

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. 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) "Dead western Joshua tree" means a western Joshua tree that meets at least one of the following criteria:

(1) Has not burned and has no green leaves, no new growth on the main stem, and no basal sprouts.

(2) Has partially or fully burned at least 18 months prior and otherwise satisfies paragraph (1).

(3) Has fallen and is completely detached from its roots or has fallen and its roots are no longer in contact with the soil.

(e) "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.

(f) "Fee" means the elective fee described in subdivisions (d) and (e) of Section

1927.3, which is to be deposited into the fund.

(g) "Fund" means the Western Joshua Tree Conservation Fund as described in Section 1927.5.

(h) "Multifamily residence" means an apartment building, rowhouse, town house, condominium, or manufactured building that consists of two or more attached dwelling units designed for occupancy by two or more families living independently of one another.

(i) "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.

(j) "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.

(k) "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 Standards Code, for not more than one household.

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

1927.2. (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 any of the following, as applicable:

(1) This chapter.

(2) The California Endangered Species Act.

(3) The Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3).

(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, any person or public agency seeking a take authorization for the western Joshua tree may obtain a take authorization as provided by the California Endangered Species Act or by electing to pay the fees set forth in Section 1927.3.

(c) (1) This chapter is a change in state law, within the meaning of paragraph (1) of subdivision (c) of Section 2075.5, that has a direct and significant impact on the commission's determination as to whether the petitioned action is warranted. Pursuant to subdivision (c) of Section 2075.5, the commission shall reopen the administrative record for the commission's determination for the purpose of assessing the impact of the conservation program established by this chapter.

(2) In making the assessment described in paragraph (1), the commission shall consider all of the following:

(A) The effectiveness of any conservation measures funded through expenditures of fees by the department pursuant to Section 1927.5.

(B) The conservation plan developed by the department and approved by the commission pursuant to Section 1927.6.

(C) Any annual reports submitted to the commission by the department pursuant to Section 1927.7.

(D) Any recommendations submitted to the commission by the department pursuant to subdivision (a) of Section 1927.8.

(E) The fee adjustments, if any, adopted by the department pursuant to subdivision (b) of Section 1927.8.

(F) An updated status review to be submitted to the commission by the department no later than January 1, 2033, unless the commission directs the department to submit the updated status review sooner.

(d) If the commission determines that listing the western Joshua tree as endangered or threatened pursuant to the California Endangered Species Act is not warranted, this chapter shall remain operative and the authorization of take of a western Joshua tree shall be pursuant to this chapter.

(e) If the commission determines that listing the western Joshua tree as endangered or threatened pursuant to the California Endangered Species Act is warranted, this chapter shall become inoperative and the authorization of take of a western Joshua tree shall only be pursuant to Chapter 1.5 (commencing with Section 2050) of Division 3 or pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3).

(f) Upon the approval of a natural community conservation plan that provides for

the conservation of the western Joshua tree as a covered species, the authorization of take of a western Joshua tree for any project or activity covered by the plan shall only be pursuant to Chapter 10 (commencing with Section 2800) of Division 3.

(g) 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.

(h) 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.

(i) 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 pursuant to the terms of the authorization.

1927.3. (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 size information and 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 fees, pursuant to the fee schedule in subdivision (d) or (e), for deposit into the fund.

(4) (A) The department may include permit conditions that require the permittee to relocate one or more of the western Joshua trees. If relocation is required, the permittee shall implement measures to assist the survival of relocated trees, and to comply with any other reasonable measures required by the department to facilitate the successful relocation and survival of the western Joshua trees. These relocation measures shall include, but are not limited to, all of the following:

(i) A requirement that the relocated western Joshua tree is placed in a location and with proper orientation to improve its survival.

(ii) A requirement that western Joshua trees are relocated at a time that maximizes their survival when feasible.

(iii) A requirement that a desert native plant specialist be onsite to oversee relocation.

(B) The department may limit relocation to certain size classes of trees.

(C) By July 1, 2024, the department shall adopt guidelines and relocation protocols, based on the best available science, to relocate western Joshua trees successfully. The department shall consult with desert native plant specialists as part of the development of these guidelines and relocation protocols. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to the development, adoption, or amendment of guidelines and relocation protocols pursuant to this subparagraph.

(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, multifamily

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, multifamily 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. Before authorizing the take of more than 20, but no more than 40, individual western Joshua trees for a public works project, the county or city shall obtain the department's written concurrence that the project has avoided and minimized the take of western Joshua trees to the maximum extent practicable.

(4) The county or city shall collect any 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) (A) 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. The county or city shall conduct an annual assessment of the status of the local population within the county or city and submit the assessment to the department. The department shall determine if the population needs further protection to provide for the conservation of the species.

(B) The department shall adopt standardized survey and assessment methods for the annual assessment required pursuant to subparagraph (A), including requiring that a desert native plant specialist conduct the assessment. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government

Code shall not apply to the development, adoption, or amendment of standardized survey and assessment methods pursuant to this subparagraph.

