

Staff Summary for August 13-14, 2025

8. Western Joshua Tree Conservation Plan**Today's Item**Information ☐Action ☒

Discuss and consider approving the revised draft *Western Joshua Tree Conservation Plan*.

Summary of Previous/Future Actions

- | | |
|---|---------------------------|
| • Determined that listing western Joshua tree under the California Endangered Species Act may be warranted | September 2020 |
| • Public notice that western Joshua tree is protected as a candidate species under the California Endangered Species Act (CESA) | October 2020 |
| • Received the draft <i>Western Joshua Tree Conservation Plan</i> , dated December 2024 | December 11-12, 2024 |
| • Discussed draft plan | February 12-13, 2025 |
| • Received update from the Department and discussed draft plan | April 16-17, 2025 |
| • Received update from the Department and discussed draft plan | June 11-12, 2025 |
| • Today, potentially take action on revised draft plan | August 13-14, 2025 |

Background

For background information on development of a western Joshua tree conservation plan (plan) and related Commission actions, see Exhibit 1.

At its June 2025 meeting, the Commission received a revised draft version of the plan from the Department, revised based on comments from the public over the previous several months (Exhibit 2). The Commission then heard public comment and placed approval of the plan on the agenda for this meeting, to provide time for public and stakeholder review of the revised draft plan. Today, the Commission will consider taking final action on the plan.

California Environmental Quality Act

Section 21080.56 of the California Public Resources Code exempts projects from the California Environmental Quality Act (CEQA) if they meet certain requirements, via a process coordinated by the Department; the Department refers to this exemption as the Statutory Exemption for Restoration Projects (SERP). Lead agencies wishing to rely on this exemption must determine the project meets the SERP eligibility criteria and submit a request to the Department documenting the determination and asking for the Department director's concurrence. Commission staff determined that approval of the conservation plan is a CEQA project that meets the SERP eligibility criteria; based on that determination and working with Department staff, Commission staff submitted a concurrence request to the Department for the conservation plan (Exhibit 3). In response, the Department transmitted a cover letter and Department director concurrence (exhibits 4 and 5).

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Significant Public Comments

1. The California Department of Transportation (Caltrans) asserts that there is confusing language in the plan regarding avoidance and minimization measures. They suggest adding Caltrans' responsibilities regarding western Joshua tree (WJT) habitat; recategorizing road rights-of-way as moderately degraded; clarifying the typical buffer zones for root balls, rootzones, and seed banks; describing who may collect WJT seeds and providing a list of repository sites; clarifying whether salvage is considered relocation; clarifying the difference between incidental take permits issued under the Western Joshua Tree Conservation Act and CESA; and expanding opportunities to utilize in lieu fees for offsetting unavoidable impacts to WJT. (Exhibit 6)
2. The Large-Scale Solar Association (LSA) outlines concerns and recommendations regarding the plan, including approving the plan without Appendix E, avoiding automatic and inflexible requirements to relocate a specific percentage of trees from a project, and stopping perceived "double mitigation" requirements. (Exhibit 7)
3. The California Construction and Industrial Materials Association (CalCIMA) raises concerns with the plan including undefined elements, such as conservation acreage targets, expanded relocation protocols, an unrealistic scope, and a lack of clarity in avoidance and minimization frameworks. They present several recommendations, such as considering pre-existing infrastructure as already having met avoidance and minimization requirements, shielding relocated and preserved trees from future regulation, considering restoration as a minimization measure, maintaining a state-managed list of properties willing to accept relocated trees, eliminating buffers for fire safety, and making all references in the plan publicly available. (Exhibit 8)
4. Reed Family Companies recommends considering pre-existing infrastructure as already having met avoidance and minimization requirements and equalizing take fees between the bounded and unbounded regions. (Exhibit 9)
5. The California Four Wheel Drive Association (Cal4Wheel) states that the plan proposes overly broad avoidance buffers that will negatively impact outdoor recreationalists, citing federal laws and California codes that require protection for recreational access. They further assert that the buffer zones lack scientific justification and cite federal case law that limited restrictive closures. They suggest measures such as removing or reducing the buffers, implementing fine-scale mapping, seasonal closures, physical measures for avoiding impacts to staging areas, adaptive monitoring, damage thresholds, utilizing education and signage to educate the public, individually assessing off road vehicle routes for impacts to WJT, and reopening routes when no significant impact exists. Further, Cal4Wheel requests the addition of a statement that off-road recreation is a protected activity, including an analysis of economic impacts from recreation loss. (Exhibit 10)
6. A coalition of the Morongo Basin Residents for Reasonable Joshua Tree Regulations, several water agencies, the Joshua Tree Gateway Association of Realtors, and the California Farm Bureau Federation thank the Commission for extending the comment period for the plan and thank the Department for its engagement with project proponents and residents. They also criticize the Commission's decision to make WJT a candidate and the way the Western Joshua Tree Conservation Act was passed.

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They suggest establishing reduced or waived fees for key projects, stopping perceived “double mitigation” requirements, minimizing buffers, providing exemptions and expedited permitting, delegating authorities to local jurisdictions, developing a timeline for gaining research knowledge, being transparent with mitigation funds and cost analyses, and incentivizing urban residents and businesses to care for WJT. (Exhibit 11)

7. Three associations for developers of utility-scale solar projects support the Department’s statements regarding its approach to the plan and its innovative strategies to conserve WJT. They encourage the elimination of “double mitigation” and “serial census” mandates. (Exhibit 12)
8. The San Bernardino County Board of Supervisors thanks the Department for its engagement, is encouraged by the progress to date, and looks forward to continued collaboration. They urge the Department to provide exemptions for emergency infrastructure repairs. (Exhibit 13)
9. Individual commenters question the adequacy of the plan. They express concerns with the availability of desert native plant specialists; challenge the appropriateness of the plans’ buffer zones; request exemptions for state-mandated actions and wildfire safety projects; assert a lack of public process in developing rules and mandates for WJT permitting; express apprehension about property values and the ability to complete projects; state that fees associated with permitting are too high; encourage the Department to collaborate with residents; ask for expanded comment opportunities; challenge the working definition of “take” for plants; urge reforms to the Western Joshua Tree Conservation Act; recount examples of conservation and development coexistence; support incentives over penalties; request periodic status updates on WJT; encourage education campaigns; assert that mitigation obligations are unclear, unsupportable, and/or impractical; contend that the ten-tree limit is not compatible with local delegation; maintain that the plan is not voluntary; claim that the WJT’s status under Western Joshua Tree Conservation Act and CESA are at odds; and oppose listing WJT under CESA. At the same time, many acknowledge the threats to WJT and support conservation efforts generally. A representative sample of the various comments is provided in Exhibit 14.
10. A commenter writes to inform the Department of nine land parcels containing WJT that were purchased by the Twenty-Nine Palms Band of Mission Indians. He states that the parcels have ‘become sovereign’ and contain a cannabis dispensary, while a gas station and travel center are planned for the area. He urges involvement from the Department when tribes purchase fee-to-trust lands, focused on community involvement, and raises concerns for the natural resources on the land. The correspondence includes a March 18, 2025 letter from the Desert Tortoise Council to the Bureau of Indian Affairs regarding desert tortoise. (Exhibit 15).

Recommendation

Commission staff: Approve the revised draft *Western Joshua Tree Conservation Plan*.

Department: Approve the revised draft *Western Joshua Tree Conservation Plan*.

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Exhibits

1. [Staff summary for Agenda Item 14, April 16-17, 2025 Commission meeting \(for background purposes only\)](#)
2. [Department transmittal memo and revised draft *Western Joshua Tree Conservation Plan*, received June 3, 2025](#)
3. [CEQA Statutory Exemption for Restoration Projects Concurrence Request for Western Joshua Tree Conservation Plan, dated June 4, 2025](#)
4. [Department cover letter conveying SERP concurrence, received June 6, 2025](#)
5. [California Environmental Quality Act Statutory Exemption for Restoration Projects \(SERP\) Concurrence No. 21080.56-2025-073-R6, received June 6, 2025](#)
6. [Letter from Jeremy Ketchum, Chief, Division of Environmental Analysis, Caltrans, received June 26, 2025](#)
7. [Letter from Shannon Eddy, Executive Director, LSA, received June 10, 2025](#)
8. [Letter from Adam Harper, Senior Director of Policy, CalCIMA, received July 10, 2025](#)
9. [Letter from Tom Ferrell, Environmental Manager, Reed Family Companies, received July 10, 2025](#)
10. [Letter from Rose Winn, Natural Resource Consultant, Cal4Wheel, received July 11, 2025](#)
11. [Letter from Morongo Basin Residents for Reasonable Joshua Tree Regulations, seven water agencies, and the California Farm Bureau Federation, received July 11, 2025](#)
12. [Letter from Shannon Eddy, Executive Director, LSA; Stephanie Doyle, Director, State Affairs, California, Solar Energy Industries Association; and Quintana Hayden, Senior Director, Wildlife & Federal Lands, American Clean Power Association; received July 21, 2025](#)
13. [Letter from Dawn Rowe, Chair, San Bernardino County Board of Supervisors, received July 31, 2025](#)
14. [Letters from various commenters, received July 7, 2025 through July 10, 2025](#)
15. [Letter from Dewayne Ethan Dante, received July 22, 2025](#)

Motion

Moved by _____ and seconded by _____ that the Commission approves the Western Joshua Tree Conservation Plan, dated June 2025, as proposed by the Department.

Staff Summary for April 16-17, 2025
(*For background purposes only*)

14. Western Joshua Tree Conservation Plan

Today's Item

Information ☒

Action ☐

Receive a summary of initial comments on and discuss the draft *Western Joshua Tree Conservation Plan*.

Summary of Previous/Future Actions

- | | |
|--|--------------------------|
| • Determined that listing western Joshua tree under the California Endangered Species Act may be warranted | September 2020 |
| • Public notice that western Joshua tree is protected as a candidate species under the California Endangered Species Act | October 2020 |
| • Received from Department the draft <i>Western Joshua Tree Conservation Plan</i> | December 11-12, 2024 |
| • Discussed draft plan | February 12-13, 2025 |
| • Today receive update from the Department and discuss draft plan | April 16-17, 2025 |
| • Potentially take action on draft plan | June 18-19, 2025 |

Background

At its September 2020 meeting, the Commission determined that listing western Joshua tree (WJT; *Yucca brevifolia*) under the California Endangered Species Act (CESA) may be warranted and accepted for consideration the petition submitted to list WJT as threatened or endangered. The Commission provided public notice of that decision; consequently, WJT is a candidate species under CESA.

In March 2022, the Department completed and made publicly available a status review report for WJT, as required under CESA. On July 10, 2023, the Governor signed the Western Joshua Tree Conservation Act, authorizing the Commission to postpone final consideration of the WJT CESA petition until the Department submits an updated status review, no later than January 1, 2033. Among other provisions, the act requires the Department to draft a conservation plan for WJT in collaboration with the Commission, governmental agencies, California Native American tribes, and the public. The plan must:

- incorporate a description of management actions necessary to conserve WJT and objective, measurable criteria to assess the effectiveness of such actions;
- include guidance for avoiding and minimizing impacts to WJT and protocols for the successful relocation of western Joshua trees; and
- include tribal co-management principles, provide for the relocation of western Joshua trees to tribal lands upon request from a tribe, and incorporate traditional ecological knowledge.

Staff Summary for April 16-17, 2025
(*For background purposes only*)

The Department submitted a draft *Western Joshua Tree Conservation Plan* to the Commission (exhibits 1 and 2), which was publicly received at the Commission's December 2024 meeting. The act further stipulates that the Commission "shall take final action" on the plan by June 30, 2025, and that the Department and Commission periodically review and update the plan if necessary.

At the Commission's February 2025 meeting, the Department gave a presentation describing how the draft plan was developed and the contents of the draft plan and its appendices. The Commission received public comments on the draft plan and discussed elements of the plan, the process laid out in the act, and the next steps in revising the draft plan. During discussion, the Commission requested that the Department provide additional opportunities (i.e., workshop) for the public to engage with the Department on the plan.

Today's Update

Today, the Commission will receive a presentation from the Department providing a summary of the feedback received to date, the workshops and outreach since the last Commission meeting, and plan amendments the Department proposes (Exhibit 3). The Commission will also hear public comments and provide additional feedback on the draft plan, in anticipation of considering final action on the plan in June 2025. The Department has summarized anticipated changes based on prior comments (Exhibit 4).

Significant Public Comments

1. Five scientists from the Ecology and Evolutionary Biology Department at the University of California Santa Cruz urge the Commission to consider comments and recommendations to the plan, including incorporating more realistic emissions scenarios, prioritizing areas with climatically suitable habitat loss, facilitating dispersal, increasing groundwater research, expanding the effectiveness criteria, and prioritizing recruitment and nurse trees (Exhibit 5).
2. The California Construction and Industrial Materials Association requests the Department's annual report assessing the conservation status of WJT, as required by California Fish and Game Code Section 1927.7, to be able to review the plan, and urges that the plan incorporate an accurate climate refugia map (Exhibit 6).
3. Preservation Ranch suggests some changes to the plan, including more specificity regarding climate refugia, greater emphasis on federal coordination, and increased transparency on the conservation fund and its coordination with other funding sources (Exhibit 7).
4. The Large-Scale Solar Association elaborates on concerns with buffer zones, seed collection, and tree relocation protocols, and requests more time for public engagement before the Commission acts on the plan (Exhibit 8).
5. Eight environmental organizations state that the plan will help fill knowledge gaps, contemplates the need for separate guidance for developed and undeveloped areas, and advocates for the siting of renewable energy projects to avoid impacts to habitats,

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(For background purposes only)

The organizations generally agree with the determinations and management actions proposed in the plan (Exhibit 9).

6. The Mojave Desert Land Trust communicates its support for the plan and recounts its part in founding the Joshua Tree Conservation Coalition. The trust stresses the nonregulatory, collaborative, and voluntary nature of the plan (Exhibit 10).
7. A commenter submits a suggested process to allow more flexibility in certain aspects of WJT permitting, including California Environmental Quality Act compliance, impacts to tree roots (including in urban areas), tree censusing, mitigation, tree relocation, dead trees, and issuance timelines. The commenter includes a “Suggested Joshua Tree Permit Matrix” to illustrate some of these ideas (Exhibit 11).
8. Four commenters, including the Sierra Club’s California/Nevada Desert Committee, broadly support the plan, its goals, and its measures. One commenter includes a video demonstrating the variety of insects attracted by Joshua tree blooms, and another states that the fees charged for removing trees are too low to provide adequate protection (Exhibit 12).
9. Three commenters express concerns with the plan and WJT permitting, including the size of the ground disturbance avoidance buffer around trees, inhibiting the Yucca Valley sewer project and potentially preventing residents from connecting to the sewer line, and the amount of fees borne by homeowners (Exhibit 13).

Recommendation (N/A)

Exhibits

1. [Draft Western Joshua Tree Conservation Plan Volume 1](#), received November 22, 2024
2. [Draft Western Joshua Tree Conservation Plan Volume 2: Appendices](#), received November 22, 2024
3. [Department presentation](#)
4. [Summary of Changes to Western Joshua Tree Conservation Plan](#), received from Department on April 2, 2015
5. [Letter from five scientists at the University of California Santa Cruz](#), received April 2, 2025
6. [Letter from Adam Harper, Senior Director of Policy, California Construction and Industrial Materials Association](#), received April 1, 2025
7. [Letter from Heidi Brannon, Preservation Ranch](#), March 31, 2025
8. [Letter from Shannon Eddy, Executive Director, Large-Scale Solar Association](#), received April 3, 2025
9. [Letter from eight environmental non-governmental organizations](#), received April 3, 2025
10. [Email from Krystian Lahage, Mojave Desert Land Trust](#), received April 3, 2025
11. [Letter from Julie Gilbert](#), received April 3, 2025

Staff Summary for April 16-17, 2025
(*For background purposes only*)

12. [Emails from four commenters.](#) received March 7, 2025 through April 3, 2025
13. [Emails from three commenters.](#) received March 9 through March 26, 2025

Motion (N/A)

State of California
Department of Fish and Wildlife

Memorandum

Date: May 27, 2025

To: Melissa Miller-Henson
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: **Western Joshua Tree (*Yucca brevifolia*) Conservation Plan**

The California Department of Fish and Wildlife (Department) is providing the attached Draft Western Joshua Tree Conservation Plan (Conservation Plan) revision date June 2025, for the California Fish and Game Commission's (Commission) approval pursuant to the Western Joshua Tree Conservation Act, Fish and Game Code section 1927 et seq. This revised Conservation Plan is based on the best scientific information currently available to the Department and has been completed in collaboration with governmental agencies, California Native American Tribes, and the public (Fish & G. Code, § 1927.6, subd. (a)).

The revised Conservation Plan incorporates a description of management actions necessary to conserve the western Joshua tree, and objective, measurable criteria to assess the effectiveness of such actions. This revised Conservation Plan addresses comments provided by various governmental agencies, California Native American tribes, and the public. The Department has completed its submission requirements to the Commission.

If you have any questions or need additional information, please contact Ryan Mathis, Acting Branch Manager, Habitat Conservation Planning Branch at (916) 704-6177 or by email at [wj@wildlife.ca.gov](mailto:wjt@wildlife.ca.gov).

Attachment

ec: Joshua Grover
Deputy Director
Ecosystem Conservation Division

Ryan Mathis
Acting Branch Manager
Habitat Conservation Planning Branch

Isabel Baer
Environmental Program Manager
Habitat Conservation Planning Branch

Drew Kaiser
Senior Environmental Scientist (Specialist)
Habitat Conservation Planning Branch

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July 10, 2025

Erika Zavaleta, President
California Fish and Game Commission
715 P Street, 16th Floor
Sacramento, CA 95814

RE: Request Meeting to Discuss Western Joshua Tree Permit Fee Impacts to Community Development.

Dear President Zavaleta and Members of the Commission:

I am writing to you on behalf of Reed Family Companies, LLC., (RFC) a group of family-owned and operated companies that have been trusted leaders in the asphalt and concrete paving industry, equipment manufacturing, and more since 1944. Our company consists of six family-owned and operated entities: Basic Resources, George Reed, VSS International, VSS Macropaver, 7/11 Materials, and VSS Emultech, operating throughout Eastern and Northern California.

Reed Family Companies is reaching out to address an issue of great importance to our Canebrake Aggregates Quarry and the northern Kern County community—the potential listing of the Western Joshua Tree as an endangered species. As a community member, I am deeply concerned about the significant negative impacts this listing may have on our local economy, environment, and way of life. The Western Joshua Tree is an iconic symbol of our region, and while its conservation is essential, we must also consider the implications for our community members who depend on the land for their livelihoods.

