ORDINANCE NO. 4435

An ordinance of San Bernardino County, State of California, to add section 11.0206(a)(1)(C) to Chapter 2 of Division 1 of Title 1 of the San Bernardino County Code relating to increased fines for the unlawful removal of Joshua trees.

The Board of Supervisors of the County of San Bernardino, State of California, ordains as follows:

SECTION 1. The Board of Supervisors of San Bernardino County finds that:

- (a) At just over 20,000 square miles, San Bernardino County (County) is the largest county in the contiguous United States. Among the features that contribute to the attractiveness and livability of the County desert communities are its Joshua trees growing as single specimens or in clusters. These trees have significant psychological and tangible benefits for both residents and visitors. The County and its residents have a deep appreciation for the Joshua tree as a symbol of resiliency and determination to survive and thrive in the desert. The Joshua tree contributes to the visual framework of the County by providing scale, color, silhouette and mass. The Joshua tree also provides screens and buffers to separate land uses and contributes to the protection of other natural resources by providing erosion control for the soil, oxygen for the air and habitat for wildlife. The Joshua tree contributes to the economy of the County by sustaining property values and as an iconic emblem of the region.
- (b) The County has a strong desire to protect and preserve the Joshua tree, as shown by the adoption of local regulations designed to regulate the removal of Joshua trees, to prevent unnecessary loss, to encourage replacement planting, and to effectively enforce unlawful removal. The County's local regulations apply to all subspecies of Joshua trees, commonly referred to as the western Joshua tree (*Yucca brevifolia*) and the eastern Joshua tree (*Yucca brevifolia jaegeriana*).
 - (c) On October 21, 2019, a petition to list the western Joshua tree as

threatened under the California Endangered Species Act (CESA) was submitted to the Fish and Game Commission (Commission). Thereafter, at its scheduled public meeting on September 22, 2020, the Commission found that sufficient information existed to indicate the petitioned action may be warranted and accepted the petition for consideration. Upon publication of the Commission's notice of its findings, the western Joshua tree was designated a candidate species under CESA on October 9, 2020.

- (d) The Commission's action designating the western Joshua tree as a candidate species triggered the California Department of Fish and Wildlife's (Department) process for conducting a status review to inform the Commission's future decision on whether listing the species is warranted.
- (e) At its scheduled public meeting on April 21, 2022, the Department provided the Commission with its status review report which recommended that the Commission find that the petition to list the western Joshua tree as a threatened species is not warranted. At its scheduled public meeting on June 15 and 16, 2022, the Commission is expected to consider the Department's status review and make a determination on whether to list the western Joshua tree as a threatened species under CESA.
- (f) During the candidacy period the western Joshua tree has received protection from removal (i.e., take) under CESA, including enhanced punishment for the violation of an unlawful removal. (Fish and Game Code §§ 12000-12300.) In the event the Commission accepts the Department's recommendation regarding the western Joshua tree and local regulation is restored, the County's misdemeanor fines for the unlawful removal of Joshua trees do not provide an appropriate deterrence given the importance and value of the Joshua tree as described in subsection (a). In order to protect the public peace, health, and safety that the Joshua tree provides, this ordinance provides for increased fines to deter violators and make enforcement actions more impactful in order to prevent the unlawful removal of the Joshua tree.
- (g) This ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, 14 California Code of Regulations,

sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the Board of Supervisors further finds that the ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption, 14 California Code of Regulations section 15308 (regulatory activity to assure protection of the environment). There are no unusual circumstances under CEQA Guidelines, 14 California Code of Regulations, section 15300.2, subdivision (c) that would render these exemptions inappropriate. Each exemption stands as a separate and independent basis for determining that this ordinance is not subject to CEQA.

SECTION 2. Section 11.0206(a)(1)(C) is added to Chapter 2, Division 1, Title 1 of the San Bernardino County Code to read:

11.0206 Criminal Actions.

(C) Violations of Chapter 88.01. Notwithstanding the penalty provisions in Section 88.01.050(j)(1), upon conviction of a misdemeanor, or upon a plea of nolo contendere (commonly called "no contest") involving misdemeanor violations of Chapter 88.01 related to the unlawful removal of a Joshua tree, the penalty shall be as follows:

- (I) Any person convicted of a misdemeanor for the unlawful removal of a Joshua tree in violation of Chapter 88.01 shall be punished by a base fine of up to \$5,000.00 upon a first conviction, by a base fine of up to \$10,000.00 for a second conviction, by a base fine of up to \$20,000.00 upon a third or subsequent conviction, or by imprisonment in the County jail for a period of not more than six months, or by both such base fine and imprisonment;
 - (II) The unlawful removal of each Joshua tree in violation

of Chapter 88.01 shall be a new and separate offense.

SECTION 3. The Board of Supervisors declares that it would have adopted this ordinance and each section, sentence, clause, phrase, or portion of it, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions of it be declared invalid or unconstitutional. If for any reason any portion of this ordinance is declared invalid or unconstitutional, then all other provisions of it shall remain valid and enforceable.

SECTION 4. This ordinance shall take effect thirty (30) days from the date of adoption.

CURT HAGMAN, Chairman Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

LYNNA MONELL, Clerk of the Board of Supervisors

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1	STATE OF CALIFORNIA)
2) ss. SAN BERNARDINO COUNTY)
3	I, LYNNA MONELL, Clerk of the Board of Supervisors of San Bernardino County,
5	State of California, hereby certify that at a regular meeting of the Board of Supervisors of said County and State, held on the 14 th day of June, 2022, at which meeting were present
6	Supervisors: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr. and the Clerk, the foregoing ordinance was passed and adopted by the following
7	vote, to wit:
8	AYES: SUPERVISORS: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.
9	NOES: SUPERVISORS: None
11	ABSENT: SUPERVISORS: None
12	IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Board of Supervisors this 14 th day of June, 2022.
13	of the Board of Supervisors this 14 day of surie, 2022.
14	LYNNA MONELL Glerk of the
15	Board of Supervisors of
16	LYNNA MONELL Clerk of the Board of Supervisors of San Bernarding County State of Colifornias
17	SAN BERNARDINO
18	Debut
19	Approved as to Form:
20	TOM BUNTON
21	County Counsel
22	
23	But Salar Children
24	By: Sura (Mide) JOLENA E. GRIDER
25	Deputy Oounty Counsel
26	Nate: 6-21-22
27	Date: <u>0-21-22</u>