

**Town of Yucca Valley**  
**PLANNING COMMISSION STAFF REPORT**

**To:** Honorable Chair and Planning Commissioners  
**From:** Jared Jerome, Associate Planner

**Date:** March 5, 2021  
**Meeting Date:** March 23, 2021

**Subject:** Native Plant Permit (NPP) 235-21, 7573 Cardillo Trail, Yucca Valley CA. APN: 0586-441-01; Removal of One (1) Detached Western Joshua Tree Branch.

**Recommendation:**

That the Planning Commission approve the application for NPP 235-21, remove one (1) detached Western Joshua Tree branch, based upon Ordinance 291 Section 9.56.130 that a project proponent may remove a detached dead Western Joshua Tree or detached limb.

**Prior Review**

There has been no prior review of this matter.

**Executive Summary**

Native plant permit applications are acted upon by the Planning Commission for review and action at this time.

**Order of Procedure**

- Request Staff Report
- Request Public Comment
- Council Discussion/Questions of Staff
- Motion/Second
- Discussion on Motion
- Call the Question

**Discussion**

**Applicant:** Cynthia Morgan  
**Address:** 7573 Cardillo Trail  
**APN:** 0586-441-01  
**Zoning:** Single-family Residential (RS-2)  
**Parcel Size:** 0.44 acres

An application has been filed for the removal of one (1) detached Western Joshua Tree branch. This branch has died of natural causes and may pose an immediate threat to the public health, safety or welfare.

The applicant proposes to remove one (1) detached Western Joshua Tree branch. The western Joshua Tree branch is believed to have died from natural causes. The fallen branch is within 30 feet of an existing structure, and in the consulting desert native plant specialists opinion, the tree also has a damaged branch that is an imminent threat to the safety of the residents and should be pruned or removed.

Section 9.56.070 of Ordinance 291 requires photos, descriptions of the trees, and a letter from the applicant's arborist; which are attached to this report.

Section 9.56.130 states:

*The Planning Commission may issue a permit to authorize either the removal of a dead western Joshua tree or the trimming of a western Joshua tree. The proponent or its agent may remove a detached dead western Joshua tree or detached limb of a western Joshua tree. All other removals and all trimmings of western Joshua trees authorized by permits issued pursuant to this subsection may be completed by a desert native plant specialist. Planning Commission may issue a permit in accordance with this section without payment of mitigation fees, provided that the dead western Joshua tree or the limb(s) to be removed:*

- (1) Has fallen over and is within 30 feet of a structure; or*
- (2) Is leaning against an existing structure; or*
- (3) Creates an imminent threat to public health or safety.*

### **Alternatives**

Staff recommend no alternative actions. The application is consistent with the Town's adopted standards.

### **Fiscal Impact**

NA

### **Attachments:**

NPP 235-21 7573 Cardillo

ORD 291 Joshua Trees

9.60 Permit Procedures





# Native Plant Permit Application

Date Received 2-8-2021  
 By JY  
 Case # NPP 235-21

## General Information

APPLICANT Cynthia Morgan Phone 3233773073  
 Mailing Address 7573 Cardillo Trl Email thecynthiamorgan@gmail.com  
 City Yucca Valley State CA Zip 92284  
 PROPERTY OWNER Cynthia Morgan Phone 3233773073  
 Mailing Address 7573 Cardillo Trl Email thecynthiamorgan@gmail.com  
 City Yucca Valley State CA Zip 92284  
 Address/Location of Plants 7573 Cardillo Trl, Yucca Valley, CA 92284

## Project Information

TYPE OF PLANT	# OF PLANTS BEING DESTROYED	# BEING RELOCATED		# BEING PROTECTED IN PLACE	# BEING TRIMMED	HEIGHT	DIAMETER
		ON-SITE	OFF-SITE				
INDIAN YUCCA	<i>removed after falling</i>						
<u>JOSHUA TREE</u> <i>Yucca brevifolia</i>							
OUR LORDS CANDLE							
CALIFORNIA JUNIPER							
PINON PINE							
PARRY'S NOLINA							

Joshua Tree split in storm and has fallen too close to house.

Reason for relocation or removal \_\_\_\_\_  
 Property owner signature *Cynthia Morgan* Date 2-4-21

Staff Use Only  
 Issuance Date: \_\_\_\_\_ Issued By: \_\_\_\_\_  
 Approved as shown on plot plan \_\_\_\_\_ photos \_\_\_\_\_ Expiration \_\_\_\_\_  
 Denied \_\_\_\_\_ Reason for Denial \_\_\_\_\_





## REMOVE A DEAD WESTERN JOSHUA TREE OR TRIM A WESTERN JOSHUA TREE PERMIT APPLICATION

Permit Application to Remove a Dead Western Joshua Tree or Trim a Western Joshua Tree under California Code of Regulation, Title 14, Section 749.11

For removal of a dead western Joshua tree complete Sections 1 and 2. For trimming of a living or dead western Joshua tree complete Sections 1 and 3.

### Section 1:

**Project Information:** Joshua tree split in wind storm and fell close to house.

Property owner's name*:	Cynthia Morgan
Property owner's telephone number*:	323-377-3073
Property owner's mailing address*:	7573 Cardillo Trail Yucca Valley, CA 92284
Property owner's email address*:	the.cynthiamorgan@gmail.com
Location of the western Joshua tree to be removed or trimmed*:	7573 Cardillo Trail front yard.
County*:	San Bernardino
Street address*:	7573 Cardillo Trail Yucca Valley, CA 92284
-OR-	
Assessor's Parcel Number*:	

\*REQUIRED



CYNTHIA MORGAN 7573 CARDILLO TR  
THE JT SHOULD BE PRUNED TO AVOID FURTHER BREAKAGE OR EVEN REMOVED  
TREE IS SERIOUSLY COMPROMISED

**Section 2:**

For removal of a dead western Joshua tree, enclose photographs that visually depict the following for each dead western Joshua tree to be removed:

Photographs must show that the western Joshua Tree is dead, and at least one of the following (check all that apply):

- The dead western Joshua tree has fallen over and is within 30 feet of an existing structure:
- The dead western Joshua tree is leaning against an existing structure: .....
- The dead western Joshua tree creates an imminent threat to public health and safety: ....

Check this box if enclosed photographs show that the dead western Joshua tree is fully detached from the root system: .....

**Section 3:**

For trimming of a living or dead western Joshua tree, enclose photographs that visually depict the following for each western Joshua tree to be trimmed:

Photographs must show the specific limb or limbs to be trimmed, and at least one of the following (check all that apply):

- The limb or limbs to be trimmed have fallen over: LAYING ON THE GROUND .....
- The limb or limbs to be trimmed are leaning against an existing structure: .....
- The limb or limbs to be trimmed create an imminent threat to public health and safety:

Check this box if enclosed photographs show that the limb or limbs to be removed are fully detached from the tree: .....