Reed Family Companies has two main concerns:

1. **Existing Projects and Homes:** Pre-existing homes and infrastructure should be considered as having met prior avoidance and minimization requirements under earlier laws. Mitigation and reclamation should remain the primary requirements for these operations. Our Canebrake quarry has an established mining permit and reclamation plan. Listing the Western Joshua Tree will have the potential to make large portions of the mineral reserves uneconomic to mine, thus removing locally sourced construction materials from the region. This removal will mean trucking construction materials from outside the region which will dramatically increase all construction costs and have negative impacts on climate change. Since the greatest threat to the Western Joshua Tree is climate change, ensuring locally source construction materials are available is the best way to protect the species.
2. **Unfair Take Fees Depending on Region of Operation:** We would like to address the disparity in fees assessed between the unbounded region where our Canebrake quarry is located and the fees assessed south of us in the

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bounded region. We see no scientific justification or principle that would require us to pay such exorbitantly higher fees than our southern counterparts. It is unfair to assess these higher fees.

AB 1008 Requirements:

Tree Size	Bounded Lower Fee Area (per tree)	Unbounded Higher Fee Areas
>5 Meters	\$1000	\$2500
<5 Meters	\$300	\$500

The financial impacts of this listing are already having devastating effects on 7/11 Materials Canebrake mine's economic reserves and operating life. Because of the presence of the Western Joshua Tree, most of our future expansion areas, which are fully permitted, will become uneconomic to mine. This will dramatically reduce the available construction materials in the Lake Isabella and Ridgecrest areas, leading to significantly increased prices for road maintenance and construction in general.

The proposed listing could lead to restrictive regulations that may affect local businesses, land use, and development plans. It is crucial that we find a balanced approach that ensures the protection of the Western Joshua Tree while also safeguarding the economic stability and future growth of our community.

While we understand that the initial plan cannot address all concerns, these two items should be considered and implemented in the initial draft. We welcome the opportunity to further discuss our recommendations with the Commission or Fish and Wildlife staff.

Warm regards,

Tom Ferrell
Environmental Manager
Reed Family Companies

From: Rose Winn <rwinn@cal4nrc.com>

Sent: Thursday, July 10, 2025 4:44:42 PM

To: FGC <FGC@fgc.ca.gov>

Subject: C4WDA Public Comment Submission: Western Joshua Tree Conservation Plan

You don't often get email from rwinn@cal4nrc.com. [Learn why this is important](#)

WARNING: This message is from an external source. Verify the sender and exercise caution when clicking links or opening attachments.

Good afternoon,

California Four Wheel Drive Association (Cal4Wheel) is writing to provide the attached comment letter for the California Department of Fish and Wildlife proposed Western Joshua Tree Conservation Plan (WJTCP).

Cal4Wheel would like to be considered an interested public for the WJTCP. Information can be sent to the following address and email address:

Rose Winn
California Four Wheel Drive Association
8120 36th Avenue
Sacramento, CA 95824
rwinn@cal4nrc.com

Thank you,

Rose Winn | Natural Resources Consultant

California Four Wheel Drive Association
559.862.6382 | rwinn@cal4nrc.com
cal4wheel.com





July 10, 2025

Public Comments Processing
California Fish and Game Commission
P. O. Box 944209
Sacramento, CA 94244-2090

This comment is submitted via the designated CA Fish & Game Commission email: fgc@fgc.ca.gov

Re: Western Joshua Tree Conservation Plan

To Whom It May Concern:

California Four Wheel Drive Association (Cal4Wheel) is writing to provide feedback for the California Department of Fish and Wildlife (CDFW) proposed [Western Joshua Tree Conservation Plan](#)¹ (WJTCP). The entirety of our members and supporters live and/or recreate in areas that have been directly impacted by implementation of the [Western Joshua Tree Conservation Act](#)² (WJTCA), and implementation of the pending review of Western Joshua Tree as a candidate for listing under the California Endangered Species Act. This letter of comment shall not supplant the rights of other Cal4Wheel agents, representatives, clubs, or individual members from submitting their own comments; CDFW should consider and appropriately respond to all comments received for the WJTCP.

Cal4Wheel is a non-profit organization that champions responsible off-highway vehicle (OHV) recreation and encourages a strong conservation ethic and individual stewardship of public lands for the benefit of all recreationists. We accomplish this by educating and empowering our members to secure, protect, and expand shared outdoor recreation access and use by working collaboratively with natural resource managers and other recreationists. As active conservationists and vested stewards of public lands, Cal4Wheel members care deeply about the preservation and protection of all flora and fauna that reside in California's public lands. Cal4Wheel members are actively involved in efforts to maintain and improve the quality of habitat for wildlife across the state, including leading volunteer cleanup crews to remove trash and foreign debris from wildlands, conducting road and trail maintenance to prevent degradation of habitat, creating and repairing signage to ensure recreationists remain on designated routes, planting trees, removing weeds and invasive plant species, and rehabilitating natural habitat for wildlife. Cal4Wheel members continually contribute to the conservation and health of California's public lands to ensure that everyone may enjoy the state's beautiful wildlands now and for all generations to come.

Our members use OHVs and other motorized and unmotorized methods to enjoy federally and state managed public lands throughout California and the United States. Our members and supporters live in gateway communities near public lands or travel across the country to visit public lands to access outdoor recreation destinations. Cal4Wheel members visit innumerable areas of public lands that have been impacted by closures and restrictions to public access as a result of species and habitat protections for the Western Joshua Tree (WJT). Cal4Wheel members and supporters have concrete, definite, and immediate plans to continue such activities within WJT inhabited public lands throughout the future.



GENERAL COMMENTS

We support any additional comments that encourage CDFW to objectively weigh all points of impact from the proposed WJTCP – not only impact on the WJT, but also, impact on:

- Other species of flora and fauna that reside in the same habitat as the WJT
- The general health and resilience of public lands where WJTs reside
- The real and impending increased risk of catastrophic wildfire if additional restrictions on human activity are imposed on listed WJT habitat
- The social and economic welfare of humans who reside, conduct commerce, and recreate within the range of habitat occupied by the WJT
- The accurate, factual impact of various human activities on the health of current and potential habitat and conservation of the WJT, including, but not excluded to, OHV recreation
- The imperative for CDFW to use the most current, accurate, and best available science to clearly demonstrate the need and justification for approving and implementing the WJTCP

We encourage CDFW to exercise caution in advancing a decision to approve and implement the proposed WJTCP. We strongly advocate against any decision to advance the WJTCP toward approval without first analyzing the full scope of impact for each bulleted item noted above, as well as the additional details noted within the following contents of this letter. While the health and welfare of the WJT is indeed important, the health and welfare of all life that shares habitat with the WJT is equally important. The stated mission of the FWS is:

"To manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public."

With emphasis on ensuring "use and enjoyment by the public," we strongly urge CDFW to scrutinize and revise the proposed WJTCP in full alignment with the CDFW mission.

Cal4Wheel has reviewed the proposed WJTCP and asserts that the CDFW is legally and procedurally compelled to revise the Plan as a consequence of:

1. Arbitrary and capricious negative impacts to public land access and recreation
2. OHV use and outdoor recreation are already compatible with WJT conservation
3. Cascading and compounding negative impacts from restrictions to OHV access
4. Social and economic impacts
5. Implications resulting from overturn of the Chevron Doctrine

ARBITRARY AND CAPRICIOUS NEGATIVE IMPACTS TO PUBLIC LAND ACCESS AND RECREATION

The WJTCP proposes overly broad avoidance buffers, including minimum 56.7 m (186 ft) around individual mature trees, and 5-mile landscape buffers around occupied habitat (Vol I, p. 1 2; App. D 7). These excessive zones will:

- Eliminate OHV access along designated routes and impede access to open riding areas, as entire corridors fall within buffer zones.



- Close informal staging and dispersed camping sites, forcing users into narrower zones, increasing environmental degradation at those sites.
- Fragment shared-use trail networks used by hikers, equestrians, and mountain bikers.
- Disproportionately burden elderly and physically disabled users, by removing accessible parking areas and graded loops without equally maintained alternative sites. The extensive 186 ft clear zones will likely encompass improved accessible facilities, violating ADA Title II and Cal. Gov. Code §11135, which guarantee reasonable public access to natural areas.
- Buffer zones requiring up to 186 ft of avoidance around mature Joshua trees, and closures within mapped tree populations, threaten to eliminate many traditional routes and staging areas.
- The NOIA recognizes potential for “significant disruption to OHV route networks” and increased user conflicts, as constrained areas funnel riders into a shrinking permitted footprint.

Other negative impacts to public land access and outdoor recreation are vast. Recreational staging, dispersed camping, and trailheads near trees may be closed, thereby forcing users deeper into backcountry areas and fracturing cohesive trail systems. Within federally- and state-managed public lands, visitor experience could be negatively impacted by a patchwork of no-go zones across landscapes. Fragmented access may trigger de facto decommissioning of legal rights-of-way (including OHV, hiking, and equestrian corridors) if routes pass through designated conservation buffers. Of critical note: road closures enacted without clear evidence may invite legal challenges from users or municipalities on constitutional and administrative grounds.

Buffer Zones Lack Scientific Justification

The CDFW's own status review concluded Western Joshua trees are *“relatively widespread and abundant with no immediate risk of extinction”* (CDFW Status Review 2022³). Yet the WJTCP imposes blanket 186-ft and 5-mile buffers around broad landscape zones. This is an excessive footprint of impact that will cause a myriad of restricted and banned recreational and economic uses across the many hundreds of thousands of acres of public lands that host WJT habitat. Such gross overreach mirrors procedural failures seen in *Sierra Club v. Babbitt* (1995), where courts invalidated habitat protections lacking robust scientific underpinning. The CDFW should heed best available science and legal precedent and subsequently refrain from adopting measures that exceed science-based necessity.

Legal Risk / Protections from Overreach through Existing Statutes & Public Resource Code

Under the [Federal Land Policy and Management Act](#)⁴ (FLPMA) and the [National Forest Management Act](#)⁵ (NFMA), recreation and multiple-use mandates require agencies to justify closures with compelling resource threats; unsupported closures may be struck under the [Administrative Procedures Act](#)⁶ (APA) “arbitrary and capricious” standard. California’s [PRC §5003.1](#)⁷ and [Americans with Disabilities Act Title II](#)⁸ require maintaining recreational access and accessibility. ADA Title II mandates that state and local governments ensure recreational facilities and programs are accessible to people with disabilities. This includes providing equal opportunities to participate in all recreational activities, which may necessitate modifications to policies, practices, or the environment to remove barriers. Blanket buffer rules forcing closure of ADA-accessible staging sites, or legally and scientifically unjustified restrictions and closures to motorized access to public lands, exposes the CDFW to ADA litigation.



Federal case law makes clear that conservation actions lacking credible science are vulnerable to litigation. In [*Sierra Club v. Babbitt* \(1998\)](#)⁹, the court ruled that the U.S. Fish & Wildlife Service failed to ensure its habitat protections were backed by sufficient evidence and NEPA analysis, remanding the rulemaking. Similarly, *Center for Biological Diversity v. BLM* (Mojave OHV expansion, Judge Illston, 2009) struck down restrictive closures because the BLM's habitat claims were unsupported and impacts insufficiently analyzed. Agencies implementing overly restrictive conservation buffers risk such lawsuits - especially when public access and recreation are curtailed without solid empirical support.

That solid empirical support is wholly lacking in the WJTCP proposition for excessive buffer zones, consisting of minimum 56.7 m (186 ft) around individual mature trees, and 5-mile landscape buffers around occupied habitat. "It is rudimentary administrative law that discretion as to the substance of the ultimate decision does not confer discretion to ignore the required procedures of decision making." *Bennett*, [520 U.S. 154](#), 117 S. Ct. at 1166; See *SEC v. Chenery Corp.*, [318 U.S. 80](#), 94-95, 63 S. Ct. 454, 462, 463, 87 L. Ed. 626 (1943).

When an administrative agency fails to provide an adequate basis in the Administrative Record for its action, such action is arbitrary and capricious. See e.g. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, [463 U.S. 29](#), 43, 103 S. Ct. 2856, 2866, 77 L. Ed. 2d 443 (1983); *Nat'l Nutritional Foods Ass'n v. Weinberger*, 512 F.2d 688, 701 (2nd Cir.) cert. den., 423 U.S. 827, 96 S. Ct. 44, 46 L. Ed. 2d 44 (1975) (stating that, "even under the "arbitrary and capricious" standard agency action will not be upheld where inadequacy of explanation frustrates review"); and *AT & T v. FCC*, 974 F.2d 1351 (D.C.D.C.1992) (agency action will not be upheld where agency has failed to offer a reasoned explanation of the record). Thus, although under the "arbitrary and capricious" standard, a reviewing court may not set aside an agency action that is rational, based on consideration of the relevant factors and within the scope of the authority delegated to the agency by the statute, "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 43, 103 S. Ct. at 2866.

The evidence of scientific and policy inconsistencies between the CDFW 2022 Status Review of the WJT, and the CDFW 2025 WJTCP, is glaring. The CDFW status review concluded that the WJT is not currently threatened or endangered in California. That review noted stable - and even robust - populations across most of the Mojave, with any habitat loss limited in magnitude. Public comments on the proposed conservation plan similarly underscore the tree's abundance. If species conservation measures (closed buffers, staging restrictions) outpace scientific justification, they risk regulatory overreach and may be deemed "arbitrary and capricious" under the APA. Under National Environmental Policy Act (NEPA) requirements, agencies must demonstrate rational nexus between evidence and restrictions; vague or precautionary closures often fail that standard.

In order to prevent implementation of arbitrary and capricious measures within the WJTCP, it is essential for CDFW to revise the WJTCP to remove or reduce the 186-ft and 5-mile buffers to scientifically documented, minimal root zones.

Generally, mitigation of impacts from recreational uses are missing from the WJTCP. The Plan cites a variety of justifications for reduction and closure of OHV access and general recreational uses of public



lands that host WJT habitat, while omitting proposed actions that would mitigate impacts while also advancing WJT conservation. As remedy, we assert the exigence that the CDFW must revise the draft plan by:

1. **Removing or reducing the 186-ft and 5-mile buffers to scientifically documented, minimal root zones.**
2. **Implementing fine-scale GIS mapping, protecting only documented key individuals rather than sweeping buffers.**
3. **Applying seasonal closures during seed-set or bloom periods rather than permanent spatial exclusion.**
4. **Retrofitting staging areas, developed and dispersed camp sites, designated routes and open riding areas with root-zone fencing and signage per ADA standards in order to preserve access while enforcing habitat protection.**
5. **Using adaptive monitoring tied to monitoring; open or close areas based on empirical data (tree health, soil compaction)**
6. **Explicitly defining damage thresholds to WJT root zones, maintain all routes and open riding areas as open when damage thresholds are not exceeded thereby tying conservation action to measurable ecological data.**
7. **Incorporating public monitoring results with pathways to re-open routes when no significant impact exists.**
8. **Utilizing education and signage to support public land stewardship, not blanket restrictions or closures to public access.**

These targeted strategies preserve multi-use recreation and public access to public lands without compromising WJT conservation. The WJTCP can still effectively protect WJTs if refined to reflect true conservation needs while honoring California's strong public access and recreation laws. We stand ready to assist with technical AMGIS routing or staging design to safeguard both desert ecology and open-country recreation.

OHV USE & OUTDOOR RECREATION ARE ALREADY COMPATIBLE WITH WJT CONSERVATION

There is a need to align the WJTCP with the best available scientific data as set forth in the 2022 Western Joshua Tree Status Review³ prepared by CDFW, particularly with respect to off-highway recreation, camping, and public land access. The Summary of Findings in the 2022 Status Review clearly demonstrated that there is no substantial threat to WJTs from managed recreation. The 2022 CDFW Status Review provides a comprehensive assessment of threats to the WJT. The Review identifies primary threats to the species as:

- Habitat loss from urban development,
- Altered fire regimes,
- Climate change impacts,
- Invasive species competition (notably *Bromus* spp.).

Crucially, managed OHV use, designated camping, and general public recreation are not identified as significant threats to the species' persistence. As cited on p. 77 of the Status Review:



“There is currently no evidence that recreational activities, including legal OHV use and camping on designated routes and within permitted areas, result in substantial population-level effects on Western Joshua Tree distribution, recruitment, or survivability.”

Furthermore, Appendix 1 of the WJTCP itself (Agency Comments Summary, p. 11) clarifies:

“OHV use is more impactful in open riding areas than on designated trails... the Plan should clarify that negative impacts from OHV use refer to unrestricted off-trail use.”

This reflects the consensus among land managers, including California State Parks and the BLM, that on-trail or designated area OHV use is compatible with WJT conservation goals, especially when paired with responsible management practices.

However, there are multiple areas of inconsistency between the WJTCP and the Status Review. Despite this data, the WJTCP proposes:

- A 56.7-meter (186-foot) avoidance buffer around all individual WJT specimens (Vol. I, p. 1-2; App. D-7),
- 5-mile “landscape-level” buffer zones in areas of tree concentration,
- Restrictions or closures of access routes, dispersed camping areas, and trailheads.

These expansive and inflexible buffers are not supported by empirical evidence in the Status Review or public agency field data. In fact, many of California’s most robust WJT populations thrive within existing OHV and multi-use recreation areas. The Status Review (p. 70) notes viable populations in:

- Onyx Ranch SVRA (Kern County)
- Hungry Valley SVRA (Los Angeles County)
- Johnson Valley OHV Area (BLM, San Bernardino County)

These areas contain active OHV and dispersed recreation activity, yet still support natural regeneration and stable populations of Western Joshua Trees.

As previously discussed in this comment letter, there is both a legal and policy requirement to base conservation measures on best available science. Under the California Endangered Species Act (CESA), public agencies must use “best available scientific and other information that is reasonably available at the time” to inform listing decisions and conservation actions (Fish & Game Code §2074.6, §2075.5). Imposing restrictions—such as blanket access closures or excessive buffer zones—that are not supported by evidence of threat may violate the law’s intent and open the state to legal challenges under:

- The California Administrative Procedure Act (arbitrary and capricious standard),
- The California Environmental Quality Act (CEQA), if impacts to public access and equity are not properly disclosed and mitigated.