(7) The county or city shall be required to submit to the department quarterly reports documenting the number of permits issued, photographs and other evidence demonstrating that take and other impacts were avoided and minimized to the maximum extent practicable, 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 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 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 99 and Highway 58, 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 the intersection of Highway 99, then north along Highway 99 to Highway 58.

(B) Any project receiving a permit issued by a county or city pursuant to an agreement with the department pursuant to subdivision (c), regardless of location.

(2) (A) One thousand dollars (\$1,000) 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 fifty dollars (\$150) 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 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 forty dollars (\$340) 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 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) (1) The permittee shall bear responsibility for implementing measures to assist the survival of western Joshua trees relocated pursuant to paragraph (4) of subdivision (a).

(2) 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.

1927.4. (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 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).

(D) A signed attestation from the property owner or signed certification by a desert native plant specialist that the tree meets the definition of a dead western Joshua tree.

(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.

(c) (1) The department retains express authority to suspend or revoke 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 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 local population of western Joshua trees within, or in the vicinity of, that county or city needs further protection. A county or city that has entered into an agreement with the department shall conduct an annual assessment of the status of the local population of western Joshua trees within the county or city and submit the assessment to the department. The department shall determine if the population needs further protection to provide for the conservation of the species.

(2) The department shall adopt standardized survey and assessment methods for the annual assessment required pursuant to paragraph (1), including requiring that a desert native plant specialist conduct the assessment. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to the development, adoption, or amendment of standardized survey and

assessment methods pursuant to this paragraph.

1927.5. (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 is renamed the Western Joshua Tree Conservation Fund. Notwithstanding Section 13340 of the Government Code, any moneys in the fund are continuously appropriated to the department solely for the purposes of acquiring, conserving, and managing western Joshua tree conservation lands and completing other activities to conserve the western Joshua tree.

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

(c) The fund may also receive other funding to support the conservation of the western Joshua tree.

1927.6. (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 successful 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 1927.5, shall use any fees deposited into the fund for the purpose of addressing threats to the western Joshua tree, including, but not limited to, acquiring, conserving, and managing western Joshua tree

conservation lands. Acceptable expenditures from the fund may include, but are not limited to, land acquisition or conservation easement costs, monitoring costs, restoration costs, transaction costs, costs of endowments for land management or easement stewardship consistent with Chapter 4.6 (commencing with Section 65965) of Division 1 of Title 7 of the Government Code and Part 7 (commencing with Section 18501) of Division 9 of the Probate Code, and other reasonable expenditures to implement the conservation plan. The department shall prioritize actions and acquiring and managing 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 regional conservation assessment, a regional conservation investment strategy, or a conceptual area protection plan.

(d) (1) The department may retain one or more consultants to assist in locating, acquiring, conserving, and managing conservation 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, Part 5.5 (commencing with Section 14600) of Division 3 of Title 2 of the Government Code, and Division 13 (commencing with Section 21000) of the Public Resources Code shall not apply to any action by the department to implement subdivision (c).

1927.7. (a) Beginning in 2025, by January 31 of each calendar year, the department shall submit an annual report to the commission and the Legislature assessing the conservation status of the western Joshua tree, including, but not limited to, by 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 number and location of acres of western Joshua tree woodlands developed, the type, scope, and scale of mitigation measures undertaken by permittees, the number and location of acres of western Joshua tree woodlands conserved, the quality of the acres conserved, the amount of fees paid, the amount of all expenditures from the fund, the projects and actions funded by expenditures from the fund, the adequacy of the fees to conserve the western Joshua tree, 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 1927.3 and subdivision (b) of Section 1927.4.

(b) The report to the Legislature pursuant to subdivision (a) shall be submitted in accordance with Section 9795 of the Government Code.

1927.8. (a) Beginning in 2026, and at least every two years thereafter, the commission shall 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. Concurrent with each review conducted 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 fees provided for in Section 1927.3 pursuant to Section 713. By December 31, 2026, and every three years thereafter, the department shall adopt and subsequently amend regulations pursuant to Section 702 adjusting the fees as necessary to ensure the conservation of the species. The department shall utilize total cost accounting when determining the adequacy of the fees for ensuring conservation of the species, including ensuring sufficient funds for land acquisition or conservation easement costs, monitoring costs, restoration costs, transaction costs, and the amount of endowments for land management or easement stewardship costs consistent with Chapter 4.6 (commencing with Section 65965) of Division 1 of Title 7 of the Government Code and Part 7 (commencing with Section 18501) of Division 9 of the Probate Code.

1927.9. No later than January 1, 2033, the department shall submit to the commission an update to the status review previously submitted pursuant to Section 2074.6 for the western Joshua tree that incorporates any new scientific information relevant to the status of the species and includes an evaluation of the impact of the conservation and management efforts pursuant to this chapter. The commission shall consider the updated status review in making its findings pursuant to subdivision (e) of Section 2075.5.

1927.10. 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.

1927.11. 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.

1927.12. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.