**Submit this permit application to Planning by either:**

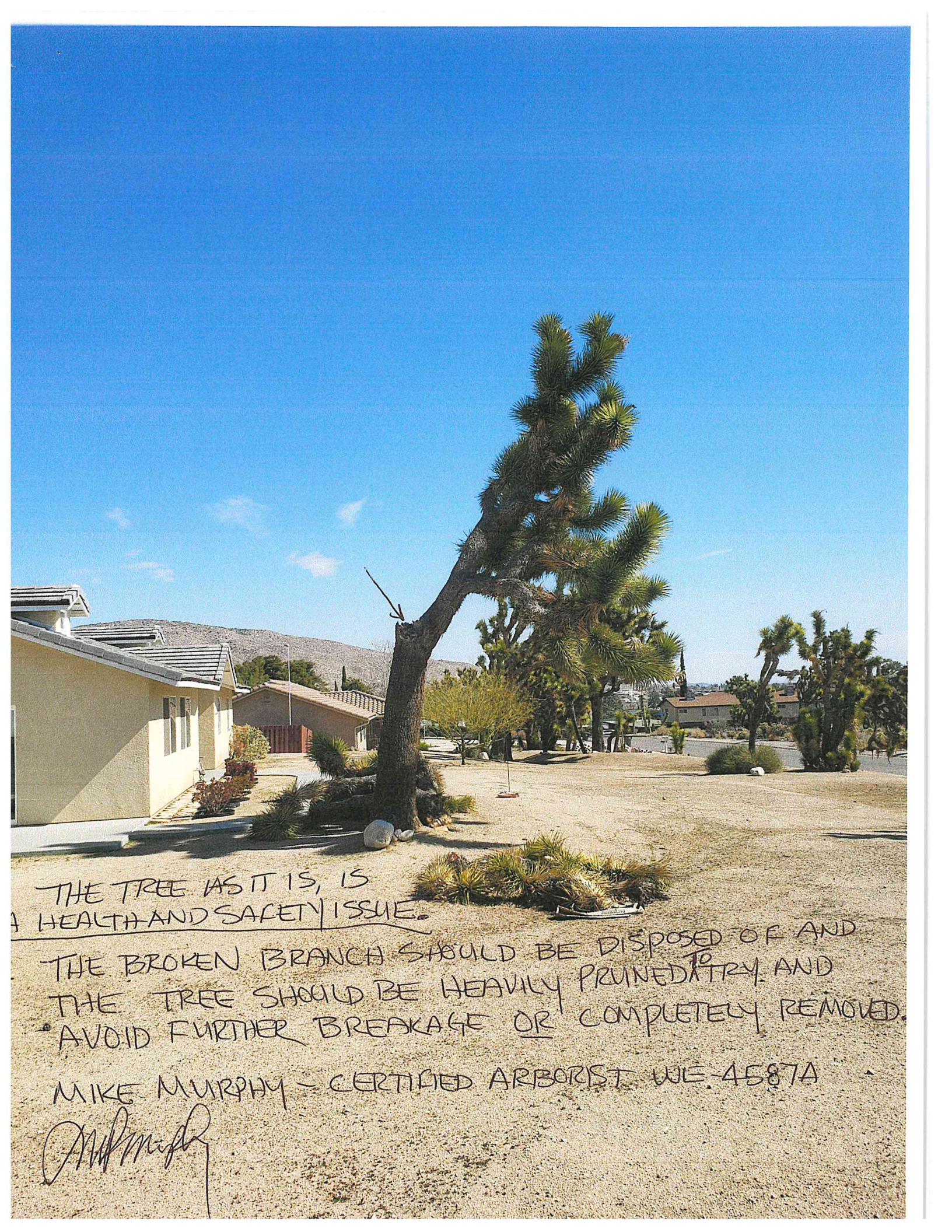
Emailing a signed copy to: [jyochmowitz@yucca-valley.org](mailto:jyochmowitz@yucca-valley.org)

-OR-

Mailing a signed copy to:

The Town of Yucca Valley  
Community Development  
58928 Business Center Drive  
Yucca Valley, CA 92284





THE TREE AS IT IS, IS  
A HEALTH AND SAFETY ISSUE.

THE BROKEN BRANCH SHOULD BE DISPOSED OF AND  
THE TREE SHOULD BE HEAVILY PRUNED <sup>TO</sup> TRY AND  
AVOID FURTHER BREAKAGE OR COMPLETELY REMOVED.