It is critical for CDFW to implement revisions to the WJTCP in order to achieve alignment with both scientific evidence and policy. To harmonize the WJTCP with the Status Review and applicable law, we recommend the following:



1. **Reduce default buffer zones around individual trees from 186 feet to a science-based radius representing actual root and seed dispersal zones (generally < 30 feet for adult trees).**
2. **Eliminate 5-mile landscape buffers in favor of site-specific conservation assessments based on density, soil condition, and evidence of actual stressors.**
3. **Retain existing designated OHV routes and recreation areas, consistent with their continued use in habitat occupied by healthy and reproducing WJT populations.**
4. **Use adaptive management and monitoring to detect and mitigate specific problem areas rather than applying preemptive, broad-scale access restrictions.**
5. **Incorporate exceptions and access protections for individuals with disabilities, seniors, and underserved populations, in compliance with ADA Title II and California Government Code §11135.**

The WJTCP presents an important opportunity to protect a cherished native species. However, its current form diverges from the State's own scientific review and fails to distinguish between unregulated recreation and managed recreation, which has coexisted with healthy WJT populations for decades. Cal4Wheel urges the CDFW to revise the Plan to better reflect science-based conservation and inclusive, equitable access to public lands. We would be pleased to provide field-level data, route inventories, and collaboration on monitoring methods to support this alignment.

CASCADING AND COMPOUNDING NEGATIVE IMPACTS FROM RESTRICTIONS TO OHV ACCESS

The area of public lands contained within the boundaries of WJT habitat are popular areas for off-highway vehicle (OHV) use. Multiple communities that are economically dependent upon the health of public lands and public access to outdoor recreation lie inside or within close proximity to WJT habitat. The proposed WJTCP states that OHV recreation activities present a threat to the WJT, however, research demonstrates that there is insufficient data to back up the claim that managed OHV recreation, nor any other form of outdoor recreation, has born negative impact on the WJT whatsoever. We thus emphasize in this comment that the mere fact that recreation areas overlap with WJT habitat does not substantiate any claim that recreation activities are detrimental to the WJT.

It is important to note that a significant volume of OHV roads have been closed and decommissioned in California over the course of the last several decades. While these historical closures occurred for a variety of reasons, one major contributing factor for road closures has been for habitat protection of species that are listed under the ESA as threatened or endangered. With reference to one of the primary known threats currently facing the WJT – catastrophic wildfire – it is pertinent for CDFW to thoroughly evaluate the impact of those closures in relationship to the scale of destruction inflicted by catastrophic wildfire in WJT habitat. OHV roads do not only serve to provide humans with opportunities to access and enjoy outdoor recreation, they also function as vital infrastructure for prevention of catastrophic wildfire and support of wildfire fighting efforts. OHV roads form natural fuel breaks across the landscape. They also provide routes for firefighters to access wilderness terrain that is otherwise difficult, if not impossible, to address during a catastrophic wildfire event.



Before advancing the WJTCP towards approval and implementation, we assert the need for CDFW to create an itemized inventory of OHV routes that fall within WJT habitat, then conduct an analysis of each route to determine the actual correlation of threat from OHV use in WJT habitat versus the real and immediate benefit that OHV roads provide as fuel breaks and firefighter access in wildland areas.

To support efforts to develop a full inventory of OHV roads that fall within WJT habitat, Cal4Wheel offers volunteers through membership to survey and itemize the terrain across the designated habitat of this species. Additionally, to support habitat restoration and maintenance efforts for the WJT, Cal4Wheel offers support through membership volunteers. Cal4Wheel takes pride in a deep history of contribution to conservation and stewardship of public lands through club "adoption" for care of specific sites as long-term commitments. We ask CDFW to consider this tangible offer of support as part of the resources available to ensure the success and health of the WJT through active conservation. We believe that through active conservation, effective protections may be afforded to the WJT and other wildlife that serve to create balance between the welfare and interests of both wildlife and humans. We believe that this framework serves to fulfill the CDFW mission: *"To manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public."*

Finally, given the lack of data to demonstrate that OHV recreation bears any negative impact on the viability of the WJT as a species, and the quality and availability of WJT habitat, **we ask that CDFW state explicitly within the WJTCP a clause to specify that OHV recreation is a protected activity that will not be negatively impacted by designation.** Given the positive correlation between OHV recreation and maintenance of fuel breaks and access for firefighting efforts, **we urge CDFW to not only preserve, but also support the expansion of OHV recreational activity across our public lands in California as it is a highly effective means of preventing catastrophic wildfire, managing the landscape, and creating vital access for operations that maintain a healthy density of WJT individuals and forests, grasses, brush, and habitat diversity.**

SOCIAL AND ECONOMIC IMPACTS

The WJTCP is subject to requirements to analyze economic and social impacts under multiple California laws and regulatory frameworks. These requirements stem from the California Environmental Quality Act (CEQA), specific sections of the California Fish and Game Code, and Public Resources Code (PRC).

CEQA requires analysis of economic and social effects when they are related to physical environmental changes.

- PRC §21001(g) – Declares the intent of the state to:
"Require governmental agencies at all levels to consider environmental factors, including economic and social factors, associated with any proposed project."
- PRC §21002 and §21002.1(b) – State that a project with significant effects on the environment may not be approved unless alternatives or mitigation measures are adopted, and agencies must consider economic, legal, social, technological, and other benefits of a project.



- CEQA Guidelines §15131 – While economic and social effects are not treated as environmental impacts per se, CEQA requires that such effects be analyzed if they cause physical environmental impacts (e.g., recreation closures leading to displacement, increased use of sensitive areas, or economic harm to gateway communities).

If the WJTCP causes restrictions on recreation, camping, or OHV use, which in turn causes displacement or economic harm to surrounding communities, or increased use elsewhere leading to environmental degradation, these secondary effects must be evaluated under CEQA.

Additional requirements for analysis of social and economic impacts are present within CA Fish and Game Code. Conservation plans under the California Endangered Species Act (CESA) must be informed by best available scientific and commercial data, and are subject to public interest and feasibility considerations.

- Fish and Game Code §2075.5 – Requires that status reviews include a description of:
"Efforts to protect the species, including those of other state and federal agencies, and private individuals and organizations."
- Fish and Game Code §2074.6 – the Commission must consider "the degree and immediacy of the threat", and the extent of existing or alternative conservation efforts.

While this section does not explicitly mention economic analysis, it does imply a need to consider feasibility, alternatives, and balancing of uses, all of which have economic and social dimensions.

CA Public Resources Code and Recreational Access Mandates also support balanced land management and requires agencies to protect both environmental and recreational uses.

- PRC §5090.01 et seq. (OHMVR Act) – Establishes the State's policy to ensure environmentally sustainable OHV recreation and mandates consideration of recreational needs in conservation actions.
- PRC §5003.1 – Declares recreation a "beneficial use" of public land, and any restriction to that use must be subject to review and public process.
- PRC §21083.05 – Mandates that environmental justice, access equity, and disproportionate social burdens on communities be considered in environmental reviews, when applicable.

Finally, California Government Code §11135 ensures equity and access by prohibiting any program receiving state funds from discriminating or disproportionately burdening individuals based on disability, age, or income status. If WJTCP results in closures that reduce access for elderly, low-income, or disabled individuals, it could trigger legal or procedural review.

Existing laws, statutes, and PRC require that the WJTCP include comprehensive analysis of economic and social impacts, particularly when those impacts are tied to changes in land use, access, or recreation opportunity. If the WJTCP proceeds without a comprehensive CEQA review that includes socio-economic impacts of land closures or access restrictions, it would likely be vulnerable to litigation or administrative appeal under CEQA and related access laws.

The WJTCP proposed closures threaten:

- Local economies relying on OHV tourism - fuel, gear, lodging, and guiding services in desert gateway towns.



- Affordable access to nature for seniors, disabled individuals, and families - as dispersed camping and graded routes are removed without replacement.
- Overcrowding in unbuffered zones leading to environmental damage - eroding the very habitat the plan seeks to protect.

However, the WJTCP does not provide any analysis or discussion of possible economic impacts related to motorized recreation, or outdoor recreation generally. CDFW must revise the WJTCP to include a legally-compliant economic assessment for public comment.

The WJTCP acknowledges there is recreation within each of the WJT habitat units yet says nothing about the economic impacts resulting from possible loss of recreation. Since recreation currently and historically co-exists with WJTs across its full range of habitat, we urge CDFW to adjust the language of the WJTCP to state that all existing recreation will continue without restrictions.

Recreation, especially [recreation off of paved or gravel roads, is the leading cause of growth in visitors to public lands](#)¹⁰. This is a longstanding trend, and it is critical to note, California has led the nation as the state with the highest percent of population and number of participants in OHV recreation since 2008. The US OHV market is worth more than \$10 billion, and California represents over 10% of that market share. It is clear that public interest in OHV recreation is a dominant value and preferred mode of outdoor recreation for residents of California. The restrictions and closures to public access to OHV recreation that are contemplated in the WJTCP bear the potential to eliminate user access to vast areas of public land. Such restrictions or closures of access will detrimentally impact local economies that depend on outdoor recreation and recreation tourism, as well as the OHV industry broadly. The negative economic impact of the WJTCP will directly affect millions of Californians who reside in the areas within and surrounding WJT habitat. This is a vast region that would encompass over 9.3 million acres in Southeastern California, as well as all of the communities that host and surround that acreage.

There will clearly be massive economic impacts from implementation of the WJTCP as it is currently written in draft; impacts which CDFW has neglected to consider and analyze, including:

- Loss of recreation caused by WJT related restrictions, or lawsuits resulting in loss to the local economy as well as loss of access to public lands
- Reduction or elimination of active management to the detriment of landscape health and loss of jobs

We call on CDFW to do their due diligence and uphold their responsibilities as decision makers in this proposed WJTCP by conducting a comprehensive economic analysis that includes evaluation of impacts on OHV recreation specifically, outdoor recreation generally, tourism within local communities that rely on the recreation economy, and active management of the landscape across all impacted public lands. We assert the imperative that CDFW must refrain from issuing a final decision on whether or not to approve the proposed WJTCP until after a comprehensive economic analysis has been completed, and, the public has had an opportunity to review said analysis and submit comments on it.



IMPLICATIONS RESULTING FROM OVERTURN OF THE CHEVRON DOCTRINE

While the WJTCP is a state-level plan developed under California law (specifically CESA), the recent reversal of the Chevron doctrine by the U.S. Supreme Court in *Loper Bright Enterprises v. Raimondo* (2024) has important implications, especially in contexts where the plan overlaps with federal land, federal permits, or federally protected rights (such as NEPA/FLPMA compliance, ADA access, or public land coordination). Below is a breakdown of the legal relevance, implications, and specific authorities that tie the WJTCP to the Chevron reversal.

Under the Chevron doctrine (established in *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984)), courts were required to defer to reasonable interpretations of ambiguous statutes by federal agencies. In *Loper Bright Enterprises v. Raimondo* (decided June 2024), the Supreme Court overturned this deference standard, ruling that:

Courts must exercise their independent judgment in interpreting statutes and may no longer defer automatically to federal agencies' interpretations of ambiguous laws.

Although WJTCP is a California Department of Fish and Wildlife (CDFW) action, the plan:

- Affects federal lands, including BLM- and Forest Service-managed OHV routes and campgrounds.
- Proposes management prescriptions in areas covered by federal land use plans like the Desert Renewable Energy Conservation Plan (DRECP).
- May trigger federal Endangered Species Act (ESA) coordination if the WJT becomes federally listed in the future.
- May indirectly affect NEPA and FLPMA-managed public lands, raising issues of coordination under FLPMA §202(c)(9).

With Chevron overturned, federal courts are no longer required to defer to the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (USFWS), or other federal agencies in disputes involving interpretations of federal statutes, thus opening the door to more legal scrutiny of state-federal coordination plans like the WJTCP.

There are multiple legal implications of Chevron Reversal on WJTCP including federal–state coordination and land use conflicts. Under FLPMA §202(c)(9), the BLM must coordinate with state and local governments, and consider state conservation plans, but is not bound by them. Post-*Chevron*, if a state plan like WJTCP creates conflicting prescriptions (e.g., buffer zones that effectively close BLM OHV routes), federal courts reviewing such conflict will no longer automatically defer to BLM's interpretation of its coordination duties. This gives affected land users or local governments stronger legal footing to argue that BLM must enforce its recreation commitments under DRECP or other planning documents, even if California demands more restrictive conservation measures.

This swings open wide the door of opportunity for increased legal challenges to interagency deference. Suppose the WJTCP is used as justification by BLM to close roads or limit access (e.g., under NEPA or FLPMA plan revisions). Post-*Chevron*, courts would evaluate statutory interpretations independently, not simply accept BLM's or CDFW's position. This could apply in legal challenges under:



- Federal Lands Recreation Enhancement Act (FLREA)
- National Environmental Policy Act (NEPA)
- Americans with Disabilities Act (ADA) Title II
- Rehabilitation Act §504

If the western Joshua tree becomes federally listed under the U.S. Endangered Species Act (ESA), any resulting federal critical habitat designations or Section 7 consultations must be evaluated without agency deference. Courts may now scrutinize whether such listings or habitat restrictions are scientifically and statutorily justified, creating risk for future listing decisions modeled on state plans like the WJTCP.

The reversal of the Chevron doctrine does not directly strike down the WJTCP, but it changes the legal environment in which the Plan could be challenged, implemented, or coordinated with federal agencies. The practical effects are such that:

- Federal courts are more likely to independently assess whether state-driven conservation restrictions on federal land are legally permissible.
- Affected user groups (e.g., OHV advocates, rural communities, disability access stakeholders) have a stronger legal foundation to challenge federal agency actions that adopt or enforce state plans like the WJTCP without clear statutory backing.
- Future ESA listings, NEPA decisions, or BLM travel management revisions informed by the WJTCP will face heightened judicial scrutiny.

Subsequently, we urge the CDFW to revise all components of the WJTCP that are inconsistent with existing Congressional directives, federal and state legal statutes, and public resource code. The need for consistency underscores our emphasis that all proposed actions in the WJTCP must be centered wholly in clear justification from current best available science, and in full alignment with the scope of current species status and conservation recommendations set forth in the 2022 CDFW WJT Status Review.



CLOSING

We appreciate the opportunity to comment on the proposed WJTCP. We would like to emphasize that the proposed Plan presents the CDFW with an important opportunity to positively impact not only the current and future health of WJTs, but also, the health of all wildlife that share habitat with the WJT, and the health and vitality of public lands to serve the benefit of the American people. We urge the CDFW to revise the WJTCP to ensure that accurate decisions are based on best available science, in alignment with necessary actions to prevent future catastrophic wildfire and increase the opportunity for all flora and fauna to thrive in a healthy ecosystem, and to provide vested stakeholders such as members of Cal4Wheel with an opportunity to actively contribute to the conservation and stewardship of the WJT and all wildlife that inhabit our treasured public lands.

In summary, we urge the CDFW to revise the WJTCP to include the following:

- Remove or reduce the 186-ft and 5-mile buffers to scientifically documented, minimal root zones.
- Implement fine-scale GIS mapping, protecting only documented key individuals rather than sweeping buffers.
- Apply seasonal closures during seed-set or bloom periods rather than permanent spatial exclusion.
- Retrofit staging areas, developed and dispersed camp sites, designated routes and open riding areas with root-zone fencing and signage per ADA standards in order to preserve access while enforcing habitat protection.
- Use adaptive monitoring tied to monitoring; open or close areas based on empirical data (tree health, soil compaction)
- Explicitly define damage thresholds to WJT root zones, maintain all routes and open riding areas as open when damage thresholds are not exceeded thereby tying conservation action to measurable ecological data.
- Incorporate public monitoring results with pathways to re-open routes when no significant impact exists.
- Utilize education and signage to support public land stewardship rather than blanket restrictions or closures to public access.
- Reduce default buffer zones around individual trees from 186 feet to a science-based radius representing actual root and seed dispersal zones (generally < 30 feet for adult trees).
- Eliminate 5-mile landscape buffers in favor of site-specific conservation assessments based on density, soil condition, and evidence of actual stressors.
- Retain existing designated OHV routes and recreation areas, consistent with their continued use in habitat occupied by healthy and reproducing WJT populations.
- Use adaptive management and monitoring to detect and mitigate specific problem areas rather than applying preemptive, broad-scale access restrictions.
- Incorporate exceptions and access protections for individuals with disabilities, seniors, and underserved populations, in compliance with ADA Title II and California Government Code §11135.
- Create an itemized inventory of OHV routes that fall within WJT habitat, then conduct an analysis of each route to determine the actual correlation of threat from OHV use in WJT habitat versus



the real and immediate benefit that OHV roads provide as fuel breaks and firefighter access in wildland areas.

- State explicitly within the WJTCP that OHV recreation is a protected activity that will not be negatively impacted by designation
- Conduct a comprehensive economic analysis that includes evaluation of impacts on OHV recreation specifically, outdoor recreation generally, tourism within local communities that rely on the recreation economy, and active management of the landscape across all impacted public lands, and refrain from issuing a final decision on whether or not to approve the proposed WJTCP until after a comprehensive economic analysis has been completed, and, the public has had an opportunity to review said analysis and submit comments on it.

California Four Wheel Drive Association would like to be considered an interested public for the WJTCP. Information can be sent to the following address and email address:

Rose Winn
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8120 36th Avenue
Sacramento, CA 95824
rwinn@cal4nrc.com

Sincerely,

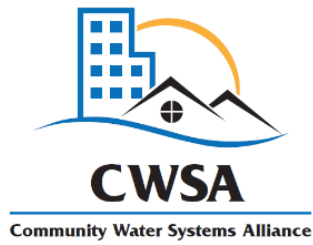
Rose Winn
Natural Resource Consultant
California Four Wheel Drive Association

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July 11, 2025

President Zavaleta and Commissioners
California Fish and Game Commission
715 P Street
Sacramento, CA 95814

Director Charlton Bonham
California Department of Fish and Wildlife
715 P Street
Sacramento, CA 95814

Sent electronically to fgc@fgc.ca.gov

Sent electronically to [REDACTED]

Dear Commissioners and Director Bonham:

Thank you for extending the time to provide comments on the final draft of the first Western Joshua Tree Conservation Plan ("Plan"). As you all know and some have expressed, the Plan in which you are engaged is experimental, untried, and in numerous respects very confusing. Judging from the remarks during consideration of this item on June 12, we do not expect that any changes will be made before approval of the Plan next month. However, we do appreciate the courtesy and respect you showed in continuing the matter to allow more time for the public to review the Plan and "digest" what it could mean for the people who live and work within the affected region, as well as the public agencies that must undertake needed projects in that area.

