

LOGOS

July 10, 2025

DRAFT

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

Director Charlton Bonham
California Department of Fish and Wildlife
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Sent electronically to fgc@fgc.ca.gov

Sent electronically to Chuck.Bonham@wildlife.ca.gov

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. The administratively administered Permitting portion of the plan is punitive against the hundreds of thousands of residents and business owners who have lived successfully among the Joshua trees for decades. Judging from the remarks you made 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. The Act and the Plan are the result of the Commission’s continued listing of the species as a candidate threatened under the Endangered Species Act solely based on climate change, resulting in the continued “need” to treat this as a potential threatened species, even though numerous studies have proven otherwise. Because we do not anticipate any substantive changes to the Plan, we request that the Commission direct the CDFW to revise its administrative policies in administering the plan so that the results will not be as detrimental to the affected communities and public agencies while this “experiment” to conserve a species solely based on climate change is underway.

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, builders and real estate brokers, water district employees, local government officials, environmental consultants, etc. 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 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 (CDFW) must continue working to reverse strong distrust created by the way the Western Joshua Tree Conservation Act ("Act") originated and what it contains. We note that the western Joshua tree was considered for listing as an endangered species not just once, but a few times under both federal and state petitions, but scientifically did not qualify. Then came a bill, 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 suddenly converted to 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. If the Commission continues to refuse to take issue to decide that the species does not afford protection under the ESA, but does want to continue with the Conservation Plan, then CDFW leadership, which developed the original Act with no public input, needs to champion corrections in the Act that will untie the hands of the staff to allow for the administrative changes to make this experiment more manageable in the long term.

In similar fashion, the experimental nature of this novel approach, with its case-by-case permitting, work 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. To date, we have seen the CDFW staff want to do more, but because of the status of the species as a candidate, their hands are tied. Therefore, there needs to either be changes to the Act to allow for administrative relief, or this Commission needs to declare the species not subject to the ESA, but worthy of the Plan.

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 be 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 hear that some local jurisdictions (cities and counties) may 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. We suggest that the Plan should include more incentives for local jurisdictions to embrace this 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. Climate change is a global phenomena. There is nothing a local or State agency can do that will solve this problem. The Plan still does not identify specific metrics by which the species would no longer be in danger or has recovered to a point that it no longer needs to be considered a candidate species due to climate change. All the while, this Plan and the Act burdens the severely disadvantaged communities that have lived in harmony with the western Joshua tree for many decades.
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. However, we implore the Commission and the CDFW that while you continue to experiment with saving a species due to climate change over the next 10 years, that you do not experiment with the hundreds of thousands of residents, businesses and public agencies that are hurting now and will in the future due to this Plan. 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,

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.