MIKE MURPHY - CERTIFIED ARBORIST WLE-4587A

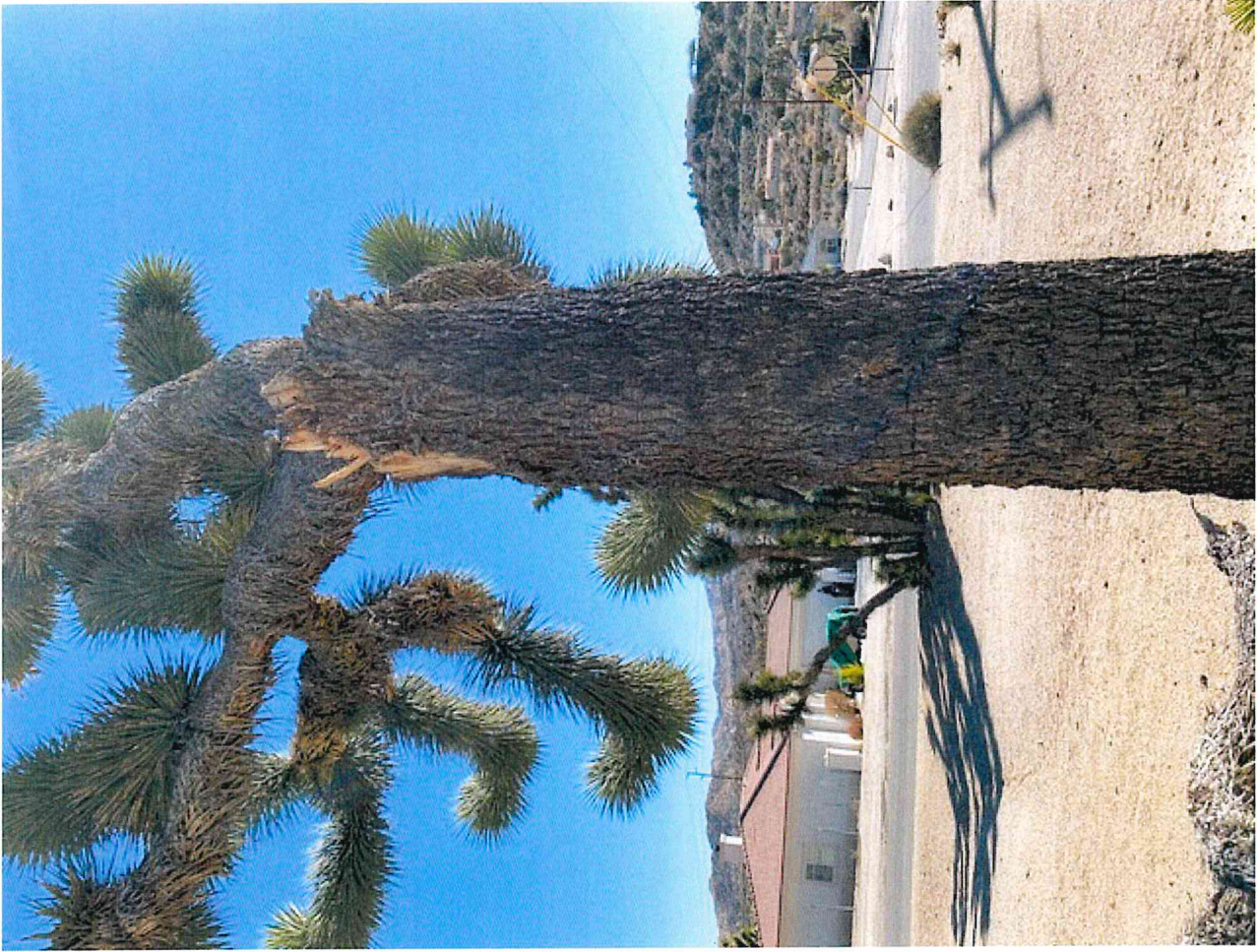
























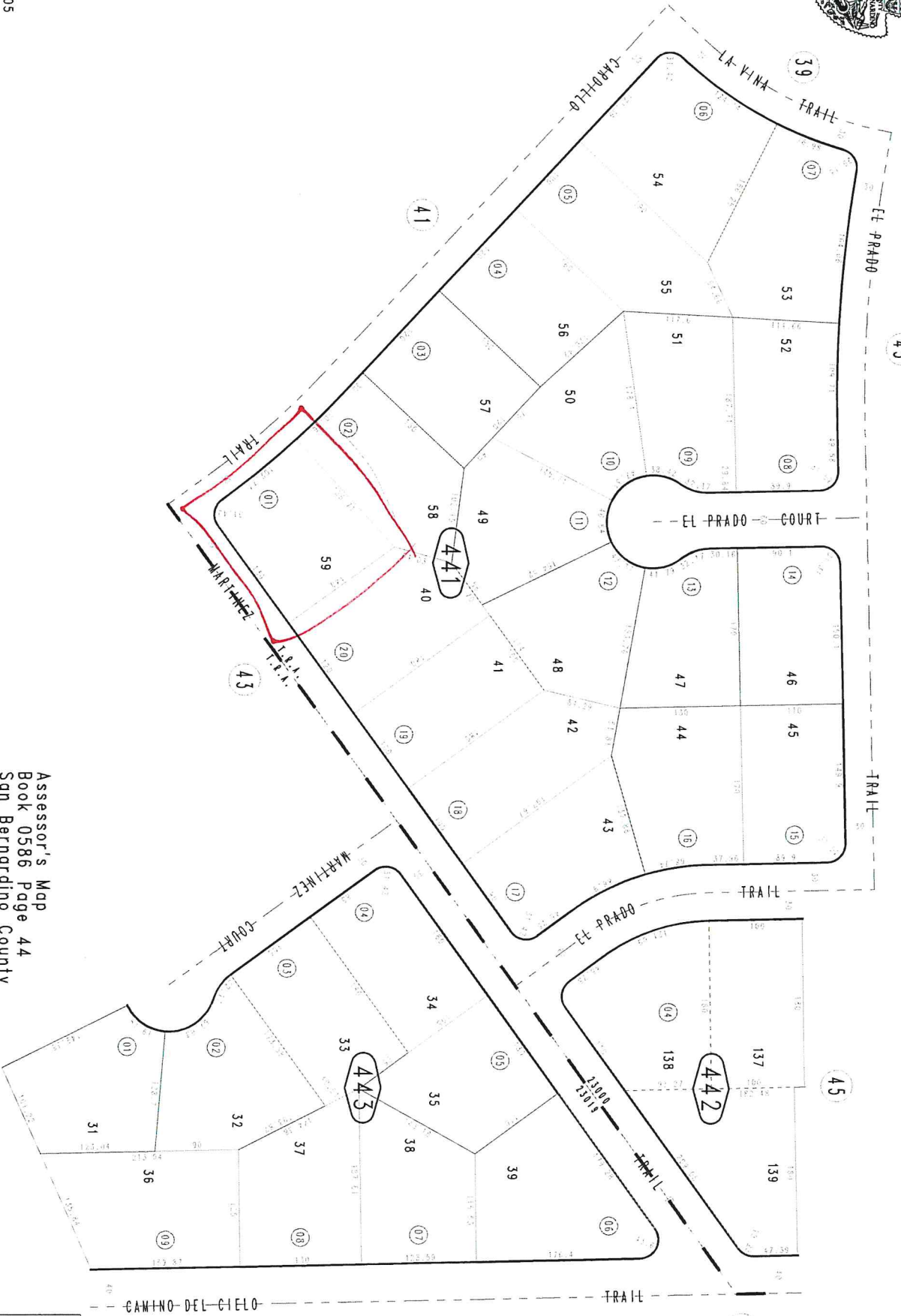
THIS MAP IS FOR THE PURPOSE  
OF AD VALOREM TAXATION ONLY



Ptn. Tract No. 6143, M.B. 77/59-63

Town of Yucca Valley  
Tax Rate Area  
23000 23019

0586-44



January 2005

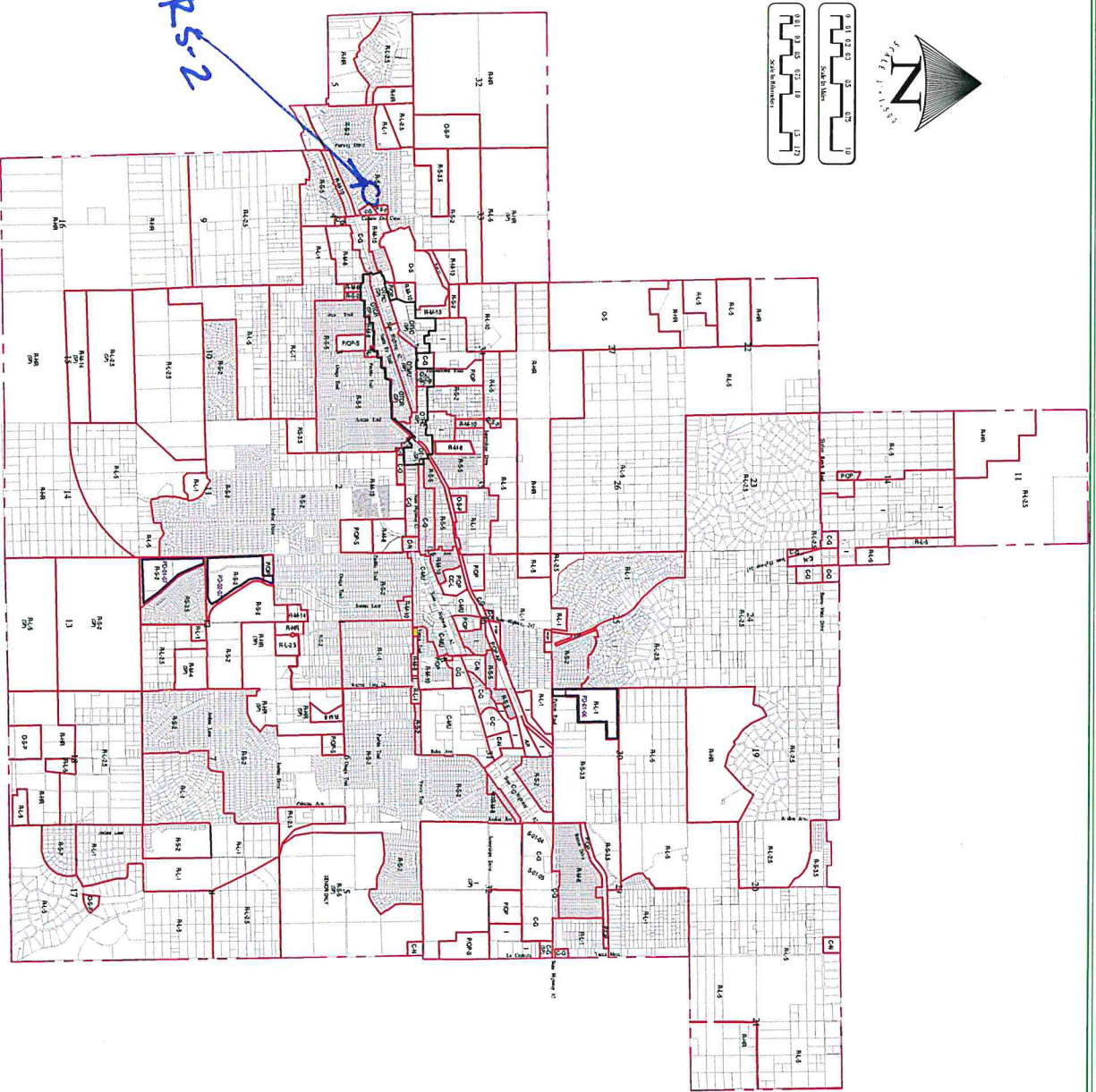
Assessor's Map  
Book 0586 Page 44  
San Bernardino County