Comments on Context

As stated in prior letters, the people and organizations represented in this coalition letter have lived and worked among the Joshua trees as homeowners, farmers, builders and real estate brokers, water district employees, local government officials, environmental consultants, for decades. Our overarching position supports practical and effective conservation conducive to safe, affordable coexistence with the Joshua trees, without punitive or unreasonable regulations overly complicating the enjoyment of life and livelihoods in the area or resulting in increased compliance

costs that impact affordability of life's basic necessities, particularly in economically disadvantaged communities. Some of our members literally have a lifetime of experience and observations with the trees and have a great love for them. Our members also know the economic struggles that define the everyday experience of many residents in the high desert region, most of which are considered disadvantaged or severely disadvantaged communities. It is extremely important for the Plan to avoid putting such a burden on the residents that life and business become unaffordable.

The Commission and the Department (or CDFW) must continue working to reverse strong distrust created by the way the Western Joshua Tree Conservation Act ("Act") originated and what it contains. The Act and the Plan originate from the Commission's continued designation of the species as a candidate for listing as threatened under the Endangered Species Act, based solely on climate change projections. This candidate status remains in effect because the Commission has delayed its vote on the listing, which forces continued treatment of the species as potentially threatened—despite clear evidence that it does not meet the criteria for listing under the California Endangered Species Act. Then came Assembly Bill 1008, apparently drafted by the Department, carried by a legislator from the Bay Area, which had no idea or stake in the matter, that proceeded without local input through the regular legislative process. But midway through the legislative process, the bill was abandoned and its text suddenly put into a budget trailer bill – eliminating any real opportunity for input from regular people who will live with its consequences or additional meaningful comment and feedback. Since its enactment, it has become clear the Act has flaws that should be corrected, and some of our concerns with the Plan stem from defects in the Act.

In similar fashion, the experimental nature of this novel approach, with its case-by-case permitting, works against trusting that permitting decisions and fees will be fair and consistent. Commissioners express great confidence and trust in Director Bonham and Department staff, but until a track record of fair and reasonable Plan implementation is established, that same confidence will have to be earned at the ground level.

Given that we do not anticipate any substantive revisions to the Plan, we respectfully request that the Commission direct the California Department of Fish and Wildlife to amend its administrative procedures for implementing the Plan. Doing so would help reduce the disproportionate and harmful impacts on affected communities and public agencies during this experimental effort to conserve a species based solely on climate change projections.

What We Support

We gratefully acknowledge the work that regional CDFW employees are putting in to meet with project proponents and residents. We are thankful for sincere efforts to understand effects the Act and the Plan will have on people's lives and the necessary actions to provide infrastructure, housing, and a safe, enjoyable environment. We appreciate and support the proposed exclusion of single-family residential projects from any requirement to relocate Joshua trees. This is the kind of

practical approach we want to see. We also support the concept of the Department providing programmatic CEQA coverage for residential projects. These concepts should become adopted policy and extended to other public necessities to hold down negative impacts to the cost of living, such as for existing multi-family residential projects, or routine and emergency public utility work. We would like to collaborate with the Department on legislative improvements to ensure that these, and other specific fixes to the Act are made.

Concerns the Plan Does Not Address

We understand the Commission feels an urgency to approve the Plan due to the statutory deadline in the Act. Stakeholders within the region feel the same urgency, as they have their own plans on hold while the Plan is being finalized and permitting decisions are made. Thus, we anticipate the Commission will approve the Plan in August, and do not wish to delay that decision further. There are, however, outstanding issues of concern to members of our ad hoc coalition that need to be addressed in a future iteration of the Plan, and/or in legislation as appropriate.

1. Establish reduced or waived fees for key projects. Comments made by Director Bonham and Department staff indicate that permitting discussions for some public infrastructure projects are on track for a satisfactory outcome, and we hope to acknowledge that important outcome very soon. Similarly, we believe that other infrastructure and housing projects will also serve crucial community needs, yet we need better assurance that future projects will be afforded comparable accommodations. When permit requirements are determined case-by-case, that uncertainty leaves great room for concern, and general verbal assurances are unsatisfactory for project planning, for real estate disclosures, and so forth.
2. Prevent double charging. The Plan should explicitly bar multiple fees for “taking” the same trees. If a project strives to avoid or minimize harm to Joshua trees, only to be faced with additional fees later for the same trees, that does not lead the project proponent to care about the trees’ survival. The implementation plan should clarify that the term “take” would apply only to lethality but not “minimization of harm.” Application of the term “take” to both lethal and nonlethal effects is a fundamental problem in the Act, and if the Plan cannot address this issue, we would like to work with the Department on fixing the Act to more specifically address “take” as it applies to a tree species.
3. Minimize buffers. The maximum buffer for necessary public works, housing developments, and single-family residential projects should be no more than 5 feet. Relocation of trees using mechanical equipment such as a tree spade will cut roots at or less than 5 feet from the main trunk. Despite some skepticism about the success of relocation efforts, plenty of optimism was expressed in the June 12 Commission discussion. Therefore, if relocation with the complete disturbance of roots at a 5-foot length can be successful, the buffer zones in the revised Plan are excessive, especially for necessary projects to meet the needs of disadvantaged

communities. Further, buffers should not extend beyond the property line or the edge of the “project site,” another term which needs to be defined. That is, the Plan should not require a project to be responsible for Joshua trees within a buffer zone on neighboring private property (which raises a legal and liability issue related to the project proponent’s ability to enter onto another person’s property). It is easily conceivable that a public agency could be misusing public funds if required to perform care and maintenance of a Joshua tree on private property.

4. Provide exemptions and/or expedited permitting. Certain routine activities for public health and safety, such as water distribution system repairs and maintenance, wildfire mitigation and emergency response activities, need to be categorically excluded from permitting delays and fees.
5. Promote delegation of authority. We know that some local jurisdictions (cities and counties) will be reluctant to accept the added responsibility for project review and permitting. Even with the statutory ability to charge fees to cover the cost of service, the fees required to fully account for indirect costs such as record keeping, annual census, etc. would be too high and viewed very negatively by permit applicants. We suggest that the Plan would have to include significant incentives for many local jurisdictions to embrace this thankless administrative responsibility.
6. Timeline for improvement of scientific knowledge. The statement has often been repeated that the Western Joshua Tree Conservation Act and the accompanying Plan are “entrepreneurial” and even experimental. Publicly available, accepted scientific reports on matters like reproduction, relocation, and assisted migration – especially in the unknown context of future climate change – appear to be scant at best. This helps to explain the extensive list of fundamental questions in Section 5.2.4, Continue Research and Information Development. Experimentation on such a grand scale that places a considerable burden on local communities, should at least be sure to produce scientific advancements. We believe the Plan needs to include better (i.e., clear and scientifically based) milestones and deadlines for research results vital to successful conservation of the western Joshua tree. It would be tragic for this experiment in ecological engineering, with its significant financial and regulatory impacts on local communities, to reach the decision point in 2033 and still confront major knowledge gaps such as we have today.
7. Transparency of funds and analysis of economic costs. Potentially significant funds will be collected from fees and other sources under the Act. Pre- and post-implementation analysis of potential and actual costs, and associated social and economic impacts of the WJT Conservation Act must be conducted to demonstrate the proper use of those funds.
8. Caring for urban Joshua trees. Guidelines and financial incentives are needed for encouraging residents and businesses to take care of western Joshua trees in urban and residential areas

where the tree thrives today. Positive incentives have been recognized as a critical component for successful conservation of endangered species,¹ but the Plan is short on incentives to encourage support from private landowners for the western Joshua trees. Action E&A 1.8 is vague and amounts to a token gesture, and nothing in the effectiveness criteria refers to the non-tribal public who live and work in the western Joshua tree region. Unfortunately, this reinforces the sense that residents and businesses in the area are more of a hindrance than a help to conservation.

In closing, we want to again acknowledge efforts that have been made to meet with concerned residents, local governments, and businesses. We appreciate the modifications made to the original draft Plan that reduce economic impacts, although we strongly urge the Department and Commission to go farther to enhance the practical application of the Plan.

Respectfully,

Morongo Basin Residents for Reasonable
Joshua Tree Regulations

Adnan Anabtawi
Mojave Water Agency

Timothy Worley
Community Water Systems Alliance

Jody Rich-Ramirez
Joshua Tree Gateway Assn. of REALTORS

Sarah Johnson
Joshua Basin Water District

Marina West
Bighorn-Desert View Water Agency

Lance Eckhart
San Geronio Pass Water Agency

Richard Filgas
California Farm Bureau Federation

cc: Governor Gavin Newsom
Wade Crowfoot, Secretary for Natural Resources
State Senator Rosilicie Ochoa Bogh
State Senator Suzette Martinez Valladares
Assemblymember Juan Carrillo
Assemblymember Greg Wallis
Assemblymember Tom Lackey
Los Angeles County Supervisor Kathryn Barger
San Bernardino County Supervisor/Board Chair Dawn Rowe

¹ Camacho, A.E., Kelly, M.L., and Li, Y-W. "The Six Priority Recommendations for Improving Conservation under the Federal Endangered Species Act," [UCI Law](#), Center for Land, Environment and Natural Resources and Environmental Policy Innovation Center. September 2021. See especially pp. 22-25. Accessed 7/9/25.



VIA E-MAIL: fgc@fgc.ca.gov

July 21, 2025

California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244-209

Re: Large-scale Solar Association's Comments on August 13-14 Meeting Agenda – Western Joshua Tree Conservation Plan

Dear President, Vice President, and Members of the Commission:

The Large-scale Solar Association (LSA), the Solar Energy Industries Association (SEIA), and the American Clean Power Association (ACP) write to provide comments on the Western Joshua Tree Conservation Plan (Plan). As developers of utility-scale solar projects, our members are deeply committed to advancing California's clean energy goals while minimizing impacts to species and habitats, including the western Joshua tree. Collectively, we appreciate the substantial effort by the California Department of Fish and Wildlife (Department) and the California Fish and Game Commission (Commission) to develop the Plan.

This letter outlines the following comments regarding the final Western Joshua Tree Conservation Plan and its implementation:

- **Plan Positives:** We support Director Bonham's emphasis that this a non-regulatory effort that will follow a "get it right, not rushed"¹ approach, allowing for real-time learning as the program evolves and focused regulatory actions within permit-specific processes. Additionally, the innovative in-lieu fee structure, a pooled-funding model, coupled with the Department's authority to acquire and manage conservation lands, represents a more efficient and scalable conservation strategy than traditional parcel-based mitigation.
- **Need for Continued Engagement:** We request the Department continue to work on two aspects of the Plan involving its implementation of the Act: 1) eliminating "double mitigation," and 2) eliminating the serial census. Both are appearing as permit requirements and will burden the development of utility-scale clean energy and defeat the dual purposes of the Plan – to streamline permitting and conserve western Joshua trees. We've provided an appendix with specific text amendment proposals that address these two impediments.

¹ Director Bonham at the California Fish and Game Commission Meeting, June 12, 2025.

Plan Positives

“Get it right, not rushed” Approach

We support the comments made by Director Bonham during the June Commission meeting. His framing of this effort as one where the goal is to “get it right, not rushed” is precisely the right approach for a first-of-its-kind conservation effort. This is an unprecedented process that will benefit most from an iterative, field-based approach that evolves as we learn from on-the-ground experience while remaining mindful of balancing species conservation with California’s broader climate and energy goals. Implementing a novel and complex conservation strategy will benefit from a commitment to adaptive, real-time management as the program evolves.

The Plan is not a Regulatory Document

We particularly appreciate the Department’s ongoing and consistent acknowledgment that the Plan is not a regulatory document. This clarification helps maintain the necessary distinction between long-term planning guidance and project-level permitting requirements. That distinction matters, and it helps avoid confusion about how and where project-level decisions are made. Specifically, permitting decisions should continue to be made on a project-specific basis with appropriate flexibility and discretion. The Department’s efforts to emphasize the Plan’s non-regulatory nature and to focus regulatory actions within permit-specific processes are critical to maintaining a workable framework.

In-Lieu Fee Structure

The in-lieu fee option for mitigation is both innovative and essential, providing needed conservation funding without jeopardizing clean energy development. It provides a clear, lawful, and efficient pathway for applicants to comply with the Act while allowing the Department to strategically direct funds toward high-value conservation. For a species as widespread and abundant as the western Joshua tree, this pooled-funding model, coupled with the Department’s authority to acquire and manage conservation lands, represents a more efficient and scalable conservation strategy than traditional parcel-based mitigation. We support the Department’s implementation of this fee structure and urge its continued use and refinement as the Plan is implemented.

Need for Continued Engagement

Eliminate Double Mitigation

The Department continues to require “double mitigation,” which we believe is unlawful and should be changed. For example, the Department recently issued a western Joshua tree Incidental Take Permit (ITP) for a project by an LSA member company that requires the permittee to protect western Joshua tree relocation receiver sites in perpetuity. As LSA explained in its June 10 comment letter, both the Act and the Plan make clear that the Department cannot lawfully require permittees to acquire fee title to, and/or conservation easements over, receiver site lands in addition to paying the statutory in-lieu mitigation fees.

Fish and Game Code section 1927.3, subdivision (a)(3) provides that a permittee “may elect” to satisfy its mitigation obligation by paying fees “[i]n lieu of completing the mitigation obligation on its own[.]” The Legislature did not intend that a permittee pay mitigation fees *in addition to* satisfying its mitigation obligation. The Plan contemplates that permittees that elect to pay in-lieu fees will pay into the Conservation Fund and, in so doing, fund the *Department’s* efforts to protect western Joshua tree habitat in perpetuity (See WJTCP, updated June 2025, at 6-16.). In requiring mitigation twice over, the Department also violates the Legislature’s command that the measures required to meet a permittee’s mitigation obligation be “*roughly proportional in extent to the impact of the authorized taking of the species.*” (Fish & Game Code § 1927.3, subd. (a)(3).)

The Department’s insistence on such double mitigation threatens the viability of the Act as an alternative permitting pathway. With federal incentives for renewable energy development recently pared back, now is not the time for the Department to erect yet further obstacles to renewables development. The purpose of the Act was to streamline, not further burden, the development of utility-scale clean energy. Unlawfulness of the Department’s practice aside, it is simply not good policy.

We respectfully renew our request for the Commission to direct the Department to include clarifying language in the Western Joshua Tree Conservation Plan and the Relocation Guidelines and Protocols to make clear that the Act prohibits the Department from requiring double mitigation. See Appendix A for specific proposed language.

Eliminate the Serial Census

The Act does not authorize the Department to mandate recurring censuses pursuant to an ITP. The only provision of the Act that mentions censusing (Section 1927.3(a)(1)) provides that a permittee must submit “a census of all western Joshua trees on the project site” to receive an ITP in the first instance. The Act does not once mention additional censuses after an ITP is issued, yet the Department continues to require that permittees conduct recurring censuses (via permits requiring “Notification[s] of New Stem or Trunk” and “Recurring Assessment Report[s]”).

The gist of the Department’s position is that after a permittee conducts the mandatory initial census, receives its permit, pays the in-lieu mitigation fee, and moves forward with permitted activities, a permittee must submit more information about and pay mitigation fees to take any trees, their associated seeds, or their sprouts (whether germinated or clonal) for which mitigation fees were not initially paid. To secure such further take authorization in the short-term, the permittee must submit a “Notification of New Stem or Trunk” identifying the tree, its seeds, or its sprouts and pay mitigation fees. Over the medium- and long-term, the permittee must re-census the project area beginning six months from the completion of initial project construction, repeat each year for two consecutive years following the initial assessment year, and then repeat continuously every five years thereafter to determine “whether any new western Joshua tree individuals have emerged.” Those “new” trees must then be included in a “Recurring Assessment Report”

that identifies which will be taken, and the permittee must pay mitigation fees, as confirmed by the Department, before taking any of those trees. This interminably recurring process was not contemplated by the Act and it runs counter to its twin purposes – streamlining permitting and conserving western Joshua trees.

This census process stands in stark contrast to the Department’s practice of authorizing take of seeds in the area around a tree by providing take authorization for the tree itself (even if the tree itself will not be removed or encroached upon). This practice is consistent with the Act, which presumes that applicants would receive take authorization for take of trees (including their seeds) for which they paid the per tree mitigation fees. This underlying rationale for take authorization and mitigation for trees applies to their progeny: re-sprouts from roots of trees already removed, as well as new sprouts whether germinated or clonal. In other words, take of trees (including their seeds and progeny) on a project site is mitigated once and in full if the mitigation fee is paid for trees when the ITP is first issued to provide take authorization for those trees, their seeds, and their progeny.

The Department’s “serial census” requirements not only contravene the text, structure, and intent of the Act, they also disincentivize prospective permittees from making use of the Act in the first instance.² Additionally, they encourage developers to seek take authorization for and to remove as many trees as possible from the project site to avoid an endless roundelay of re-permitting.

To be consistent with the Act, the Department should cease requiring “Notification(s) of New Stem or Trunk” and “Recurring Assessment Report(s).” Instead, it should only require “New Take Assessment Reports” with the payment of mitigation fees limited to the take of trees, their seeds, or their progeny that existed at the time of the pre-permit census and for which the applicant did not pay in-lieu mitigation fees. This tailored requirement would apply where a permittee missed trees in its initial census and needed to subsequently “true up” by paying additional mitigation fees. It would also apply where the scope of a project changed such that a permittee that initially censused, but did not plan to take, trees could “true up” by paying mitigation fees for those new impacts.

See Appendix B for proposed language.

Conclusion

California is at a pivotal moment where climate leadership and conservation innovation must work hand-in-hand. The Western Joshua Tree Conservation Plan is an ambitious, necessary, and promising attempt to do just that.

² These “serial census” mandates contrast unfavorably with what the Department has traditionally required under the California Endangered Species Act. It has long been the Department’s practice under Section 2081 to provide prospective incidental take coverage for a geographic area, and not to require additional censuses and new mitigation after a permit is issued absent substantial changes to the project design or boundary resulting in take not previously anticipated.

While challenges remain, we are encouraged by the Commission's role in overseeing the Plan's development and the Department's commitment to refining guidance over time. As implementation proceeds, we respectfully urge the Commission to continue closely monitoring how mitigation and census provisions function in real-world settings, ensuring that updates to guidance are transparent and well-grounded. We also encourage the Commission to reinforce the importance of maintaining a public, transparent process as implementation evolves. This process matters, and with continued collaboration and responsiveness, we believe this Plan can succeed in protecting the western Joshua tree while advancing California's urgent climate and clean energy goals.

