

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk
County of: N/A

From: (Public Agency): CA Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244-2090

(Address)

Project Title: Take of western Joshua tree

Project Applicant: N/A

Project Location - Specific:
Anywhere western Joshua trees are found in California

Project Location - City: Multiple Project Location - County: Multiple

Description of Nature, Purpose and Beneficiaries of Project:
The proposed project would authorize the removal or trimming of western Joshua trees that pose a hazard to public health and safety.

Name of Public Agency Approving Project: California Fish and Game Commission

Name of Person or Agency Carrying Out Project: California Department of Fish and Wildlife

Exempt Status: (check one):

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: _____
- Statutory Exemptions. State code number: _____

Reasons why project is exempt:
The Commission determined that the project is exempt from the California Environmental Quality Act (CEQA) as an action necessary to prevent or mitigate an emergency as specified in Public Resources Code 21080(b)(4) and 15269(c) of the CEQA guidelines.

Lead Agency
Contact Person: Melissa Miller-Henson Area Code/Telephone/Extension: (916) 653-4899

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: Melissa D. Miller-Henson Date: 12/23/2020 Title: Executive Director

Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code. Date Received for filing at OPR: _____
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

ATTACHMENT TO NOTICE OF EXEMPTION Take of western Joshua tree

At its September 22, 2020 meeting, the California Fish and Game Commission determined that listing western Joshua tree as a threatened or endangered species under the California Endangered Species Act (CESA) may be warranted pursuant to California Fish and Game Code Section 2074.2. Upon publication of notice in the California Notice Register, western Joshua tree became a candidate species. Candidate species are protected under CESA pursuant to Fish and Game Code Section 2085 during the CESA listing process. Fish and Game Code Section 2084 permits the Commission to authorize, subject to terms and conditions it prescribes, and based on the best available scientific information, the take of any candidate species, "provided that...the take is consistent with" CESA.

On December 3, 2020, the California Department of Fish and Wildlife provided the Commission with a proposed regulation to address potential human safety issues related to western Joshua trees, that will be exacerbated by winter weather, and the constraints imposed by the western Joshua tree candidacy protections. To address potential hazards related to human safety, and pursuant to the presiding officer's authority, the Commission added an agenda item to the December 9-10, 2020 meeting to allow consideration of regulations for the limited take of western Joshua tree.

At its December 9-10, 2020 meeting, the Commission took emergency action under the Fish and Game Code and the Administrative Procedure Act to add Section 749.11 to Title 14 of the California Code of Regulations (CCR) to allow limited take of western Joshua tree necessary to address this emergency.

Statutory Exemption from the California Environmental Quality Act

The Commission determined, based on the record, that the approval is exempt from the California Environmental Quality Act (CEQA) as an action necessary to prevent or mitigate an emergency as specified in Public Resources Code subdivision 21080(b)(4) and in Title 14, CCR, subsection 15269(c) of the CEQA Guidelines. The Commission further determined, pursuant to Section 11346.1 of the Government Code, that an emergency situation exists and found the proposed regulation is necessary to address the emergency.

The proposed regulation would create a permit process for the California Department of Fish and Wildlife to authorize applicants to remove trees that have fallen over and are within 30 feet of a structure, are leaning against existing structures, or otherwise create an imminent threat to public health or safety. There is sufficient risk to warrant taking emergency action; a regular, non-emergency rulemaking would not allow these risks to be addressed quickly.