REVISED  
04/01/10 RM

OFFICIAL ZONING DISTRICT MAP

LEGEND

- R-HR HILLSIDE RESERVE (1 du / 20 ac.)
  - R-L RURAL LIVING (1 du / 1, 2.5, 5, 10, 20 ac.)
  - R-S RESIDENTIAL, SINGLE FAMILY (0-2, 0-3.5, 0-5 du / ac.)
  - R-M RESIDENTIAL, MULTI-FAMILY (1-10, 0-14 du / ac.)
  - C-MU MIXED USE COMMERCIAL (Varies)
  - C-N NEIGHBORHOOD COMMERCIAL
  - C-G GENERAL COMMERCIAL
  - C-C COMMUNITY COMMERCIAL
  - C-O OFFICE COMMERCIAL
  - I INDUSTRIAL
  - P/QP PUBLIC/QUASIPUBLIC (SEE SYMBOLS)
  - O-S OPEN SPACE (SEE SYMBOLS)
  - (SP) SPECIFIC PLAN
  - OLD TOWN LAND USE
  - OTHC OLD TOWN HIGHWAY COMMERCIAL
  - OTIC OLD TOWN INDUSTRIAL/COMMERCIAL
  - OTMU OLD TOWN MIXED USE
  - OTCR OLD TOWN COMMERCIAL/RESIDENTIAL
- SYMBOLS**
- PUBLIC/QUASIPUBLIC
  - AP AIRPORT
  - CC CIVIC CENTER
  - FS FIRE STATION
  - PS POLICE STATION
  - H HOSPITAL
  - S SCHOOL
  - L LIBRARY
  - U-S5 UTILITY SUBSTATION
  - FW FLOODWAY
  - OPEN SPACE
  - P PARK
  - LAND USE PLANS
  - SP SPECIFIC PLAN
  - PD PLAN DEVELOPMENT



Town of Yucca Valley

TOWN COUNCIL MEETING  
DECEMBER 16, 2014



**9.07.130: NATIVE LANDSCAPE DOCUMENTATION PACKAGE:**

A. General Provisions: This section identifies the standards and requirements for native landscaping on residential developments.

Regulated desert native plants for all residential projects, include the following:

**REGULATED DESERT NATIVE PLANTS**

Botanical Name	Common Name
Yucca brevifolia	Joshua tree
Yucca schidigera	Mojave yucca
Nolina parryi	Parry's nolina
Juniperus californica	California juniper
Yucca whipplei	Our Lord's candle
Pinus monophylla	Pinon pine

Pursuant to section 80117 of the state Food And Agricultural Code, the clearing or removal of native plants from a canal, lateral ditch, survey line, building site, or road or other right of way by the landowner or his agent, if the native plants are not to be transported from the land or offered for sale, are not subject to state regulations. For plants regulated by the state to be transplanted off site, the town shall issue permits for their relocation in accordance with this chapter.

**B. Scope:**

1. Provisions: The provisions of this section shall apply to all land within the town of Yucca Valley.

a. It is prohibited for any individual or entity to remove, transplant, damage, disturb, or destroy any part of any regulated desert native plant, except its fruit, from any privately or publicly owned piece of land in the town of Yucca Valley, without first obtaining a regulated desert native plant permit from the town, unless said activity is exempt from the requirement to first obtain a regulated desert native plant permit.

b. It is prohibited for any individual or entity to remove or damage all or part of any regulated desert native plant on another property without first obtaining written permission from the landowner and an approved regulated desert native plant permit. It is unlawful for any person to falsify any document offered as evidence of permission to enter upon the property of another to remove all or parts of a regulated desert native plant, whether it is alive or dead.

c. It is prohibited for any individual or entity, unless exempted by this section, to destroy, dig up, mutilate or to possess any regulated desert native plant, including the living parts of such, unless the regulated desert native plant was disturbed under a regulated desert native plant permit. Any individual or entity shall exhibit the regulated desert native plant permit upon request for inspection by any duly authorized entity as described in this section.

d. The commercial harvesting of regulated desert native plants is prohibited.

2. Exceptions: The following are exempt from the provisions of this section:

a. The removal and transplanting on and off site of regulated desert native plants on and from lands owned by the United States government or any federal agency, the state of California, the county of San Bernardino, the town of Yucca Valley, and all special districts.

b. The removal and transplanting on and off site of regulated desert native plants required by other codes, ordinances or laws of the town of Yucca Valley, county of San Bernardino, the state of California or the United States government or any federal agency.

c. The removal and transplanting on and off site of regulated desert native plants which are an immediate threat to the public health, safety or welfare, as determined by the planning division.



d. Removal as part of a bona fide agricultural activity as determined by the town that is:

- (1) Served by a water distribution system adequate for the proper operation of such activity; and/or
- (2) Conducted under a land conservation contract; and/or
- (3) An existing agricultural activity; and/or

(4) A proposed bona fide agricultural activity if the planning division is given thirty (30) days' written notice of the removal describing the location of the land and the nature of the proposed activity. The planning division shall notify the landowner in writing prior to the lapse of the thirty (30) day period if, in the opinion of the planning division the activity is not a bona fide agricultural activity or else the activity shall be deemed bona fide.

e. Destruction or removal of a regulated desert native plant that has died from natural causes or that has been destroyed by fire or other natural disasters.

f. Any regulated desert native plant that is within the building footprint and within twenty feet (20') of the building footprint of an existing structure and for new infill residential development, as determined by the planning division.

g. When removal is required by any public utility subject to jurisdiction of the public utilities commission or any other constituted public agency, including franchised cable TV, to establish or maintain safe operation of facilities under their jurisdiction.

3. Permit Required: A native plant permit shall be required for the removal and transplanting on and off site of any regulated desert native plants identified in this section.

a. A regulated native plant permit application shall be submitted to and approved by the town prior to the removal and transplanting on and off site of any regulated desert native plant.

b. The regulated native plant permit application shall include the following information:

- (1) The botanical and common name of the regulated desert native plant.
- (2) A native plant survey showing the precise location of each regulated desert native plant.
- (3) The trunk or stem diameter of each regulated desert native plant.
- (4) The height of each regulated desert native plant.

(5) The health or condition of the regulated desert native plant, including the identification of those regulated desert native plants that are not likely to survive transplanting procedures.

(6) The proposed placement or disposition of the regulated desert native plant, i.e., transplant on site, adopt off site, remove, etc.

(7) Additional information that may be required based upon the individual application.

C. Single-Family Residential Infill, Existing Single-Family Residences And Multi-Family Residential Three Units Or Less:

1. A regulated desert native plant permit application shall be submitted to the planning division at the time of filing a building or grading permit application for development of infill residential lots unless exempt.

2. A regulated desert plant permit application shall be submitted to the planning division for removal or relocation on or off site when the property owner is proposing improvements to the property including swimming pools, swing sets, horse arenas, other animal keeping activities, basketball courts, tennis courts, recreational or other vehicle parking, driveways and access, play areas, accessory structures, and other uses typical to single-family residences.

3. The regulated desert native plant application documentation shall contain the following information:

a. Printed photographs depicting the proposed native plant that is to be removed or transplanted. The photographs must clearly show the location, size of the subject plant, and its surroundings. At minimum, the surrounding area photographs shall include two (2) different views of the subject plant.



b. A plot plan is required in order to show location of regulated desert native plants proposed to be removed, transplanted, or retained in its native location. The plot plan shall clearly demonstrate that the property meets the standards in table 1 of this section.