We appreciate the opportunity to submit these comments and look forward to continuing working with the Department, the Commission, and other stakeholders to make the Plan a success for both the western Joshua tree and California's clean energy future. Thank you for your continued leadership.


Sincerely,



Shannon Eddy
Executive Director
Large-scale Solar Association



Stephanie Doyle
Director, State Affairs, California
Solar Energy Industries Association



Quintana Hayden
Senior Director, Wildlife & Federal Lands
American Clean Power Association

Appendix A: Amendments Regarding Double Mitigation

We propose the following text amendments to both the Conservation Plan and the Relocation Guidelines and Protocols, with new text marked in **bold**:

Section 6.6.2 “In-Lieu Fees” (See Conservation Plan, updated June 2025, at 6-17.)

“Under WJTCA, a permittee may pay a fee to take each individual tree based on the size of tree in lieu of completing mitigation obligations on its own. As a result, the total fees assessed for a project increase with the number and size of trees taken. WJTCA also established a two-tier fee structure, where per-tree in-lieu fees are nominally larger within a specified geographic area. **Because the in-lieu fee satisfies a permittee’s mitigation obligation under WJTCA (Fish & G. Code, § 1927.3, subd. (a)(3)), a permittee that elects to pay in-lieu fees will not also be required to provide for the protection in perpetuity, by fee title acquisition, conservation easement, or other means, of receiver lands for relocated WJT.**”

Appendix E, Relocation Guidelines and Protocols, updated June 2025, at 1–2.

“The relocation measures shall include but are not limited to the following conditions:

1. Salvage trees are placed in locations and with proper orientation to improve their chances of survival.
2. Salvage trees are relocated at a time that maximizes their chances of survival, when feasible.
3. A desert native plant specialist be onsite to oversee relocation.

In addition, section 1927.3, subdivision (a)(4)(B) states that CDFW may limit relocation requirements to certain classes of trees. **However, pursuant to section 1927.3, subdivision (a)(3), CDFW may not require, as a relocation measure, that a permittee provide for the protection in perpetuity, by fee title acquisition, conservation easement, or other means, of receiver lands for relocated WJT if the permittee has elected to pay in-lieu fees.**”

Appendix B: Amendments Regarding the Western Joshua Tree Census

We propose the following corrective amendments to the Conservation Plan, with new text marked in **bold**:

Section 6.5.1 “WJTCA Permitting” (See Conservation Plan, updated June 2025, at 6-11 – 6-12)

“Take of western Joshua tree may be authorized pursuant to WJTCA (Fish & G. Code, § 1927.3, subd. (a)). A WJTCA incidental take permit (ITP) may be issued when an applicant wishes to remove, trim, relocate, or work within the applicable avoidance buffer of one or more western Joshua trees for the purpose of completing a project. **However, a WJTCA ITP is not required if the applicant wishes to remove, trim, relocate, or otherwise take one or more western Joshua trees, sprouts from trees, or sprouts germinated from seeds of trees, for which it has paid in-lieu mitigation fees.**”

...

“Project-specific permit conditions are included in a WJTCA ITP and could include avoidance and minimization measures, such as relocation of western Joshua tree, avoidance buffers, seed collection, limits on pesticide use, and use of desert native plant specialists, as defined in Section 5.2.1, “Impact Avoidance and Minimization,” as well as monitoring and reporting. **Permit conditions may require a permittee to submit a “Notification of New Stem or Trunk” to identify and pay in-lieu mitigation fees for take of individual western Joshua trees that existed at the time of the census but for which the permittee did not pay in-lieu mitigation fees, as well as their sprouts and sprouts germinated from their seeds. However, permit conditions may not require a permittee to identify, or pay in-lieu mitigation fees for take of trees, sprouts from trees, or sprouts germinated from seeds of trees, for which in-lieu mitigation fees were paid.**”



County Administrative Office
Governmental & Legislative Affairs

Leia Fletes
Director

July 31, 2025

Erika Zavaleta, President
California Fish and Game Commission
715 P Street, 16th Floor
Sacramento, CA 95814

Re: Draft Western Joshua Tree Conservation Plan – Public Comments

Dear President Zavaleta and Members of the Commission,

On behalf of San Bernardino County, I would like to thank the California Fish and Game Commission (Commission) and the staff of the California Department of Fish and Wildlife (CDFW) for your continued engagement and responsiveness throughout the development of the Western Joshua Tree Conservation Plan (Plan). Your efforts to consider public input and work collaboratively with stakeholders, including our County, are appreciated.

We are encouraged by the progress made to date, particularly the consideration of our recommendations to revise buffer zone guidance and support defensible space measures that align with wildfire safety standards. These developments reflect a meaningful step toward a more practical and balanced implementation framework.

As the Commission approaches adoption of the current Plan, we look forward to continued collaboration on incorporating pragmatic solutions in future iterations that support both the protection of the Western Joshua Tree and the ongoing operational needs of our desert communities. As part of that ongoing effort, we urge a clear exemption for urgent and emergency infrastructure repairs, an essential step to ensure local agencies can respond swiftly to public safety threats, particularly in areas at risk of flooding or wildfire. We are committed to working together in the months ahead, including through potential legislative solutions, to ensure these priorities are meaningfully addressed.

Thank you again for your partnership. We value the opportunity to work with the Commission and CDFW as implementation of the Plan continues and stand ready to support ongoing efforts to ensure it reflects both ecological and community resilience. If you have any questions or require additional information, please contact Leia Fletes, Director of Government Relations, at (909) 387-4280 or Leia.Fletes@cao.sbcounty.gov.

Sincerely,

A handwritten signature in blue ink that reads "Dawn Rowe".

Dawn Rowe
Third District Supervisor
Chair, San Bernardino County Board of Supervisors

CC: Inland Empire Legislative Delegation

BOARD OF SUPERVISORS

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Luther Snoke
Chief Executive Officer

From: LISA LACLAIR <[REDACTED]>
Sent: Monday, July 7, 2025 07:25 PM
To: FGC <FGC@fgc.ca.gov>
Subject: western joshua tree conservation plan

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Western Joshua Tree (WJT) Conservation Plan

This plan should not be approved as written in the current draft.

There are many items that the CDFW identifies that “will be defined, that may be done, that may include, that should be done”; for example, the CDFW will define criteria for lands. Until these items are clearly defined, this plan is incomplete and should not be adopted.

No studies have been conducted on the success rate of moving WJTs and there is no requirement that the relocated WJTs receive continued care after relocation to ensure their survival, their survival being the primary objective of the plan. There is no land management plan in place. There is no plan for tracking the progress of protecting priority lands.

No studies on the cost of relocation lands have been provided. The plan states that the Conservation Fund will pay for these lands, but no exact or even ballpark cost estimate has been provided. No studies have been completed on how much land will be needed, nor has a timeline for acquiring these lands been identified.

What is the availability of Desert Native Plant Specialist required to be used to assess the offset distance? This requirement is burdensome. Reasonable standards need to be set that will both protect the WJT and avoid unduly burdening property owners. Despite recent home appreciation, Yucca Valley remains a relatively low-income community with a large community of retirees and many younger Families of Color. The 50 foot radius outlined in the plan is excessive; the previous distance was 5 feet. The practice of tree spade location supports the 5 foot radius because a WJT that is up to 14 feet high only requires a 90 inch tree spade. Shorter trees require even smaller tree spades. It should be noted that Yucca Valley homeowners who connected to the sewer system several years ago state that WJTs only a few feet from the sewer trench were unharmed and are thriving.

There need to be exemptions incorporated into the plan for disturbance fees associated with State of California-mandated actions. Homeowners should be exempted from disturbance fees incurred due to their compliance with State-ordered actions; specifically, the requirement to connect to the sewer system. Since the state mandates sewer connections, the disturbance/take fee should be waived or funded by the state.

Additionally, the sewer system for Yucca Valley, CA was supposed to be completed by 2016. Nearly a decade later the installation is not complete. Homeowners who through no fault of their own cannot yet connect to the sewer system should be grandfathered in

accordance with the WJT protections in effect at the time the sewer plan was adopted. Homeowners cannot fairly be penalized because the project is behind schedule.

Ironically, the very homeowners who have taken steps to preserve and nurture the WJTs on their property will be the ones penalized under this plan. Builders and homeowners who clear cut the WJTs on their properties will bear none of this burden. WJTs are enjoyed by everyone in the state and nationwide. Any relocation/take fees should be funded by the state and not by individual homeowners who happen to have WJTs on their property

From: Candace Moulton <[REDACTED]>

Sent: Wednesday, July 9, 2025 9:46:34 PM

To: FGC <FGC@fgc.ca.gov>

Subject: Urgent Western JT questions Conservation act

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1. When will the Department issue guidance to allow fire hardening of homes and communities?
2. Why are there inconsistencies between the Act, the Plan, and the Department's actions?
3. Why are incidental take permitting fees so arbitrary?
4. Why were residents left out of developing permitting rules and the Conservation Plan?
5. When and how were Western Joshua Tree (WJT) incidental take permitting rules developed?

Why wasn't it a public process, and when will those rules be posted?

6. Why didn't the Department collaborate with local water agencies and public works departments?

When developing the ITP permitting rules and the Conservation Plan

7. Why has the Department not included planning for low and fixed income Morongo Basin residents?

As part of the Conservation Plan, or when developing permitting rules.

.

8. Can our local arborists and biologists be authorized to develop Joshua Tree protection zones?

They've been developing them for years and can help property owners minimize impact, reduce take, protect the trees, and avoid take fees.

9. The rules are impacting property values and limiting development options on buildable urban lots.

What guidance can the Department provide so that real estate professionals can accurately disclose Western Joshua Tree-related permitting costs to prospective buyers?

10. Who was involved in writing the Western Joshua Tree Conservation Act?

The Western Joshua Tree is under severe threat, and we can all work together to protect them

Wildfires, green energy development, large scale housing development, and bigger swings from wet to dry weather conditions are all endangering Joshua trees. We believe people are

well positioned to take care of the trees on their private property with the right education, incentives, and rules.

We Love Our Local Joshua Trees

Candace Moulton

[REDACTED]

[REDACTED]

[REDACTED]

[Yahoo Mail: Search, Organize, Conquer](#)

From: Lisa Edwards <[REDACTED]>
Sent: Thursday, July 10, 2025 4:06:53 PM
To: Bonham, Chuck@Wildlife <[REDACTED]>; FGC <FGC@fgc.ca.gov>
Subject: The Western Joshua Tree Conservation Act-My questions and comments

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Hi,

Note: I have attached a more formal letter to this email:

I am a local that has lived in the Yucca Valley area since 1968. My father was a builder here for 50+ years and built 600+ homes plus some commercial projects. We did a lot of construction 10' from Western Joshua Trees, and they are still thriving today as I drive around town and look at some of his projects. I feel that there needs to be a reduction of the buffer zones.

At the last public meeting online, some mention was made of reducing it to 10' along with single family residents being exempt from some of the regulations. **Please clarify and explain how you are going to make the implementation make sense to the average homeowner. The rules and regulations of what is involved with overseeing any work to be done, is ridiculous. Some of the arborists are charging exorbitant prices to do a census etc. Single Family Homes should be exempt and allowed to do improvements as long as there is a 10' buffer. The proposed 50' radius including trees on a neighbor's property is extreme and doesn't make any sense whatsoever. Relocation hasn't proven to be that successful either.**

My personal property has over 30 WJTs if you count all the sprouts...probably more since they grow in clumps. I'm afraid to even add up the costs for doing ANYTHING on my own property.

Exactly HOW do you expect the average person to pay for the insane take permit and "take" fees??? Sell their house because they can't afford to hook up to the sewer or can't afford to repair a water line, or do an emergency septic tank replacement?

At the last online meeting you "somewhat" acknowledged the public comments by emails etc, but we do not feel you are really listening to our concerns. I am in numerous online forums and groups in the area and there is confusion, stress, fear, and concern. For every person that actually takes the time to email or comment, there are probably 100+ that have the same concerns. Corporations say one email represents at least 1000 people—because most just don't actually contact them.

Any "dirt disturbance" seems extreme and costly. It is taking away homeowner rights and ability to improve or enjoy their own property. Big commercial projects make more sense of falling under these regulations and have the funds to absorb the costs. How are solar projects getting around this?? There have been acres of WJTs hacked down for these projects. We are a low income/retirement community with struggling families due to the lack of work in the area. Those that are fortunate to own homes are still struggling---especially if you add in the crazy increase of fire insurance in California, property taxes, mandated sewer hookups, food prices and gasoline skyrocketing, cost of living in general etc...etc...

The Center of Biological Diversity is a team of attorneys and scientists that are doing this same thing to communities all over the country and creating out of control restrictions and regulations that are having negative impacts on communities everywhere. I love nature and want to respect it, but some of this goes too far. We need better protections for the average citizens.

Here are some of the local questions and concerns;

1. When will the Department issue guidance to allow fire hardening of homes and communities?
2. Why are there inconsistencies between the Act, the Plan, and the Department's actions?
3. Why are incidental take permitting fees so arbitrary?
4. Why were residents left out of developing permitting rules and the Conservation Plan?
There hasn't been enough done on a local level where you actually plan WITH the people and communities that will be severely impacted.
5. When and how were Western Joshua Tree (WJT) incidental take permitting rules developed?
Why wasn't it a public process, and when will those rules be posted? **2-3 minutes commenting at meetings isn't enough.**
6. Why didn't the Department collaborate with local water agencies and public works departments?
When developing the ITP permitting rules and the Conservation Plan? **We are mandated by the State to connect to the sewer system. You are making it near impossible for people to pay for this if Joshua Trees are involved. And why in the heck would there need to be take permits for installing sewer lines in the middle of existing streets?**

7. Why has the Department not included planning for low- and fixed-income Morongo Basin residents as part of the Conservation Plan, or when developing permitting rules? Besides that, the average middle class couldn't even afford estimates of \$20-40,000 for permits if they had a higher number of WJTs on their property.

8. Can our local arborists and biologists be authorized to develop Joshua Tree protection zones?

They've been developing them for years and can help property owners minimize impact, reduce take, protect the trees, and avoid take fees.

9. The rules are impacting property values and limiting development options on buildable urban lots.

What guidance can the Department provide so that real estate professionals can accurately disclose Western Joshua Tree-related permitting costs to prospective buyers?

There has to be a better compromise so we can all work together to protect them. Locals love the Joshua Trees, but now are beginning to wish they had ZERO on their own property because the costs are prohibitive.

Thank you for reading and listening. We appreciate all your hours and efforts to remedy a challenging situation.

**Sincerely,
Lisa Edwards**

[REDACTED]

July 9, 2025
Lisa Edwards
Morongo Basin Resident since 1968
Yucca Valley
[REDACTED]

California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244-2090

Email: fgc@fgc.ca.gov

Subject: Urgent Need for Transparency, Fair Implementation, and Community Protection Under the Western Joshua Tree Conservation Act and Draft Plan

Dear Commissioners,

As a resident of the Morongo Basin—where the Western Joshua tree is both a defining feature of our landscape and part of our everyday environment—I'm writing to express urgent concerns about how the Western Joshua Tree Conservation Act (WJTCA) and the Draft Conservation Plan are being implemented.

A Historic Step Undermined by a Problematic Rollout

The WJTCA is a landmark policy in California's approach to plant conservation, marking the first time a native plant species has triggered such extensive permitting processes, mitigation costs, and land-use restrictions. This has major implications for private property rights, community development, and infrastructure planning across our region.

Unfortunately, the path to adopting the Act was anything but inclusive:

- It was passed as part of the state budget, without open debate, without meaningful opportunity for public comment, and without engagement with local governments or the communities most directly impacted.
- The resulting policies are inconsistent, difficult to understand, and burdensome—not only for individual residents, but also for local agencies tasked with enforcement.
- The Department now expects local jurisdictions to issue permits under this complex new system—despite those jurisdictions having been left out of the development process and, in many cases, lacking the resources or desire to manage these requirements.

Damaging Effects on Housing, Infrastructure, and Public Safety

The Act and its Draft Plan are already producing widespread negative effects:

- Homeowners and housing developers are facing costly delays or denials of permits in areas long identified for future growth to meet California's housing needs.
- Infill development, which should be encouraged in already urbanized areas, is being stalled by unclear or excessive restrictions.
- Critical infrastructure projects—for water delivery, energy, and public safety—are being delayed and made significantly more expensive due to high mitigation fees.
- Wildfire prevention and safety efforts are also being impeded. Vital vegetation management and fire-hardening work is slowed by complex and unclear permitting rules.

Additionally, the Plan places an excessive burden on projects by requiring both:

1. Implementation of on-site minimization or mitigation efforts, and
2. Payment of in-lieu fees under the Act.

This “double penalty” is unreasonable. The Act permits the use of in-lieu fees as an alternative—not an add-on—and projects that meaningfully minimize harm should not face additional financial penalties. It must be one or the other.

Definition of “Take” Must Be Plant-Appropriate

The application of the term “take” is also deeply problematic. California law defines “take” in relation to wildlife—species that move and can be captured or hunted. The original Fish and Game Code Section 86 describes “take” as “hunt, pursue, catch, capture, or kill.”

Applying that same definition to a plant like the Western Joshua tree—stationary and often unaffected by small-scale disturbances—makes little ecological or legal sense. The Act itself recognizes that certain impacts are permissible and not all projects require a fee, indicating that a zero-impact standard was never the intention.

The Plan should:

- Provide a scientifically sound definition of “take” that reflects the biological nature of a plant species.
- Spell out clearly what actions do and do not constitute “take.”
- Acknowledge that many projects reduce harm through design and location, and that such efforts should result in reduced permitting burdens and lower or no fees.

Don’t List the Western Joshua Tree—Fix the Act Instead

In light of how the Act and Plan were developed—without transparency or adequate input from those most affected—I strongly urge the Commission to:

- Reject any proposal to list the Western Joshua tree as threatened or endangered under the California Endangered Species Act at this time.
- Instead, work to reform and improve the Act through a more inclusive, public process that balances ecological protection with real-world community needs for housing, infrastructure, fire safety, and sustainable growth.

This is about more than one species—it sets the tone for how California balances environmental protection with human needs. The current Plan risks doing more harm than good, and the communities that have lived with and valued the Western Joshua tree for generations were largely left out of its creation.

A Call for Inclusive, Transparent Policy

I respectfully request that the Commission and the Department reopen this process to the

public, involve local stakeholders meaningfully, and create solutions that are practical, fair, and ecologically sound.

Thank you for considering these concerns.

