

January 7, 2022

**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.

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, the Commission adopted on December 10, 2020 emergency regulation Section 749.11, Title 14 of the California Code of Regulations (CCR) for the limited take of western Joshua tree OAL (No. 2020-1228-02E).

At its October 14, 2021 meeting, the Commission took action to readopt Section 749.11, for the first of two 90-day periods effective November 8, 2021 (OAL file No. 2021-1027-02EE) and will expire on February 8, 2022 unless it is readopted for an additional 90 days.

At its December 15, 2021 meeting, the Commission took action to readopt Section 749.11 to allow limited take of western Joshua tree for a second 90-day period to prevent lapse in regulatory coverage.

Extending the emergency regulation would prevent excessive permitting delays and significant costs that could be detrimental to public safety and result in property damage.

**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 re-adoption in regulation is necessary to address the emergency.

The proposed re-adoption regulation would continue 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.