4. Written permission from the property owner(s) authorizing the proposed removal or relocation of regulated desert native plants from the property.

5. The property owner may attempt to retain as many regulated desert native plants in their native location as possible. The property owner may also attempt to transplant or relocate as many regulated desert native plants as possible on site. The property shall comply with the minimum standards specified in table 1 of this section.

6. Those regulated desert native plants identified in the permit application to not remain on site following development, and which are not incorporated into a project's landscaping plan, may be available for adoption at the property owner's discretion.

7. The following chart establishes the minimum undisturbed area that shall be provided:

TABLE 1

Lot Size	Required Undisturbed Area
Up to 2.49 acres	No mandate, incentives only
2.5 to 4.99 acres	A minimum of 5% of the lot shall remain undisturbed
5+ acres	A minimum of 10% of the lot shall remain undisturbed

8. Single-family residential infill development in the rural living residential land use district, which exceed the minimum required undisturbed area from table 1 of this section by a minimum of ten percent (10%), shall be allowed up to a ten percent (10%) deviation of all development code standards listed in table 2 of this section and approved in conjunction with the project. The deviations include the following:

TABLE 2

Typical Standards		Deviations Permitted
Lot size	Varies	Up to a 10% reduction in lot size based on property zoning
Front setback	25'	22.5'
Side/rear setbacks	15'	13.5'
Arterial/collector street side setback	25'	22.5'
Local street side setback	25'	22.5'
Lot dimensions	150'/150'	135'/135'
Lot coverage	20%	22%

9. Single-family residential infill development in the single-family residential land use district which voluntarily retains ten percent (10%) undisturbed area shall be allowed up to a ten percent (10%) deviation of all development code standards listed in table 3 of this section and approved in conjunction with the project. The deviations include the following:

TABLE 3

Typical Standards		Deviations Permitted
Lot size	Varies	Up to a 10% reduction in lot size based



		on property zoning
Front setback	25'	22.5'
Side/rear setbacks	5'/10'	4.5'/9'
Arterial/collector street side setback	25'	22.5'
Local street side setback	15'	13.5'
Lot dimensions	60'/100'	54'/90'
Lot coverage	40%	44%

10. Single-family residential infill development in the residential-hillside reserve land use district which exceeds the minimum required undisturbed area from table 1 of this section by a minimum of ten percent (10%) and provide documentation that the applicant has attended educational training on native plants shall be allowed up to a ten percent (10%) deviation of all development code standards listed in table 4 of this section and approved in conjunction with the project. The deviations include the following:

TABLE 4

Typical Standards		Deviations Permitted
Lot size	Varies	Up to a 10% reduction in lot size based on minimum lot size required
Front setback	75'	67.5'
Side/rear setbacks	75'	67.5'
Arterial/collector street side setback	75'	67.5'
Local street side setback	75'	67.5'

D. Regulated Desert Native Plant Removal Procedures For All New Residential Subdivisions And Multi-Family Four Units Or More: Single-family residential subdivisions and multi-family four (4) units or more, shall be allowed to transplant on and off site and to remove all regulated desert native plants from their native locations within the property boundaries, pursuant to the following development standards and requirements:

1. Application Submission: A regulated desert native plant permit application shall be submitted to the planning division at the time of filing land use applications for development of residential subdivision projects. Land use applications for residential subdivision projects may include, but are not limited to, planned developments, specific plans, parcel and tract map applications, grading permit applications, building permit applications, and any other applications necessary for town authorization of land disturbing or development activity. The planning commission shall review and approve all native plant applications for residential subdivisions.

2. Application Information: The regulated desert native plant application documentation shall contain the following information:

- a. The botanical and common name of the regulated desert native plant.
- b. The precise location of each regulated desert native plant.
- c. The trunk or stem diameter of each regulated desert native plant.
- d. The height of each regulated desert native plant.
- e. The health or condition of the regulated desert native plant, including the identification of those regulated desert native plants that are not likely to survive transplanting procedures.



f. The proposed placement or disposition of the regulated desert native plant, i.e., transplant on site, adopt off site, remove, etc. The plans for the regulated desert native plant survey shall be no smaller than twenty four inches by thirty six inches (24" x 36") unless otherwise approved by the planning division.

3. **Transplanting Off Site And On Site:** All regulated desert native plants identified in the regulated desert native plant survey as likely to survive transplanting shall be made available for adoption or shall be transplanted on site as part of the project's landscaping plan. All native plant permit applications shall illustrate maximum utilization of regulated desert native plants in the project's landscaping plan. It is strongly encouraged that all *Yucca brevifolia* (Joshua trees) identified for adoption and transplantation be relocated through the use of an adequately sized tree spade.

4. **Adoption:** Those regulated desert native plants identified in the regulated desert native plant survey as likely to survive transplanting procedures, and which are not incorporated into a project's landscaping plan, shall be available for adoption pursuant to this section to the general public for an adoption period of thirty (30) days, or until all available plants have been adopted, whichever is sooner, prior to any other ground disturbing activity on the project site. A thirty (30) day noticing and signage period is required which noticing period may begin prior to issuance of the regulated desert native plant permit.

5. **Removal:** Those regulated desert native plants not incorporated into a project's landscaping plan and not adopted during the thirty (30) day adoption period are allowed to be removed.

6. **Table 5:** The following additional standards shall apply to all new residential subdivisions:

TABLE 5

Proposed Lot Size	Required Undisturbed Area
Up to 2.49 acres	None required, incentives only
2.5 to 4.99 acres	A minimum of 5% of the project site shall remain undisturbed
5+ acres	A minimum of 10% of the project site shall remain undisturbed

7. **Table 6:** New residential subdivisions in the rural living land use districts, which exceed the minimum required undisturbed area from table 5 of this section by a minimum of ten percent (10%), and provide documentation that the applicant has attended educational training on native plants shall be allowed up to a ten percent (10%) deviation of all development code standards listed in table 6 of this section and approved in conjunction with the project. The deviations include the following:

TABLE 6

Typical Standards		Deviations Permitted
Lot size	Varies	Up to a 10% reduction in lot size based on property zoning
Front setback	25'	22.5'
Side/rear setbacks	15'	13.5'
Arterial/collector street side setback	50'	45'
Local street side setback	25'	22.5'
Lot dimensions	150'/150'	135'/135'
Lot coverage	20%	22%

8. **Table 7:** New residential subdivisions in the single-family residential land use districts which exceed the minimum required undisturbed area from table 5 of this section by a minimum of ten percent (10%) shall be allowed up to a ten percent (10%) deviation of all development code standards including:



TABLE 7

Typical Standards		Deviations Permitted
Lot size	Varies	Up to a 10% reduction in lot size based on property zoning
Front setback	25'	22.5'
Side/rear setbacks	5'/10'	4.5'/9'
Arterial/collector street side setback	25'	22.5'
Local street side setback	15'	13.5'
Lot dimensions	60'/100'	54'/90'
Lot coverage	40%	44%

9. Table 8: New residential subdivisions in the residential- hillside reserve land use district, which exceed the minimum required undisturbed area from table 5 of this section by a minimum of ten percent (10%), and provide documentation that the applicant has attended educational training on native plants shall be allowed up to a ten percent (10%) deviation of all development code standards listed in table 8 of this section and approved in conjunction with the project. The deviations include the following:

TABLE 8

Typical Standards		Deviations Permitted
Lot size	Varies	Up to a 10% reduction in lot size based on minimum lot size required
Front setback	75'	67.5'
Side/rear setbacks	75'	67.5'
Arterial/collector street side setback	75'	67.5'
Local street side setback	75'	67.5'