Sincerely,
Lisa Edwards
Morongo Basin Resident

From: pamela@pamelagarcia.realtor <pamela@pamelagarcia.realtor>

Sent: Thursday, July 10, 2025 09:26 AM

To: Bonham, Chuck@Wildlife [REDACTED]

Cc: FGC <FGC@fgc.ca.gov>

Subject: Urgent Recommendations Regarding the Western Joshua Tree and the Current Regulatory Landscape

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Date: July 10, 2025

To:

California Fish and Game Commission

P.O. Box 944209

Sacramento, CA 94244-2090

Dear Members of the California Fish and Game Commission,

I am writing to you as a resident of the Morongo Basin, a licensed real estate professional, and someone deeply invested in the preservation and prosperity of our desert communities. I urge you to carefully reconsider the current course of action regarding the Western Joshua Tree (*Yucca brevifolia*) and its placement under the California Endangered Species Act (CESA).

The Current Regulatory Environment – A Well-Intentioned Mess

Since the emergency listing of the Western Joshua Tree as a candidate species in 2020 and its formal designation as threatened in 2023, the regulatory framework has created confusion, delays, and economic hardship for landowners, developers, small businesses, and even public agencies. The permitting process through the California Department of Fish and Wildlife (CDFW) has been inconsistent and overwhelmed. The distinction between “legacy trees” and “nursery trees,” vague thresholds for mitigation, and a lack of

clarity on habitat management guidelines have made it nearly impossible for local stakeholders to plan, invest, or build confidently.

While the intent to preserve this iconic species is universally respected, the tools currently being used are blunt, bureaucratic, and, in many cases, counterproductive.

How We Got Here

The push for emergency protection of the Western Joshua Tree came in response to valid concerns about climate change, habitat fragmentation, and rapid development in parts of the Mojave. However, the blanket application of CESA regulations—without sufficient scientific consensus on species viability, without stakeholder engagement at the community level, and without a pragmatic implementation framework—has resulted in a broken system.

Ironically, some of the most effective conservation efforts have been led by the very communities being hurt the most—those who live and work in the desert.

Examples of Successful Compromise

There have been small but powerful victories demonstrating that conservation and development can coexist:

- Local conservation easements and open space dedications tied to housing developments have resulted in contiguous habitat preservation while still allowing housing growth.
- Landowners have voluntarily relocated or replanted Joshua Trees in collaboration with local biologists, showing a willingness to adapt without rigid enforcement.
- Partnerships between cities and tribal governments have led to more culturally and environmentally sensitive land use plans.

These examples prove that when local voices are included, and flexibility is granted, solutions can emerge that protect both the land and the people.

Urgent Recommendations

I respectfully submit the following recommendations:

1. **Reform the Permit Process Immediately**
Simplify and standardize the Western Joshua Tree permitting process. A clearly defined, tiered system based on project scale and tree impact would reduce confusion and restore confidence.

2. **Recognize Local Control and Planning**
Empower counties and municipalities to create their own Joshua Tree Conservation Plans, with oversight and approval by the state. These plans should allow for planned growth while ensuring habitat corridors and protected zones.
3. **Support Incentives, Not Just Penalties**
Shift the focus from punitive regulation to positive reinforcement. Provide financial and technical support for landowners who choose to preserve Joshua Trees, relocate them appropriately, or set aside habitat.
4. **Re-evaluate the Threatened Status Every 3 Years Based on Updated Science**
Require the Commission to reassess the species' status regularly using peer-reviewed climate and population data. Decisions must reflect real-world ecological changes—not outdated models or political pressure.
5. **Invest in Education and Stewardship**
Fund education campaigns in desert communities to promote appreciation, protection, and stewardship of the Joshua Tree—especially among youth and new residents. Long-term survival depends on culture as much as law.

Closing Thoughts

The Western Joshua Tree is a symbol of the California desert. But it is also a symbol of resilience—something our communities know intimately. Please help us restore balance by fixing what is broken. Let's protect the tree without strangling the communities that have always been its most faithful stewards.

Thank you for your service and urgent attention to this matter. I am available to speak further or provide insight from our region at any time.

With sincerity and respect,

Pamela Garcia

Realtor | Desert Community Advocate

Coldwell Banker Roadrunner Realty

Yucca Valley, California

From: Russell Gibbs <glenrealty@aol.com>

Sent: Thursday, July 10, 2025 4:35:29 PM

To: FGC <FGC@fgc.ca.gov>

Cc: Bonham, Chuck@Wildlife <Chuck.Bonham@wildlife.ca.gov>

Subject: Western Joshua tree

You don't often get email from glenrealty@aol.com. [Learn why this is important](#)

WARNING: This message is from an external source. Verify the sender and exercise caution when clicking links or opening attachments.

Dear Commissioners and Director Bonham,

Thank you for extending the comment period on the Western Joshua Tree Conservation Plan.

We've lived and worked around Joshua trees for decades. Nearly every home in the area was built next to them without harm — just drive through and see. Local residents have always respected and coexisted with these trees.

The current plan feels overly complicated and unfair, especially for disadvantaged communities. It was pushed through with no local input and now places unnecessary burdens on homeowners and small projects.

We support conservation that makes sense — like the exemption for single-family homes. That approach should be expanded to include essential services and small multifamily projects.

We urge the Commission to support changes to the Act or reconsider the species' listing, so the plan can be implemented in a way that's workable for the people who live here.

Thanks,

Russell

Russell Gibbs
The Glen Realty
760-668-6913 Cell
760-365-8341 Fax
License #01127608

Email: fgc@fgc.ca.gov

July 10, 2025

Jerome Manne



Morongo Basin Resident

California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244-2090

Subject: Urgent Need for Reform, Transparency, and Community Protections when implementing the Western Joshua Conservation Act and Plan

Dear Commissioners,

As a resident of the Morongo Basin and part of a community that lives alongside the Western Joshua tree every day, I am compelled to submit this letter to raise urgent concerns regarding the Western Joshua Tree Conservation Act and the Draft Conservation Plan.

Groundbreaking Precedent But a Flawed Process with Harmful Impacts

The Western Joshua Tree Conservation Act represents a **groundbreaking precedent in California**: It is the first time a plant species has been subject to such complex and restrictive land use permitting processes, coupled with high fees and mitigation costs. The Act is setting the stage for unprecedented regulation of private property, community growth, and infrastructure development.

However, this precedent has been created through a **deeply flawed process**:

- The Act was passed as part of the state budget, **behind closed doors**, without meaningful public review, input from local governments, or the communities most affected.
- The resulting regulations are **confusing, inconsistent, and burdensome** for residents and agencies.
- The Department is attempting to **delegate permit authority** to local governments—yet these agencies were not consulted in developing the Act or the permitting rules and many have **no interest in administering complex, unworkable rules**.

Harming Housing, Infrastructure, and Public Needs

The Act and Plan are already creating significant harm to:

- **Homeowners and housing developers**, by halting or delaying home construction in an area that has long been expected to grow to meet California's housing needs.
- **Infill housing projects**, where existing urban and suburban areas are being blocked from reasonable development.
- **Critical infrastructure projects** for water, energy, and public safety—many of which now face **extremely high mitigation fees** and delays.
- **Wildfire safety projects**, where necessary fire hardening and vegetation management efforts are mired in permitting confusion.

The Plan also creates a **double penalty** for projects by requiring both:

- Costly **on-site mitigation or minimization measures**, and
- Payment of an **in-lieu fee** under the Act.
- It must be **one or the other**, not both. The Act itself allows for in-lieu fees as an alternative, and projects that effectively minimize impacts should not also be subjected to additional fees.

Definition of “Take” Must Reflect Plant Status — Not Animal Standards

The term "take" has always been defined in California law based on animals - wildlife species that **move**. The original **California Fish and Game Code Section 86** defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to do so.”

Applying this same framework to a **stationary plant species** like the Western Joshua tree makes no sense, particularly when its physical relocation or minor impacts do not threaten its viability.

The Act itself acknowledges that **impacts are allowed** and that not every project must pay a fee—demonstrating that a rigid, zero-impact approach was never the legislative intent.

The Plan must:

- Provide a **reasonable definition of “take”** that accounts for the ecological realities of Joshua trees.
- Clearly define what activities constitute a "take."
- Respect the fact that **minimization and detrimental impacts are allowed** under the Act, and projects that minimize impacts should be supported with reduced permitting burdens and fees.

Commission Should NOT List the Species — Focus on Reforming the Act Instead

Given the **chaotic and opaque process** that produced the current Act and Plan, the Commission must:

- **Decline to list the Western Joshua tree as a threatened or endangered species** under the California Endangered Species Act.
- Instead, focus on advancing **meaningful, publicly vetted legislation** that protects the species while ensuring housing, infrastructure, and community needs are met.

The Commission must recognize that this is not simply about protecting a species—it is about setting a precedent for how California will balance **conservation, housing, infrastructure, wildfire safety, and community needs** in the future.

The current plan creates more harm than good. It threatens the very communities that live alongside the Western Joshua tree, and it was developed in a way that **excluded** those most affected.

I urge the Commission and the Department to engage in an open, transparent public process to develop workable solutions.

Thank you for your consideration of these serious concerns.

Sincerely,

Jerome Manne
Morongo Basin Resident

July 8, 2025

To: California Fish and Game Commission

From: James R. Foote
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Comments on the June 2025 Draft of the Western Joshua Tree Conservation Plan

Thank you for this opportunity to comment on the June 2025 draft of the Western Joshua Tree Conservation Plan (WJTCP) prepared pursuant to Section 1927.6 of the Western Joshua Tree Conservation Act (WJTCA). My comments are organized into five sections: (1) lack of clarity regarding mitigation obligations; (2) unsupportable avoidance buffer determinations; (3) ten-tree limit upon delegation of take authorization to cities and counties; (4) incorrect assertion that adoption of the WJTCP is voluntary; and (5) lack of clarity how the WJTCP applies during the candidacy period for the western Joshua tree. Suggested remedies following each section are provided for consideration.

Comment No. 1: Lack of Clarity Regarding Mitigation Obligations

It is clear based on the Agency and Public Input Summary Memo, Appendix B of the WJTCP, that one of the primary concerns of the public when undertaking a project, particularly when located on single-family residential properties, pertains to the payment of mitigation fees as described in Sections 1927.3(d) and 1927.3(e) of the WJTCA. Yet the payment of such fees is not absolute, that is, payment is required only when any person or public agency receiving a take authorization elects to pay these fees in lieu of satisfying the mitigation obligation provided for in Section 1927.3(a)(3).

1927.3(a)(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.

The option to pay mitigation fees in lieu of completing the mitigation obligation by the permittee is reiterated in Sections 6.5 and 6.6.2 of the WJTCP.

Section 6.5 WJTCA provides a framework for authorizing take of western Joshua tree through the issuance of permits (Fish & G. Code, § 1927.3, subd. (a)). Pursuant to this framework, permittees may elect to pay fees in lieu of completing mitigation obligations. (page 6-11)

Section 6.6.2 Under WJTCA, a permittee may pay a fee to take each individual tree based on the size of tree in lieu of completing mitigation obligations on its own. (page 6-17)

However, the WJTCP does little to nothing to clarify the type or extent of the mitigation measures that could be prescribed to achieve the mitigation obligation addressed in Section 1927.3(a)(3) of the WJTCA, thereby relieving the permittee of paying mitigation fees. In particular, this lack of clarity leaves the single-family residential property owner in the Town of Yucca Valley in fear of potential financial devastation when connecting to the State-mandated sewer system, a nondiscretionary action. Such sewer connection is defined as an “accessory structure” in accordance with Section 1927.1(a) of the WJTCA, for which, in accordance with Section 1927.2(f), an authorization of take is required pursuant to Chapter 10 (commencing with Section 2800) of Division of the Fish and Game Code (which is the Natural Community Conservation Planning Act) upon approval of a natural community conservation plan, i.e., the WJTCP.

Further, it is not clear with respect to sewer connections in the Town of Yucca Valley how the measures required to meet the mitigation obligation pursuant to Section 1927.3(a)(3) of the WJTCA would differ from the avoidance and minimization requirement pursuant to Section 1927.3(a)(2).

1927.3(2) The permittee avoids and minimizes impact 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.

Given that residential sewer connections are relatively straightforward with limited variables, one can argue that an alignment of the sewer connection that avoids and minimizes impacts to the western Joshua tree to the maximum extent practicable, consistent with Section 1927.3(a)(2), also mitigates all impacts to the western Joshua tree (upon employing all reasonable measures) consistent with Section 1927.3(a)(3). (Note that to “mitigate” impacts means to moderate or alleviate impacts, not completely avoid or eliminate them.) Therefore, it is reasonable to argue that upon compliance with Section 1927.3(a)(2), the permittee also has met the mitigation obligation as required by Section 1927.3(a)(3) and, as a result, is not required to pay in-lieu mitigation fees.

Finally, a lack of clarity regarding what may constitute measures to meet the mitigation obligation pursuant to Section 1927.3(a)(3) of the WJTCA, particularly with respect to sewer connections in the Town of Yucca Valley, could result in arbitrary determinations of such measures on a case-by-case basis. One must question how individuals tasked with project-specific determinations about mitigation measures required to meet the mitigation obligation make such determinations absent applicable guidance. For example, if a sewer connection is located to best avoid western Joshua trees located on a permittee’s residential property by ensuring the trench is equidistant from each of the affected trees, pursuant to the avoidance and minimization requirements of Section 1927.3(a)(2), what additional measures would be required to meet the mitigation obligation pursuant to Section 1927.3(a)(3)? Clearly, Appendix D, Avoidance and Minimization Best Management Practices and Guidelines, of the WJTCP does not offer guidance for such projects as this.

REMEDY

The WJTCP should clarify, for both landowners and individuals delegated with making determinations about mitigation measures to meet the obligation required by Section 1927.3(a)(3) of the WJTCA, the considerations to be employed when evaluating project sites that would differentiate between avoidance and minimization determinations pursuant to Section 1927.3(a)(2) and the mitigation obligation of Section 1927.3(a)(3). The WJTCP should also provide examples of measures that would satisfy the mitigation obligation, differentiating between such measures and avoidance-minimization measures. Absent such clarification, the landowner may be the subject of a potentially arbitrary determination that

could result in financial devastation when a different outcome might occur had a different individual made these determinations. Not only should clarity in this regard result in two individuals making the same determinations about measures to achieve the mitigation obligation for the same property, the same individuals would need to substantiate their determinations, thereby providing the landowner with rationale why the avoidance and minimization measures undertaken pursuant to Section 1927.3(a)(2) of the WJTCA do or do not satisfy the mitigation obligation required by Section 1927.3(a)(3).

Comment No. 2: Unsupportable Avoidance Buffer Determinations

I am pleased that the recommended minimum buffers for ground disturbance identified in Section 5.2.1, Action A&M 1.2 (Implement Avoidance Buffers) contained in the previous draft of the WJTCP have been removed. Since an explanation for this revision was not provided, it leaves me to conclude there is a lack of scientific evidence to support programmatically-applied avoidance buffers of 25, 50, and 186 feet, instead deferring determinations of buffers to delegated individuals on a case-by-case basis upon considering the information described in the WJTCP on page 5-11.

However, if there are insufficient data or evidence to support specific distance buffers to be utilized on a programmatic basis, how can the consideration of the information provided in the WJTCP to determine avoidance buffers on a case-by-case basis yield a different result? How would buffers determined on a case-by-case basis be any more supportable than those of a programmatic nature? The information identified for consideration had already been presented in the December 2024 draft of the WJTCP, but only to be utilized for potential adjustments to the specific-distance buffers. Now they themselves provide the basis for buffer determinations, not simply information to be considered for adjustments. For example, if a 50-foot avoidance buffer for a western Joshua tree one meter or greater in height but less than five meters in height can no longer be substantiated, how can a specific distance buffer determined on a case-by-case basis for the same tree be substantiated regardless of which factor cited in the WJTCP is considered? The end result is the same, that is, it lacks the scientific foundation for establishing an avoidance buffer at a specific distance from the tree whether 10, 25, or 50 feet, or some intermediate distance. Without such foundation, any buffer determination would be arbitrary and based on unsupported supposition.

Further, while the WJTCP describes information to be considered when determining avoidance buffers, it fails to elaborate how such information might inform the individual delegated to make a buffer determination. For example, does a greater versus lesser density of western Joshua trees suggest broader or narrower buffers? Does the location of a tree relative to existing structures suggest broader or narrower buffers? Do the intensity and depth of proposed ground-disturbing activities suggest broader or narrower buffers? Without clarification provided in the WJTCP, the public cannot ascertain or even make an educated guess as to the size of buffers to be determined for any particular project and, in turn, cannot estimate mitigation fees statutorily established in Sections 1927.3(d) and 1927.3(e) of the WJTCA should a permittee elect to pay these fees in lieu of completing the mitigation obligation on its own pursuant to Section 1927.3(a)(3).

Specific discussion regarding information provided on page 5-11 of the WJTCP under Action A&M 1.2 (Implement Avoidance Buffers) is provided as follows:

- “Density of trees within each project site as provided by the project census or other biological survey information.”

How would density of western Joshua trees on the project site inform the determination of avoidance buffers? Does a greater density suggest that buffers should be smaller in scope given

the potential for overlap of buffers, or does a greater density suggest broader buffers to ensure preservation of overlapping root networks? Does a greater density of trees suggest a greater potential for survival in response to project impacts, or does it suggest that a greater number of trees would be harmed from any one project? If the former, then a smaller avoidance might be warranted, but if the latter, then a broader buffer could be established. What knowledge is brought to the field determination by an individual charged with making buffer determinations? Is there sufficient clarity when considering the density of trees such that two different individuals would make the same determination?

- “Location of a tree in relation to existing structures, such as fences, driveways, or other permanent structures.”

Does close proximity to permanent structures suggest that western Joshua trees have been hampered in their growth and vitality, which might suggest that avoidance buffers should be broad to enable unencumbered root growth to occur where the permanent structure does not restrict growth, or might it suggest that thriving trees in such circumstances have not been unduly impacted so that avoidance buffers should be limited in extent? If western Joshua trees appear to thrive whether proximal to a fence, which creates little impact from the small areas disturbed for fence posts, or adjacent to driveways or block walls which restrict root extensions to the depth of the installation, how is this information to be considered when determining buffers? Does proximity to permanent structures suggest broader avoidance buffers to enhance protection on the side which is not encumbered by such structures? As with the item discussed above, is there sufficient clarity when considering the proximity of trees to existing structures such that two different individuals would make the same determination?

- “Intensity and depth of proposed ground-disturbing activities (e.g., trenching and excavation impacts may be different than installing fencing).”

