



News & Publications

Western Joshua Tree Conservation Act Passes California Legislature, Creates Streamlined Take Permitting Process

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On June 27, 2023 the California Legislature passed the Western Joshua Tree Conservation Act (“WJT Act”) as part of this year’s suite of budget trailer bills. Governor Newsom is expected to sign the Act into law this week. Assuming that occurs, the Act would become effective July 1.

Passage of the WJT Act is the latest in a series of State actions addressing conservation of western Joshua trees since the California Fish and Game Commission (“Commission”) declared the species a candidate for listing under the California Endangered Species Act (“CESA”) in 2020. Under CESA, candidate species are afforded the same protection from “take” as listed species, meaning that take is prohibited unless authorized by the California Department of Fish and Wildlife (“CDFW”) through issuance of an incidental take permit.

As long as the species remains a candidate for listing under CESA, the Act will significantly simplify the CESA take permitting process by allowing developers to obtain take authorization by avoiding and minimizing take to the maximum extent practicable and paying a fee established by the Act. The fee - which is paid on a per-tree basis and varies based on tree height and project location - should reduce mitigation costs relative to what might otherwise be required in CESA incidental take permits issued for the species. Fees under the WJT Act vary between \$150 and \$2,500 per trunk or stem emerging from the ground, depending on tree height and project location. If the Commission ultimately lists the species as threatened or endangered under CESA, the WJT Act would become inoperative and take

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authorization would only be available under CESA and its strict standards.

The WJT Act also includes provisions applicable to the development of residential projects and public works projects, as well as provisions for property owners seeking to trim or remove trees on their properties. CDFW can delegate to cities and counties the ability to authorize take of the species associated with the development of single-family and multi-family residential projects, accessory structures (e.g., accessory dwelling units and garages), and public works projects. Residential projects (including accessory structures) may not take more than 10 trees on the project site, and public works projects may not take more than 40 trees on the project site. Projects must pay the in-lieu fee discussed above. Additionally, CDFW may issue permits or authorize cities and counties to issue permits to property owners seeking to remove or trim dead trees or trim live trees on their properties. Property owners must pay administrative fees when submitting such permit applications, but are not required to pay in-lieu mitigation fees.

Finally, the WJT Act requires CDFW to develop and implement a western Joshua tree conservation plan describing management actions necessary to conserve the species, establishing measurable, objective criteria to assess the effectiveness of those actions, and providing guidance for avoidance and minimization of impacts to the species and tree relocation protocol. CDFW is required to provide a draft plan to the Commission by December 31, 2024, and the Commission is required to take final action on the plan by June 30, 2025. The WJT Act also requires the Commission to consider the effects of the conservation plan, in-lieu fee program, and other relevant information when making a final determination of whether to list the species as threatened or endangered under CESA. As a practical matter, this means the species should remain a candidate at least until the Commission adopts a final conservation plan for the species.

If you would like to know more about WJT implications for your project, please reach out to Cox Castle's natural resources permitting team.