TABLE 9

Typical Standards For Multi-Family Projects		Deviations Permitted
	Residential Multi-Family RM	Residential Multi-Family RM
Front setback	25'	22.5'
Side/rear setback	10'/10' (per story)	9'/9' (per story)
Arterial/collector street side setback	35'	31.5'
Local street side setback	25'	22.5'
Lot coverage	60%	66%
Parking	Varies	10% reduction of total parking not to include handicap stalls

Ordinance No. 291

**AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA ADOPTING AN ADDENDUM TO THE TOWN OF YUCCA VALLEY GENERAL PLAN UPDATE ENVIRONMENTAL IMPACT REPORT, ENACTING EMERGENCY REGULATIONS IN NEW CHAPTER 9.56 FOR IMPLEMENTATION OF THE SPECIAL ORDER RELATING TO TAKE OF WESTERN JOSHUA TREE (*YUCCA BREVIFOLIA*) DURING CANDIDACY PERIOD ISSUED BY THE CALIFORNIA FISH AND GAME COMMISSION IN ACCORDANCE WITH FISH AND GAME CODE SECTION 2084, AND AMENDING SECTIONS 9.07.130, 9.09.050, AND 9.10.040 OF THE TOWN MUNICIPAL CODE TO REMOVE WESTERN JOSHUA TREE (*YUCCA BREVIFOLIA*) FROM THE LIST OF REGULATED DESERT NATIVE PLANTS**

The Town Council of the Town of Yucca Valley does ordain as follows:

**SECTION 1.** Findings. The Town Council finds as follows:

A. On October 21, 2019, the California Fish and Game Commission (“FGC”) received a petition from the Center for Biological Diversity to list the western Joshua tree (“Joshua Tree”) as threatened under the California Endangered Species Act.

B. On September 22, 2020, after several public meetings, the FGC determined, pursuant to Fish and Game Code Section 2074.2, that listing of the Joshua Tree may be warranted and directed staff of the Department of Fish and Wildlife (“Department”) to issue a notice reflecting that finding and indicating that Joshua Tree is a candidate for threatened or endangered species status.

C. On September 24, 2020, the California Fish and Game Commission issued a Notice of Findings (“Notice”). In the Notice, the Commission stated that the amount of information contained in the petition, when considered in light of the Department’s written evaluation report, the comments received, and the remainder of the administrative record, would lead a reasonable person to conclude there is a substantial possibility the requested listing of the Joshua Tree as threatened or endangered could occur. The Commission also provided notice that the Joshua Tree is a candidate species as defined by Section 2068 of the Fish and Game Code.

D. In general, under the California Endangered Species Act, no person or public agency may import, export, take, possess, purchase, or sell within California, any species, or any part or product thereof, that has been designated by the Commission as a threatened, endangered, or candidate species, unless that person or public agency has received a permit from the Department.

E. The Joshua Tree is abundant within the Town of Yucca Valley (“Town”) and is found throughout the Town on all property types (including developed and undeveloped property) and within all planning zones.



F. Many property owners within the Town have Joshua Trees on their property that periodically need to be pruned or removed in order to prevent potential property damage or injury to persons or animals that may result from a dead tree or falling limbs. Similarly, in the past many property owners within the Town have had Joshua Trees on their property that have fallen over or fallen onto an existing structure and must be removed.

G. The majority of the development that occurs within the Town involves the construction or renovation of in fill single-family residences. Because of the prevalence of the Joshua Tree within the Town, these projects often require the removal of Joshua Trees in order to be completed.

H. The permitting process provided for under the Fish and Game Code Sections 2080 *et seq.* to obtain Department authorization to remove a candidate species is cumbersome and costly. Recognizing that a streamlined process to allow for the incidental take of a limited number of Joshua Trees is necessary to avoid a halt in development within the Town, on December 10, 2020, the Commission, pursuant to Fish and Game Code Section 2084, adopted a Special Order Relating to Take of Western Joshua Tree (*Yucca brevifolia*) During Candidacy Period ("Special Order"). (14 Code Cal. Reg. § 749.12.) Attached hereto as Exhibit "B" is a copy of the Special Order, which is incorporated herein.

I. The Special Order authorizes the Town to issue permits for the take of Joshua Trees associated with the development of single-family residences, accessory structures and certain public works projects, provided the Town follows certain conditions.

J. To be authorized to issues permits for the take of Joshua Trees, the Special Order mandates that the Town adopt an ordinance within 60 days that requires as a condition of any approval or permit for a single-family residence, accessory structure, or public works project that has one or more Joshua trees on the project site, satisfaction of each of the requirements set forth in subsections (d) of the Special Order.

K. The Special Order also mandates that the Town adopt an ordinance that provides for the issuance of permits authorizing either the removal of a dead Joshua Tree or the trimming of a dead limb of a Joshua Tree by a certified arborist, without payment of mitigation fees, provided that the dead Joshua Tree or dead limb to be removed (1) has fallen over; (2) is leaning against an existing structure; or (3) creates an imminent threat to public health or safety.

L. The Town Council has the power under Government Code sections 36934 and 36937 to adopt an ordinance that takes effect immediately if it is an ordinance for the immediate preservation of the public peace, health or safety, and is passed by a four-fifths vote of the Town Council.

M. Given the requirement of the Special Order that an ordinance be adopted by the Town within 60 days, there is no time for the Town to go through its standard process when adding provisions to its development code, which generally involves a hearing before the Planning Commission followed by a first and second reading of the proposed ordinance by the Town Council.

N. Unless the Town adopts this urgency ordinance, the Town will be unable to provide relief and issue permits to its residents for the removal of a dead Joshua Tree or the trimming of a dead limb of a Joshua Tree that may be creating an imminent threat of damage to persons or property, or threat to public health or safety.

O. This ordinance is temporary and limited in scope, and will only be valid during the candidacy period of the Joshua Tree, which is anticipated to be approximately one year.

P. The Town Council desires to adopt this ordinance, pursuant to Government Code sections 36934 and 36937, and in accordance with the Special Order to address the danger to public health, safety, and general welfare presented by the designation of the Joshua Tree as a candidate species under the California Endangered Species Act and the resulting limitations placed on the Town and Town residents to take a candidate species.

**SECTION 2. Environmental Review.** The Town Council finds as follows:

a. On January 7, 2014, The Town of Yucca Valley adopted Resolution No. 14-01 certifying the Final Environmental Impact Report prepared for the Yucca Valley General Plan Update (“GP Update EIR”), State Clearinghouse No. 2012111021, and Resolution No. 14-01 adopting CEQA Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program for the Yucca Valley General Plan Update Project and approving the Yucca Valley General Plan Update Project and approving the Yucca Valley General Plan Update Project.

b. Because neither the Yucca Valley General Plan Update Project nor the GP Update EIR was challenged, pursuant to Public Resources Code section 21167.2, the GP Update EIR is conclusively presumed to be valid and to comply with CEQA.

c. Consideration and approval of the proposed urgency ordinance is a subsequent discretionary action in furtherance of the General Plan Update Project and pursuant to Public Resources Code section 21067 and CEQA Guidelines section 15367, the Town of Yucca Valley is the Lead Agency for the currently proposed urgency ordinance project. Pursuant to CEQA, when taking subsequent discretionary actions in furtherance of a project for which an EIR has been certified, the lead agency is required to review the proposed project to determine whether any of the circumstances under Public Resources Code section 21166 and CEQA Guidelines section 15162 require additional environmental review.