Again, questions arise as to how consideration of such information will inform the determination of avoidance buffers. It can logically be inferred from the statement that projects requiring trenching and excavations would result in broader buffers than projects more limited in ground disturbance such as a fencing. Perhaps the less-intense trenching for sewer connections would yield smaller buffers than clearing an area to construct the foundation for a new house. But when it comes to setting an actual radial distance for the buffer, how is the buffer to be calculated? As with the two bullet points discussed above, anecdotal evidence suggests that reality and biological supposition do not equate. As an example (pertinent to my house in Yucca Valley), large western Joshua trees (greater than five meters in height) within five feet of a house built in 1978 are thriving. Given the growth rate of Joshua trees, they must have been in place when the ground for the foundation was cleared and accessory structures (underground power lines, cable and telephone lines, and water lines) were installed. Given such circumstances, how will an individual charged with determining buffers apply the “intensity and depth” consideration when it comes to trenching for sewer connections? Further concern regards the determination of avoidance buffers relative to existing septic tanks, particularly should it be mandated they be removed. Such action would likely result in greater ground disturbance than the trenching for the sewer connection itself, but how does this translate to buffer determinations? And consider the anticipated survival of western Joshua trees that are relocated whereby all roots within a short distance of the root ball are completely severed. Given this severity of impact, how is it reasonable that trenching for sewer connections and removal of septic tanks at a greater distance from a western Joshua tree than the width of the spade cut to remove the tree warrants an avoidance buffer that is greater in extent than the width of the spade cut? It does not pass the straight face test.

- “Duration of proposed impacts (temporary or permanent).”

For western Joshua trees left in place and not relocated, consideration of this factor suggests that Joshua trees are incapable of responding to ground-disturbing impacts. A couple of scenarios are worth considering in this regard. While a sewer connection is permanent, only the width of the pipe itself is permanent while vegetative growth above, below, and to the sides of the pipe would only be temporarily constrained. If a permanent block wall is constructed proximal to a western Joshua tree, is the tree incapable of sufficiently accessing water and nutrients from the roots growing parallel to or away from the block wall? Probably not as anecdotal evidence shows.

- “Additional minimization measures to reduce impacts of buffer encroachment (e.g., supplemental watering, protecting roots and trees from access, or avoiding equipment damage, etc.).”

Consideration of such measures directly affects the practicability of project design and completion. Of primary concern with respect to sewer connections for single-family residences to the State-mandated sewer system in the Town of Yucca Valley is how the application of potential minimization measures described above would affect the determination of avoidance buffers, and whether individual homeowners have the financial capacity to implement these measures. How could potential equipment damage from trenching be avoided? It may or may not be practicable to dig these trenches by hand depending on the length of the trench and the nature of the soil (clay-like hard-packed material versus loose alluvium). Would avoiding equipment damage result in smaller avoidance buffers? An appropriate minimization measure would be proper alignment of the sewer connection to avoid, to the greatest degree practicable, western Joshua trees. If mechanized equipment is necessary to dig the trench, would this result in a broader avoidance buffer thereby ensuring that the trenching activity occurs within the buffer zone and mitigation fees are paid? Further, as a minimization measure, what is meant by “protecting roots and trees from access”? While it may be inferred that it means “motorized” access, it is not clear. Does it also mean pedestrian access? Once again, is there sufficient clarity when considering the potential application of mitigation measures such that two different individuals would make the same determination regarding avoidance buffers?

- “Geographic location (e.g., is the project located in an urban, developed, or undeveloped area? Is the project within priority climate refugia?).”

One might infer that projects located in developed urban areas would result in smaller avoidance buffers given that western Joshua trees have already been impacted in such areas and broad buffers might achieve limited results regarding protections for the species, and that broader buffers in undeveloped areas and within priority climate refugia would be warranted as survival of the species would be more likely therein. Or, because it is not clear, would broader buffers be preferred in urban and developed areas because it is here that threats are greatest thereby requiring more protection from ground-disturbing activities? Is Yucca Valley considered a developed urban area with respect to the determination of avoidance buffers, or something in between an urban developed area and an undeveloped area?

- Life stage of tree, including reproductive stage. Branched trees are more likely to have produced seed and may have more extensive root structures.”

While the specific distance parameters for avoidance buffers have been removed from the June draft of the WJTCP, this consideration suggests broader buffers could be established for shorter branched trees (those less than five meters in height) than would have previously been set. In fact,

this consideration could result in greater mitigation fees since many branched trees between one and five meters in height might have previously fallen outside the applicable 50-foot buffer. It is unclear whether branched trees less than five meters in height could be considered in a reproductive stage that would warrant a broader avoidance buffer. Therefore, it is worth asking whether all western Joshua trees less than five meters in height would be definitively considered as not being in a reproductive phase and therefore would have less extensive root structures, thereby warranting a reduced avoidance buffer despite branching. Or will we see Joshua trees between one and five meters in height be assigned broader buffers if they are branched, possibly indicating they may have produced seed and may have more extensive root structures consistent with mature trees?

REMEDY

This unfortunate circumstance could be remedied in one of two ways, though the first would fall victim to the same shortcomings as those described above:

(1) Elaborate on the manner in which the information to be considered when determining an avoidance buffer is intended to inform individuals delegated with making buffer determinations. The public deserves to know how this process is to work, particularly since it has a direct bearing on determining the financial burden each project proponent would incur upon payment of in-lieu mitigation fees. The buffer determination process and in-lieu mitigation fee payments cannot be separated. However, as described above, the determination of buffers that vary in width based on the information to be considered when making such determinations is inherently arbitrary absent scientific evidence that justifies any particular distance. For example, if it is determined that a 20-foot buffer would be warranted, there must be rationale as to why a 10-foot buffer is insufficient to achieve sufficient protection of root structure, as well as why a 30-foot buffer is unnecessarily broad to achieve the same purpose.

As expressed in Section 1927.3(a)(2) of the WJTCA, avoidance and minimization of impacts to, and the taking of, the western Joshua tree to the maximum extent practicable does not mean that impacts cannot occur, instead describing that encroachment on root systems resulting in detrimental but nonlethal impacts is allowable. This begs the question of how one determines the size of a buffer zone in which detrimental but nonlethal impacts are allowable within the context of avoidance and minimization measures. Further, given the inclusion of root encroachment that results in detrimental but nonlethal impacts to a western Joshua tree as an allowable avoidance and minimization condition, what is the purpose of establishing avoidance buffers of any size beyond those necessary to protect the root ball (significant damage to which could be lethal) other than as a means to determine mitigation fees?

When considering single-family residential properties, it would appear that conservation of western Joshua trees is secondary, at best, and the collection of funds for land acquisition in priority climate refugia is primary. Is it fair and just to burden the residents of the Town of Yucca Valley with bankrolling a land acquisition program when they are simply conforming with the nondiscretionary requirement to connect to the State-mandated sewer system?

(2) Considerable effort by the Department of Fish and Wildlife has resulted in guidelines being established for successful relocation of western Joshua trees. While relocation is generally considered a last resort when leaving trees in place is not practicable for undertaking certain projects, the underlying assumption is that despite severing the roots surrounding the root ball from the outer root network, the tree is likely to survive when relocated if various prescriptive measures are implemented. The key concept to reiterate is that western Joshua trees can thrive even when the root network is completely severed as long as the root ball and attached roots within the diameter of the spade cut remain intact.

This concept should be applied when determining avoidance buffers, particularly since such buffers relate to western Joshua trees that will not be relocated, instead remaining in place. It would be reasonable to programmatically establish buffers that do not exceed the width of typical spade cuts which occur when relocating trees and severing the root network. It would be logical to assume that impacts occurring a greater distance from a western Joshua tree than inflicted by a spade cut would not significantly impact a tree's health. If a western Joshua tree can sustain the complete severing of its root system and regrow that system upon replanting, how could trenching for a sewer connection in the Town of Yucca Valley which would avoid the root ball and, in fact, avoid much of the root system, result in significant impacts that exceed the statutory avoidance and minimization requirement that allows for "encroachment of root systems ... or other actions that result in detrimental but nonlethal impacts to a western Joshua tree"?

Therefore, the recommendation is to establish avoidance buffers at a width no greater than the typical spade cut that would occur upon relocation of a western Joshua tree. Such a buffer would be established for trees of any size. This approach would avoid the arbitrary determination of buffer size, as well as avoid unreasonable financial burdens placed on project proponents. While the Conservation Fund would realize less in fee payments, the receipts could be defended as derived through a fair implementation of the WJTCA. It is important to acknowledge that the mitigation fees described in Sections 1927.3(d) and 1927.3(e) of the WJTCA apply upon the authorization of take and in lieu of satisfying the mitigation obligation by the project proponent on its own as provided for in Section 1927.3(a)(3). If no take authorizations are required, as would occur where western Joshua trees occur outside avoidance buffers as determined in compliance with WJTCP guidelines, no mitigation fees are required.

Comment No. 3: Ten-Tree Limit Upon Delegation of Take Authorizations

Section 1927.3(c) of the WJTCA provides that the California Department of Fish and Wildlife may enter into an agreement with any county or city to delegate to the county or city the ability to authorize the taking of western Joshua trees associated with a variety of projects, including sewer connections (which are defined as "accessory structures"), but only if certain conditions are met. Among these conditions described in Section 1927.3(c)(3) is that the project will take no more than 10 individual western Joshua trees on the project site, including for constructing an accessory structure such as a sewer connection.

If the Town of Yucca Valley, for example, is delegated such authority, it could find itself unable to authorize take of western Joshua trees for connections to the State-mandated sewer system if more than 10 western Joshua trees occur within the yet-undetermined buffer zones. Whether the Town could authorize such take is largely dependent on buffer zone determinations. Under the previous draft of the WJTCP in which the extent of avoidance buffers was precisely described, more than 10 western Joshua trees would be subject to take on many residential properties, including my own, hence the Town could not authorize the taking and the sewer connection could not be made. But connections to the sewer system are nondiscretionary. It is not acceptable that take authorizations be denied, thereby subjecting residents to potential penalties of up to \$5,000 per day for failure to connect to the sewer system within the allotted timeframe. The potential for such circumstance must be averted.

REMEDY

The WJTCP should describe the potential for non-issuance of incidental take permits as described above and suggest how non-issuance for this reason may be overcome. Strict compliance with the WJTCA in this regard may force authorizations for take to be issued by the California Department of Fish and Wildlife. Should this occur, the concern of landowners in the Town of Yucca Valley who must connect to the State-mandated sewer system within 180 days of the main line being completed is that the Department may be unable to process a large number of permits in sufficient time to meet the connection deadline.

Whether the local jurisdiction could acquire an exemption to the 180-day deadline issued by the Water Quality Control Board is unknown.

Comment No. 4: Incorrect Assertion that Adoption of the WJTCP is Voluntary

It is asserted in the Introduction to the WJTCP that management actions identified in the Plan “can be voluntarily adopted and implemented by project proponents ... to help conserve and protect the species from harm” and that the Plan “does not create new statutory or regulatory mandates” (pages 1-1 and 1-2). Likewise, preparation of a conservation plan to conserve western Joshua trees, as mandated by Section 1927.6 of the WJTCA, is accomplished in accordance with the Natural Community Conservation Planning Act (Sections 2800 – 2835 of the Fish and Game Code) which also asserts that natural community conservation planning is a “voluntary and effective planning process ... to protect ... landowners and other private parties” (Section 2801(f)).

In reality, however, management actions identified in the WJTCP are not voluntary. While it is asserted that management actions identified in the Plan can be voluntarily adopted and implemented, Section 1927.2(f) of the WJTCA indicates otherwise: “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 [such as residential sewer connections or “accessory structures”] shall only be pursuant to Chapter 10 (commencing with Section 2800) of Division 3 [of the Fish and Game Code].” It is important to note that Chapter 10 constitutes the Natural Community Conservation Planning Act, so when it is mandated that take authorization must be pursuant to Chapter 10, it indicates that such authorization must conform to management actions identified in the WJTCP. Hence, while adoption and implementation of a conservation plan standing on its own would be voluntary consistent with the Natural Community Conservation Planning Act, the WJTCA directs otherwise. In accordance with the WJTCA, adoption and implementation of the WJTCP is not voluntary since any take authorization related to projects covered by the Plan “shall only be pursuant” to the Plan (Section 1927.2(f)).

REMEDY

It is recommended that the WJTCP reiterate the WJTCA’s requirement relative to take authorizations, thereby clarifying that adoption and implementation of management actions identified in the Plan are not, in fact, voluntary. While this raises issues related to application of the California Environmental Quality Act in that the WJTCP may, in fact, create regulatory mandates given language in the WJTCA, this conundrum should not deter the Commission from concluding the obvious and taking an appropriate action. Clearly, the WJTCA has created a snag in what otherwise would have been a planning process not constrained by specific statutory requirements for conservation of an individual species despite the lack of a decision to date by the Commission to list the western Joshua tree as threatened or endangered under the California Endangered Species Act, instead declaring it to be a candidate species.

Comment No. 5: Lack of Clarity How the WJTCP Applies During the Candidacy Period

There appears to be an inconsistency in the WJTCA with regards to obtaining a take authorization while the western Joshua tree remains a candidate species for listing under the California Endangered Species Act.

1927.2(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.

Currently, the western Joshua tree is a candidate for listing. Hence, there are two options for obtaining a take authorization as provided by the WJTCA: (1) in accordance with the California Endangered Species Act, or (2) paying the mitigation fee described in the WJTCA. First, the option of simply electing to pay a mitigation fee to obtain take authorization improperly suggests that such fee payment negates the requirement to obtain an incidental take permit, though the reference to Section 1927.3 in its entirety creates confusion as to the permit requirement. Second, the payment of mitigation fees is predicated on the permittee's decision to not undertake the mitigation obligation on its own pursuant to Section 1927.3(a)(3), so suggesting that the permittee simply pay a fee to obtain a take authorization is misleading at best.

Notwithstanding these issues, Section 1927.2(f) seems contradictory to the options for obtaining take authorization pursuant to Section 1927.2(b).

1927.2(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.

If the Commission approves the WJTCP at its August meeting, thereby establishing the WJTCP as the only vehicle for obtaining a take authorization pursuant to Section 1927.2(f), a conflict occurs in this regard as long as the western Joshua tree remains a candidate species. Clearly, upon a determination by the Commission that the western Joshua tree warrants endangered or threatened status pursuant to the California Endangered Species Act, or such listing is not warranted, the provisions at Section 1927.2(b) would no longer apply. But Section 1927.2(b) remains in force absent such determination by the Commission. Hence, one must question how take authorization is to be obtained when two different scenarios are prescribed given the western Joshua tree's current status.

REMEDY

The remedy is as follows: (1) the WJTCP clarifies how both Sections 1927.2(b) and 1927.2(f) are applied while the western Joshua tree remains a candidate species, or (2) the Commission moves quickly to make a determination regarding listing so that Section 1927.2(b) becomes inoperative and either Section 1927.2(d) or Section 1927.2(e) become operative. It is noteworthy that whether Section 1927.2(d) or Section 1927.2(e) become operative, approval of the WJTCP establishes it as the vehicle for obtaining incidental take permits pursuant to Section 1927.2(f).

Again, thank you for this opportunity to comment on the draft WJTCP.

From: Dewayne Dante [REDACTED]

Sent: Tuesday, July 22, 2025 07:58 AM

To: [REDACTED]; FGC <FGC@fgc.ca.gov>

Subject: Western Joshua Tree Conservation Act - Informational Webinar for California Native American Tribes

WARNING: This message is from an external source. Verify the sender and exercise caution when clicking links or opening attachments.

Dear Mr. Bonham and ALL The California Department of Fish and Wildlife employees,

I am writing to bring your awareness to 9 parcels of dense Joshua Tree woodlands in Yucca Valley - a total of 23 acres. These 23 acres are a portion of a much larger, continuously dense Joshua Tree Forest. These incredibly healthy Joshua Tree woodlands are the home to several hundreds of healthy, thriving Joshua Trees with all ecosystems alive and intact. Numerous species inhabit this forest. These 9 parcels were recently purchased in September 2024 by a 25-member Native American tribe located in Coachella, CA., the Twenty-Nine Palms Band of Mission Indians. Their official reservation is approx. 600 acres between the cities of 29 Palms and Coachella, CA. The tribe is currently petitioning these 23 acres of Joshua Tree woodlands to become sovereign.

As you may recall in 2011, the Twenty-Nine Palms Band of Mission Indians were interested in building a casino in Joshua Tree. Public comment and community involvement were allowed. With the opposition of Senator Dianne Feinstein and residents allowed to speak, voicing their opposition, the casino project was shut down.

In Yucca Valley 2020-2025, approx. 13 miles from Joshua Tree National Park, the tribe purchased 7 acres of Joshua Tree Woodlands in Yucca Valley and petitioned the BIA for off-site reservation. The opportunity was not made available for comment; local and state wildlife organizations or residents have had no voice. These 7 acres have now become sovereign.

On the sovereign 7 acres, there is now a cannabis dispensary, and the tribe will soon be constructing a gas station and travel center with underground gas tank storage. The EPA has approved this 7-acre development in Yucca Valley and approved 2 other tribe development sites - one in 29 Palms and one in Joshua Tree.

According to a letter that The Morongo Basin Action Committee received from an attorney representing the tribe, while clearing the land for the cannabis dispensary, the tribe and their developers did not kill Joshua Trees but transplanted a few Joshua Trees.

It seems the developers are slowly clearing the 7 acres now to build the gas station and travel center; they are leaving the cactus and Joshua Trees standing for now.

The 23 acres next to the 7 acres of sovereign land in Yucca Valley are currently being petitioned by the tribe to become sovereign.

If these 23 acres become sovereign, I do believe the impact on wildlife and the ecosystems will cause severe, irreversible damage. I cannot imagine pulling out several hundred Joshua Trees and replanting them.

It seems the California Department of Fish and Wildlife has created a new policy between Native American tribes and the California Department of Fish and Wildlife. There needs to be more involvement and scrutiny from the California Department of Fish and Wildlife in the application process for tribes when they are purchasing fee-to-trust lands. Including proof of historical connection to lands the tribes wish to obtain into trust. Hunting and gathering and walking through an area in my opinion does not meet strong historical connection.

These BIA fee-to-trust applications - specifically in Yucca Valley for these 7 acres that have been approved for sovereignty - seem to be way too easy regarding wildlife preservation.

Communication between tribes, their developers, local government, and the people that actually live in the area must be more focused on community involvement, with more serious inquiry to the actual location and its significance to wild flora, fauna, and animals. The proximity to corridors for bighorn sheep, bobcats and the desert tortoise are in question with these specific land acquisitions in Yucca Valley.

