of the taking of other species not yet petitioned for listing under the California Endangered Species Act when the species are threatened primarily by climate change, the specific characteristics of any such species make it difficult to avoid, and the species is widespread and abundant throughout a significant portion of the state. Any management efforts recommended as part of the report shall have the goal of conserving the species. After the commission receives and discusses the report at a public meeting, the department may adopt regulations pursuant to the findings in the report, direction from the commission, and input from the public.

1927.11. This chapter is not intended to be construed as, or to be a general project approval. It shall be the responsibility of each project proponent receiving approval from the department under this chapter to obtain all necessary permits and approvals and to comply with all applicable federal, state, and local laws.

1927.12. This chapter does not preclude a county or city from adopting and enforcing ordinances that require as a condition of approving a project more protective measures designed to conserve the western Joshua tree.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



LEGISLATIVE COUNSEL'S DIGEST

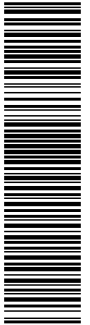
Bill No. _____
as introduced, _____.
General Subject: The Western Joshua Tree Conservation Act.

Under existing law, the Department of Fish and Wildlife (department) has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. Existing law, the California Endangered Species Act, requires the Fish and Game Commission (commission) to establish a list of endangered species and a list of threatened species and to add or remove species from either list if it finds, upon the receipt of sufficient scientific information, as specified, that the action is warranted. The act prohibits the taking of an endangered or threatened species, except in certain situations. Under the act, the department may authorize the taking of listed species pursuant to an incidental take permit if the taking is incidental to an otherwise lawful activity, the impacts are minimized and fully mitigated, and the issuance of the permit would not jeopardize the continued existence of the species. A violation of the provisions of the Fish and Game Code is a crime.

This bill, the Western Joshua Tree Conservation Act, would prohibit any person or public agency from importing into the state, exporting out of the state, or taking, possessing, purchasing, or selling within the state, a western Joshua tree or any part or product of the tree, except as authorized under the act. Because a violation of these provisions would be a crime, this bill would impose a state-mandated local program.

This bill, among other things, would authorize the department to authorize, by permit, the taking of a western Joshua tree if specified conditions are met, including, but not limited to, that the permittee mitigates all impacts to, and taking of, the western Joshua tree through measures that are roughly proportional in extent to the authorized taking of the western Joshua tree. The bill would authorize, in lieu of completing the mitigation measures on its own, a permittee to elect to satisfy the mitigation obligation by paying mitigation fees pursuant to a specified fee schedule. The bill would require any moneys collected be deposited into the Western Joshua Tree Mitigation Fund, and requires the moneys in the fund to be continuously appropriated to the department solely for the purposes of addressing threats to the western Joshua tree, as provided. Because the bill would make the fund continuously appropriated, it would create an appropriation. The bill would authorize the department to enter into an agreement with any county or city to delegate to the county or city the ability to authorize the taking of a western Joshua tree associated with developing single-family residences, accessory structures, and public works projects, as defined, concurrent with its approval of the project. The bill would authorize the department to issue a permit to authorize the removal or trimming of a dead western Joshua tree or the trimming of a live western Joshua tree, as provided.

This bill would require the department to develop a western Joshua tree conservation plan in collaboration with governmental agencies, California Native



American tribes, and the public. The bill would require the department to present the final conservation plan at a public meeting of the commission, for its review and approval, by December 31, 2024, and would require the commission to take final action on the plan by June 30, 2025. The bill would require the department to submit an annual report to the commission with specified information regarding the provisions of the act. The bill would require the department, by December 31, 2024, to submit to the commission, and make available to the public, a report addressing issues related to the conservation and regulation of the taking of other species not yet petitioned for listing under the California Endangered Species Act that meet specified requirements.

This bill would require the commission, beginning in 2026 and at a public meeting, to annually review the status of the western Joshua tree and the effectiveness of the permitting and mitigation program established under the act.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