d. Town staff and Placeworks (the Town’s CEQA consultant) have evaluated the proposed urgency ordinance in light of the standards for subsequent environmental review outlined in Public Resources Code section 21166 and CEQA Guidelines section 15162 and concluded that the previously certified General Plan Update EIR fully identified, analyzed and adequately addressed all potentially significant impacts, if any, that could result from the proposed urgency ordinance and that, therefore, no subsequent EIR or mitigated negative declaration is required. Town staff and Placeworks prepared an Addendum to the General Plan Update EIR pursuant to CEQA Guidelines section 15164 to memorialize their evaluation, analysis and findings. The Addendum to the General Plan Update EIR is attached hereto as Exhibit “B” and incorporated herein.



e. The Town Council has been provided the Addendum and has reviewed and considered it together and in connection with the previously certified General Plan Update EIR and hereby finds that the Addendum reflects the Town's independent judgment, that the Addendum and the previously certified GP Update EIR, taken together, contain a complete and accurate reporting of all the potential environmental impacts associated with the proposed urgency ordinance and that the Addendum and administrative record have been completed in compliance with CEQA and the CEQA Guidelines.

f. Based on the substantial evidence set forth in the record, including but not limited to the Addendum, the previously certified GP Update EIR, all related and supporting technical reports, and the staff report, none of the conditions identified in CEQA Guidelines section 15162 requiring the need for further subsequent environmental review have occurred because:

(i) the proposed urgency ordinance does not constitute a substantial change that would require major revisions of the previously certified GP Update EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(ii) there have been no substantial changes with respect to the circumstances under which the proposed urgency ordinance or the Yucca Valley General Plan Update Project will be implemented that would require major revisions of the previously certified GP Update EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(iii) there has been no new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the GP Update EIR was certified that has come to light showing: that there would be one or more significant effects not discussed in the previously certified GP Update EIR; that significant effects previously examined would be substantially more severe than shown in the previously certified GP Update EIR; that mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects but the Town Council declined to adopt such measures; or that mitigation measures or alternatives considerably different from those analyzed previously would substantially reduce one or more significant effects on the environment but which the Town Council declined to adopt.

g. The Town Council hereby approves and adopts the Addendum and imposes all applicable mitigation measures from the GP Update EIR, as modified by the Addendum, on the proposed urgency ordinance and any/all projects addressed and permits/authorizations issued pursuant to the urgency ordinance.

h. The Town Council hereby directs Town staff to prepare, execute and file a CEQA Notice of Determination with the San Bernardino County Clerk's Office within five (5) working days of the adoption of this urgency ordinance.

i. The documents and materials that constitute the record of proceedings upon which this Ordinance and its CEQA findings are based are located at the Town of Yucca Valley, Community Development Department, 58928 Business Center Drive, Yucca Valley, CA 92284. The custodian for these records is Shane Stueckle, Deputy Town Manager.

**SECTION 3.** Chapter 9.56 (Removal of Western Joshua Trees). Chapter 9.56, as set forth in Exhibit "A" attached hereto, is hereby added to the Town of Yucca Valley Municipal Code.

**SECTION 4.** Existing Native Landscape Regulations. During the effective period of this ordinance, Sections 9.07.130, 9.09.050, and 9.10.040, are amended to remove Western Joshua Tree (*Yucca brevifolia*) from the list of "Regulated Desert Native Plants" set forth in those sections.

**SECTION 5.** Effective Period. As an urgency ordinance, this ordinance takes effect immediately upon four-fifths vote of the Town Council, in accordance with Government Code sections 36934 and 36937. This ordinance shall remain in effect during the period in which the Western Joshua Tree remains a candidate species as defined by the by Section 2068 of the California Fish and Game Code. This ordinance shall automatically terminate when the Western Joshua Tree is no longer considered a candidate species under Section 2068 of the California Fish and Game Code.

**SECTION 6.** Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The Town Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.


**SECTION 7.** Publication. The Town Clerk is directed to certify this ordinance and cause it to be published in the manner required by law.




PASSED, APPROVED, AND ADOPTED this 19<sup>th</sup> day of January 2021.

  
MAYOR

ATTEST:

  
TOWN CLERK

APPROVED AS TO FORM:

  
TOWN ATTORNEY

## EXHIBIT "A"

9.56.010	Purpose
9.56.020	Definitions
9.56.030	Permit Required
9.56.040	Bi-Monthly Western Joshua Tree Mitigation Fund Payments
9.56.050	Bi-Monthly Western Joshua Tree Permitting Report
9.56.060	Annual Report On Survival of Western Joshua Trees
9.56.070	Permit Required and Take Permit Authorizations
9.56.080	Avoidance
9.56.090	Minimization
9.56.100	Relocation
9.56.120	Mitigation Fees
9.56.130	Dead and Trimming Western Joshua Trees
9.56.140	Enforcement

### **9.56.010 PURPOSE**

The purpose of this Chapter is to establish permitting standards and process for the issuance of take permits for the Western Joshua Tree as authorized pursuant to the Special Order approved by the California Fish and Game Commission pursuant to Fish and Game Code section 2084 on December 10, 2020 ("Special Order"). The requirements set forth in this Chapter are intended to protect the public's health, safety, and welfare by ensuring that take permits for the Western Joshua Tree are only issued consistent and compliant with the Special Order.

### **9.56.010 DEFINITIONS**

The following definitions apply to this Chapter.

**Accessory Structure:** Accessory structure means a subordinate structure, the use of which is incidental to an existing or contemporaneously constructed single-family residence, and includes: an accessory dwelling unit, addition to an existing single-family residence, garage, carport, swimming pool, patio, greenhouse, storage shed, gazebo, septic tank, sewer connection, solar panels, or gravel or paved driveway.

**Desert Native Plant Specialist:** Desert native plant specialist means (A) An arborist certified by the International Society of Arborists; or (B) An individual with a four-year college degree in ecology or fish and wildlife related biological science from an accredited college and at least two years of professional experience with relocation or restoration of native California desert vegetation; or (C) An individual with at least five years of professional experience with relocation or restoration of native California desert vegetation.

**Department:** Department means the Town of Yucca Valley Community Development Department.



**Developed Parcel:** Developed Parcel means a parcel with an existing single-family residence.

**Participating Agency:** Participating agency means the Town of Yucca Valley.

**Project Proponent:** Project Proponent means the owner of a project site for a single-family residence or accessory structure or the owner's agent or the public agency undertaking a public works project.

**Project Site:** Project Site means the parcel or parcels on which a project proponent proposes to construct a single-family residence or accessory structure or on which a public agency proposes to undertake a public works project.

**Public Works Project:** Public Works Project means a project for the erection, construction, alteration, maintenance, or repair of any public structure, building, or road.

**Single Family Residence:** Single-family residence means a single detached building that has been or will be constructed and used as living facilities, including provisions for sleeping, eating, cooking, and sanitation as required by the California Building Code for not more than one household. Nothing in this section shall be construed to authorize take of western Joshua tree for a subdivision or other development that includes more than one single-family residence.

**Size Class:** Size class means the classification of western Joshua trees by the following three sizes: (A) Less than one meter in height; (B) One meter or greater but less than four meters in height; and (C) Four meters or greater in height.

**Undeveloped Parcel:** Undeveloped parcel means a parcel without an existing single-family residence.

**Western Joshua Tree:** Western Joshua tree means an individual western Joshua tree (*Yucca brevifolia*) that has emerged from the ground, regardless of age or size, including all stems that have emerged from the ground within a one-meter radius measured from a single point at the base of the largest stem.

**Western Joshua Tree Mitigation Fund:** Western Joshua Tree Mitigation Fund means the State Western Joshua Tree Mitigation fund established pursuant to Section 14 Code Cal. Reg. § 749.10(a)(5).