It seems there is a golden opportunity for the Twenty-Nine Palms Band of Mission Indians, specifically in this region of the Morongo Basin, to increase their corporate holdings. Currently, it seems the 25-member tribe has 607 acres, 2 casinos, 3 cannabis dispensaries, and a 59-pump truck stop. With no opposition allowed in Yucca Valley and the Morongo Basin, and the ability to bypass state wildlife protection laws, it would be possible for tribes on sovereign lands acquired to have the power to decimate nature.

I would be more than happy to show you the 23 acres of Joshua Tree woodlands in Yucca Valley that the tribe is currently petitioning the BIA and federal government to become reservation lands. You will be astonished at the vibrancy of the life and health of this land.

The Twenty-Nine Palms Band of Mission Indians could not have chosen a worse location to build on. If they are approved for the additional 23 acres, so many species will decline. The location is less than 2 miles from important protected lands. It is unfortunate the tribe did not reach out to the community and wildlife conservancies to find a better-suited land for development.

It seems to me that awareness needs to become extremely clear to tribes that once ecosystems disappear, that's it.

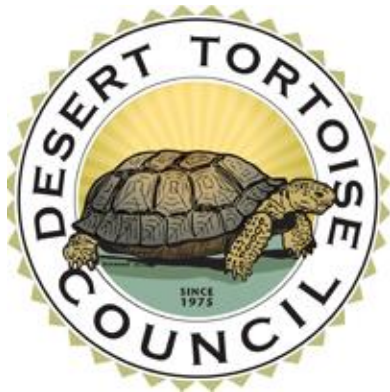
We would appreciate any effort you can put forth to prevent these 23 acres of Joshua Tree woodlands in Yucca Valley from becoming sovereign.

Please let me know if I can provide any additional information.

Sincerely,

Dewayne Ethan Dante

[REDACTED]



DESERT TORTOISE COUNCIL

3807 Sierra Highway #6-4514

Acton, CA 93510

www.deserttortoise.org

eac@deserttortoise.org

Via email and Certified Mail Return Receipt

March 18, 2025

Amy Dutschke
Pacific Regional Director
Bureau of Indian Affairs
2800 Cottage Way, Suite W-2820
Sacramento, CA 95825
amy.dutschke@bia.gov

RE: Development of Land Held in Trust for the Twentynine Palms Band of Mission Indians

Dear Ms. Dutschke,

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and northern Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

Both our physical and email addresses are provided above in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer to receive emails for future correspondence, as mail delivered via the U.S. Postal Service may take several days to be delivered. Email is an "environmentally friendlier way" of receiving correspondence and documents rather than "snail mail."

The Mojave desert tortoise is among the top 50 species on the list of the world's most endangered tortoises and freshwater turtles. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers the Mojave desert tortoise to be Critically Endangered (Berry et al. 2021), "... based on population

reduction (decreasing density), habitat loss of over 80% over three generations (90 years), including past reductions and predicted future declines, as well as the effects of disease (upper respiratory tract disease/mycoplasmosis). *Gopherus agassizii* (sensu stricto) comprises tortoises in the most well-studied 30% of the larger range; this portion of the original range has seen the most human impacts and is where the largest past population losses have been documented. A recent rigorous rangewide population reassessment of *G. agassizii* (sensu stricto) has demonstrated continued adult population and density declines of about 90% over three generations (two in the past and one ongoing) in four of the five *G. agassizii* recovery units and inadequate recruitment with decreasing percentages of juveniles in all five recovery units.”

This status, in part, prompted the DTC to join Defenders of Wildlife and DTPC (Defenders of Wildlife et al. 2020) to petition the California Fish and Game Commission in March 2020 to elevate the listing of the Mojave desert tortoise from Threatened to Endangered in California. In its status review, California Department of Fish and Wildlife (CDFW) (2024a) stated: “At its public meeting on October 14, 2020, the Commission considered the petition, and based in part on the Department’s [CDFW] petition evaluation and recommendation, found sufficient information exists to indicate the petitioned action may be warranted and accepted the petition for consideration. The Commission’s decision initiated this status review to inform the Commission’s decision on whether the change in status is warranted.”

Importantly, in their April 2024 meeting (CDFW 2024b), the California Fish and Game Commission voted unanimously to accept the CDFW’s petition evaluation and recommendation to uplist the tortoise from threatened to endangered under the California Endangered Species Act based on the scientific data provided on the species’ status, declining trend, numerous threats, and lack of effective recovery implementation and land management. The Commission is expected to vote on uplisting the tortoise to endangered in the next few months.

Recently the Council became aware of a development project underway on land held in trust by the Bureau of Indian Affairs (BIA) for the Twentynine Palms Band of Mission Indians (Tribe). The project is located on the west side of Yucca Valley and south of State Highway 62 in San Bernardino County, California. It is referred to as the Cielo property and consists of six parcels – APN 0586-042-01, APN 0586-042-02, APN 0586-042-03, APN 0586-042-04, APN 0586-042-05, and 0586-042-06. We understand that a business was constructed on the property, a marijuana dispensary, and another project is planned – to construct, operate, and maintain a travel center that includes a gas station with numerous fuel pumps and a store. The marijuana dispensary included a request to the Town of Yucca Valley (Town) for authorization to install one or more structures and/or infrastructure (e.g., utilities) on the property.

The Council is concerned that the completed project (marijuana dispensary) and proposed project (travel center) have not undergone appropriate National Environmental Policy Act (NEPA) compliance and Federal Endangered Species Act (ESA) compliance. Our concerns are based on the following information:

On December 13, 2022, the BIA issued a Notice of Decision (Case Number 23517) for the six parcels (Cielo property) to be held in trust by the BIA for the Twenty-nine Palms Band of Mission Indians (Tribe). In that decision document BIA relied on the following information regarding the future management of that property:

1. Under “25 C.F.R. §151.10(c) Purpose for which the property will be used” BIA stated, “The Cielo property is currently undeveloped open space. The Tribe has no plans to change the use of the Property.”
2. Under “25 C.F.R. §151.10(f) – Jurisdictional problems and potential conflicts of land use” BIA stated, “The acceptance of the Cielo property into federal trust status for the benefit of the Tribe will remove the property from State and local laws concerning real property taxation and other land use regulations. Tribal law will govern these activities after the property is accepted into trust, to much the same extent that it does now on existing trust land.” “It is our determination that there are no jurisdictional or potential land use conflicts regarding land use.”
3. Under “25 C.F.R. §151.10(h) – Environmental Compliance: The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 1-7 National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.”

For “National Environmental Policy Act Compliance . . . the proposed action herein has been determined not to require the preparation of either an environmental assessment (EA) of environmental impact statement (EIS). A categorical exclusion for the acquisition of the Cielo property was approved . . . Compliance with NEPA has been completed.”

4. For “Endangered Species Act (ESA) Compliance,” “The Endangered Species Act (ESA) requires federal agencies to determine if its action may affect a threatened or endangered species. The BIA review concludes no effects to endangered or threatened species would result from the Cielo acquisition.”
5. “25 CFR §151.11(c) – Where land is being acquired for business purposes, the Tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use: The subject property is not being obtained for business purposes but will continue to be utilized as open space. A business plan is not required.”

This information provided in BIA’s Notice of Decision appears to be deeply flawed because it was based on inaccurate information and incomplete analysis of connected actions.

Regarding 1., some of the land has been developed. Please see Figures 1 through 3 – photographs of recent activity on the Cielo property are attached to this letter. The Tribe initiated communication with the Town regarding the development of the Cielo property in January 2023 a little more than 30 days after the BIA’s Notice of Decision was issued and shortly after the 30-day

appeal period ended. These communications continued until late 2024. If the Cielo property were to remain as open space, there would be no need to engage in conversations with the Town regarding the Cielo property for more than a year. This activity and timeline with the Town gives the impression that the Tribe had plans to develop the property prior to BIA's issuance of the Notice of Decision. The Cielo property now has a marijuana dispensary located on it. The Council concludes that the information and conclusion that the BIA provided for this factor was incorrect. Part of the Cielo property has been developed. The Tribe had plans to change the use of the Property.

Regarding 2., the determination of no potential conflicts with land use appears to not be supported by the information provided in the Notice of Decision. We assume this determination was based on BIA's assumption from information provided by the Tribe that the land would not be developed.

The additional statement that Tribal law will govern these activities after the property is accepted into trust, to much the same extent that it does now on existing trust land" is unclear in its meaning. The marijuana dispensary is located near existing residences. The Tribe recently developed a large travel center on its property in Coachella (<https://www.mobilityplaza.org/news/38981>). According to "Gary Fletcher, executive director of travel centers for the tribe, the 12,000-square-foot facility marks the debut of a new era for the tribe's retail ventures. Apart from its Kupa Coffee Shop, the brand expects to expand the site with a truck wash, truck repair facility, and a trucker lounge by early 2025." "This Coachella location boasts 59 fueling positions, with 36 under the auto canopy and 15 under the truck canopy, designed to accommodate a wide range of vehicles. The tribe plans to open three more sites on Twenty-Nine Palms Band of Mission Indian Reservation land across California."

The Council is concerned that the Tribe is planning to develop a similar travel center on the Cielo property. If the property were under the jurisdiction of the Town of Yucca Valley, there would be a public hearing for the proposed development, the need for a conditional use permit, and the preparation of, as a minimum, a mitigated negative declaration under the California Environmental Policy Act (CEQA) because of the numerous new impacts this development would impose on the human environment in the vicinity of the development. A similar process would have occurred for the development of the marijuana dispensary. The Council concludes that the typical land use process to disclose a proposed development project on private property, notify nearby land owners, analyze the impacts of the proposed development project, provide for public input, and mitigate the impacts to minimize or avoid impacts to the human environment has been circumvented by transferring the lands to Tribal control where these land use processes are no longer required. The Council concludes that the information and conclusion that the BIA provided for this factor was unsupported and incorrect.

Regarding 3., BIA states that a categorical exclusion for the acquisition of the Cielo property was approved and compliance with NEPA has been completed. However, NEPA requires that connected actions be evaluated together. Before the development of the travel center or other development project could occur under tribal law (and bypassing state and local requirements for environmental compliance and development including development that include hazardous

materials), the subject land needed to be transferred to the reservation. Thus, it appears that BIA segmented its NEPA compliance by isolating the acquisition of the property as one NEPA action while not addressing the Tribe's plans to develop the property. This is a violation of NEPA. The Council concludes that the information and conclusion that the BIA provided for this factor was incorrect.

BIA should require the Tribe to halt all development activities on the Cielo property that BIA holds in trust, and BIA should complete NEPA compliance for the existing and proposed development. The appropriate NEPA compliance document for a marijuana dispensary or a travel center would be an environmental assessment that is circulated for public comment or an environmental impact statement if the Tribe has other related development projects (which the quote from Gary Fletcher above indicates).

Regarding 4., BIA concludes "no effects to endangered or threatened species would result from the Cielo acquisition." In Section 4.4 "Endangered Species and Historic Property Consultation," of the BIA's NEPA Guidebook (2012), BIA states that:

"Under Section 7 consultation under the ESA [Endangered Species Act] (50 CFR 402) is not required when the BIA determines that a project will have "no effect" to an endangered species or critical habitat because none are located in the project area. Any determination beyond a "no effect" will require informal and possibly formal consultation with the U.S. Fish and Wildlife Service (USFWS). The BIA offices should maintain close coordination with local USFWS offices to ensure proper consultation occurs."

With regard to the Notice of Decision, we found no information in the Notice that documented that the NEPA Guidebook's requirements had been followed, that is, that "the BIA determined that a project will have "no effect" to an endangered species or critical habitat because none are located in the project area."

The Council requests that BIA provide supporting documentation of the process and information that it used to determine that no Mojave desert tortoises were or are located in the project area in its Notice of Decision.

We are puzzled as to how the BIA determined that there are no threatened or endangered species located in the project area. The Cielo property is within the range of the federally threatened Mojave desert tortoise (USFWS 2011, page 46), contains suitable habitat for the tortoise (Nussear et al. 2009, page 13; USFWS 2011, page 52), and is connected/adjacent to larger areas of suitable habitat for the tortoise (USFWS 2011, page 52; Averill-Murray et al. 2021). A query of IPaC (Information for Planning and Consultation; <https://ipac.ecosphere.fws.gov/location/index>), a planning tool provided by the USFWS on-line, shows the Mojave desert tortoise as occurring in the project area. These documents and the IPaC website are available on-line to the public.

We are unaware that surveys were conducted by BIA to document that no tortoises were occupying the project area. For the tortoise, the USFWS has issued pre-project survey level protocols for the tortoise to be conducted by biologists deemed qualified by the USFWS throughout the “action area” of the development on the Cielo property. The “action area” is defined in 50 Code of Federal Regulations 402.2 and the USFWS Desert Tortoise Field Manual (USFWS 2009) as “all areas to be affected directly or indirectly by proposed development and not merely the immediate area involved in the action.” Thus, the action area that is surveyed for tortoises/tortoise sign is larger than the project footprint/project site. Absent these surveys and coordination with the USFWS, the BIA has provided no information to support its conclusion of “no effect” as described in the BIA NEPA Guidebook (BIA 2012).

Regarding the current development of the Cielo property, because several sources listed above indicate that the tortoise/tortoise habitat occur in the project area, the Council is concerned that the construction, operation, use, and maintenance of this project is likely to adversely affect the tortoise and may result in the take of the tortoise. Take includes harming or harassing a listed species that may occur from direct or indirect impacts from the project.

For example, because tortoises spend most of their time underground, it is extremely difficult to determine when conducting surface disturbance activities whether a hatchling to adult desert tortoise is in a burrow or tucked under a shrub from the vantage point of the operator of a grader, other heavy equipment, or a vehicle. This is an example of direct mortality. An example of an indirect impact that contributes to tortoise mortality includes providing subsidies of food, water, and sites for perching and nesting by common ravens (e.g., fences, walls, and other vertical structures; uncovered containers of trash, litter, etc.) and other tortoise predators. These and other impacts to the tortoise would be caused by the construction, operation, and use of the marijuana dispensary and the construction, operation, and use of the travel center.

As BIA is aware, compliance with the Federal Endangered Species Act (ESA) applies to any action that is authorized, funded or carried out by a federal agency, or any action by a state, tribal, or local agency or private entity that is likely to result in take of a federally listed species. Consequently, the Council is requesting that the BIA provide documentation to the Council of its consultation with the U.S. Fish and Wildlife Service (USFWS) regarding the construction, operation, use, and maintenance of the projects on the Cielo property and their direct and indirect effects/impacts to the tortoise. We presume that BIA would be the responsible entity for ensuring compliance with the Federal ESA because BIA is holding the Cielo property in trust for the Tribe.

Because BIA did not provide documentation to support the requirement that for a “no effect” determination the listed species is not present in the project area, several publicly available sources indicate that tortoises and tortoise habitat are in the project area, and the Cielo property has recently been developed, the Council concludes that the information and conclusion that the BIA provided for this factor in the Notice of Decision were unsupported and incorrect.

Regarding 5., apparently BIA was incorrect in its Notice of Decision that the “subject property is not being obtained for business purposes but will continue to be utilized as open space. A business

plan is not required.” Apparently, a marijuana dispensary is located on the Cielo property (see photos attached). Under the Controlled Substances Act (CSA), marijuana is a Schedule I controlled substance. This federal law currently prohibits the manufacture, distribution, dispensation, and possession of marijuana except in federal government-approved research studies. Selling marijuana is a felony with a federal felony with penalties of up to five years in jail and up to \$250,000 in fines.

Our understanding is that the Cielo property where the marijuana dispensary is located is held in trust by the BIA. The land held in trust by a federal agency that has a business on it that sells marijuana and its products, which is a felony under federal law, provides an interesting public perception.

BIA should halt the development and require the Tribe to prepare and submit a factual business plan including plans for other travel centers, a marijuana dispensary, and other businesses that may be related to this property/the use of this property.

Because the Notice of Decision was based on information that was incorrect and unsupported for several of the factors that must be addressed before making the Decision, the Council believes that BIA should ensure that compliance with environmental laws is carried out correctly for past actions implemented on the Cielo property.

Although these concerns focus on compliance with federal environmental statutes, regulations, and BIA policies, we are also concerned about the Tribe’s discretionary request to the Town of Yucca Valley for authorization to install one or more structures/infrastructure on the property (please see attached figures). The conversation between the Tribe and the Town started in January 2023 and continued until late 2024. The permitting and/or construction of the structure(s) and/or infrastructure may be considered discretionary under the California Environmental Quality Act (CEQA), which triggers compliance with other California environmental laws and codes by the Town of Yucca Valley. Consequently, we are sending a copy of this letter to the California Department of Fish and Wildlife, California Public Utilities Commission, and others who may have jurisdiction.

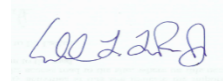
In previous letters to the BIA (e.g., September 21, 2020; 17 April 17, 2022; October 23, 2022) to the BIA’s Western Regional Office, the Council stated that the “Desert Tortoise Council wants to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by the BIA that may affect species of desert tortoises and that any subsequent environmental documentation . . . is provided to us at the contact information listed above.” The Council reiterates this request and identifies that the BIA did not notify the Council when it issued its December 13, 2022, Notice of Decision (Case Number 23517) for the Cielo property that is now the location of a marijuana dispensary.

To clarify, we ask that you notify the Council at eac@deserttortoise.org of any proposed projects that the BIA may be proposing to authorize, fund, or carry out in the range of any species of desert tortoise in the southwestern United States (i.e., *Gopherus agassizii*, *G. morafkai*, *G. berlandieri*,

G. flavomarginatus) so we may comment on it to ensure that the BIA fully considers and implements actions to conserve these tortoises as part of its directive to conserve biodiversity on lands it holds in trust.

Please respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project.

Respectfully,



Edward L. LaRue, Jr., M.S.

Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

Attachments (3figur): Photos of the Cielo property with an existing business (marijuana dispensary), recent surface disturbance, and installation of infrastructure

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Figure 1. Red Falcon marijuana dispensary on Cielo property held in trust by the Bureau of Indian Affairs for the Twentynine Palms Band of Mission Indians.



Figure 2. Recent installation of infrastructure and Joshua tree uprooted on the Cielo property held in trust by the Bureau of Indian Affairs for the Twentynine Palms Band of Mission Indians.



Figure 3. Recent installation of infrastructure and surface disturbance of the Cielo property held in trust by the Bureau of Indian Affairs for the Twentynine Palms Band of Mission Indians.