#### **9.56.040: BI MONTHLY DEPOSITS TO THE WESTERN JOSHUA TREE MITIGATION FUND**

The Town shall make bi-monthly deposits to the Western Joshua Tree Mitigation Fund, by the fifteenth day of March, May, July, September, November, and January, of all mitigation fees collected during the preceding two calendar months.

#### **9.56.50 BI-MONTHLY WESTERN JOSHUA TREE PERMITTING REPORT**

A. The Town shall submit to the State Fish and Wildlife Department by the fifteenth day of

March, May, July, September, November, and January a bi-monthly report that includes the following information for the preceding two calendar months:

1. The number of projects approved by the Town pursuant to Section 9.56.070 that resulted in the removal or relocation of western Joshua trees.
2. The number and size class of western Joshua trees that were relocated pursuant to Section 9.56.100.
3. The number and size class of western Joshua trees removed and not relocated pursuant to Section 9.56.100.
4. The total amount of mitigation fees collected for each of the mitigation categories set forth in Section 9.56.120.
5. Documentation that the total amount of mitigation fees listed pursuant to Section 9.56.120 was paid into the Western Joshua Tree Mitigation Fund.
6. The number of dead western Joshua trees removed and live trees trimmed pursuant to Section 9.56.130.

**9.56.060 ANNUAL REPORT ON SURVIVAL OF WESTERN JOSHUA TREES**

A. The Town shall submit an annual report on the survival rates of trees relocated by January 15 of each year beginning in 2022 and continuing for a total of three years. The annual report shall include, at a minimum, the following:

1. The total number of western Joshua trees relocated pursuant to Section 9.56.100.
2. For each western Joshua tree relocated:
  - a. The street address for the parcel on which the western Joshua tree was relocated. If no street address is available, the property owner may include the assessor's parcel number.
  - b. The date of the relocation.
  - c. Whether the western Joshua tree is alive or dead as of the date of the annual report.
  - d. A photograph of the relocated western Joshua tree in its current condition.

**9.56.070 PERMIT REQUIRED, PLANNING COMMISSION APPROVAL, AND TAKE PERMIT**



## AUTHORIZATIONS

- A. The Planning Commission may authorize the take of western Joshua tree associated with developing single-family residences, accessory structures, and public works projects concurrent with its approval of the project and subject to the following conditions, applications and processes:
1. No project shall be eligible to receive take authorization pursuant to this section if it will result in the take of more than ten western Joshua trees from the project site.
  2. Census
    - a. The project proponent proposing to relocate or remove a western Joshua tree shall cause a census of western Joshua trees to be conducted on the project site by a desert native plant specialist. The census shall tag and count all western Joshua trees on the project site and classify them by size class.
    - b. All applicants shall submit an application to the Department, on forms prescribed by the Department which shall including the following information. Additional information may be required by the Director or by the Planning Commission:
      - i. The name of the desert native plant specialist who conducted the census and the employer of the desert native plant specialist.
      - ii. The name of the desert native plant specialist who will relocate western Joshua trees, if applicable, and the employer of the desert native plant specialist.
      - iii. The date of the census
      - iv. The date or dates of the proposed relocation of western Joshua trees, if applicable.
      - v. A map of the project site that depicts the location of the proposed single-family residence, accessory structure, or public works project; the number and location of all western Joshua trees on the project site; and if applicable, the proposed western Joshua trees for removal, or the proposed placement of each relocated western Joshua tree.
      - vi. Photographs of each western Joshua tree on the project site, including a visual representation of the scale of the height of each tree.

- vii. Aerial imagery of the site in sufficient detail to identify the property and the western Joshua trees that are on the site and are a part of the application submitted.
- viii. Narrative written descriptions of each western Joshua tree, its diameter, height, existing health condition and any other information deemed necessary.

3. Additional Submittals

- a. New construction of single-family residential units as well as accessory structures shall require the submittal of all information on plans measuring approximately 24" x 36", shall be legibly drawn and shall accurately reflect aerial photography and satellite imagery generally available for the subject property.
- b. All property lines, dimensions, and existing structures, if any, shall be depicted on plans submitted with the application materials.
- c. Property owners name, mailing address, phone number, and email address.
- d. Applicant's name, mailing address, phone number and email address.
- e. Assessor parcel number(s), address, and general location of the property for which the application is submitted.
- f. General Plan designation and zoning designation of the subject project site.

4. Approval Process

- a. Authorizations for take may only be granted by the Planning Commission in conjunction with approved building permit plans and applications for public works projects, single family residence and accessory structures. Western Joshua tree take approvals and authorizations shall not be granted by the Planning Commission prior to the applicant receiving construction plan approvals. This does not apply to trimming or removal of dead western Joshua trees pursuant to this Ordinance.

**9.56.80 AVOIDANCE**

To the maximum extent practicable, the project proponent shall avoid take of western Joshua trees on the project site.

**9.56.090 MINIMIZATION**



The project proponent shall avoid all ground-disturbing activities within 10 feet of any western Joshua tree, unless those activities will be temporary, will not physically impact the western Joshua tree or its root system, and will not disturb the soil to a depth of greater than twelve inches.

#### **9.56.100 RELOCATION**

- A. To the maximum extent feasible, the project proponent shall relocate all western Joshua trees that cannot be avoided to another location on the project site.
- B. For purposes of this subsection, relocation of a western Joshua tree shall be determined to be infeasible if any of the following applies:
  - 1. Relocation of the western Joshua tree on the project site would pose a threat to public health or safety.
  - 2. Relocation of the western Joshua tree on the project site would interfere with existing roadways, sidewalks, curbs, gutters, utility lines, sewer lines, drainage improvements, foundations, structures, or setbacks to any of those structures or improvements.
  - 3. There is no location on the project site that satisfies the requirements of this ordinance.
- C. The project proponent shall ensure that relocation of western Joshua trees satisfies the following requirements:
  - 1. All relocations of western Joshua trees relocations one meter or greater in height shall be completed by a desert native plant specialist.
  - 2. All western Joshua trees to be relocated shall be placed at least twenty-five feet from any existing or proposed structure or improvement and at least ten feet from any other western Joshua tree.
  - 3. Within thirty days of completing the relocation, the project proponent shall provide the participating agency with a map of the project site indicating where each western Joshua tree was relocated.

#### **9.56.110 REMOVAL OF WESTERN JOSHUA TREES**

Subject to the limitations of this ordinance, a project proponent may remove western Joshua trees that cannot feasibly be avoided or relocated pursuant to this ordinance.

#### **9.56.120 MITIGATION FEES**

- A. Prior to applications being presented to the Planning Commission, the project proponent shall pay mitigation fees for deposit into the Western Joshua Tree Mitigation Fund as follows:
  
- B. For single-family residence projects and sewer connection projects undertaken on undeveloped parcels and public works projects to erect or construct a new public structure, building, road, or improvement, the project proponent shall pay mitigation fees as follows:
  - 1. \$2425 for each western Joshua tree four meters or greater in height that is relocated.
  - 2. \$625 for each western Joshua tree under four meters in height that is relocated.
  - 3. \$4175 for each western Joshua tree four meters or greater in height that is removed and not relocated.
  - 4. \$1050 for each western Joshua tree under four meters in height that is removed and not relocated.
  
- C. For accessory structure projects undertaken on developed parcels and for public works projects to alter, maintain, or repair an existing public structure, building, road, or improvement, the project proponent shall pay mitigation fees as follows:
  - 1. \$700 for each western Joshua tree four meters or greater in height that is relocated.
  - 2. \$175 for each western Joshua tree under four meters in height that is relocated.
  - 3. \$2100 for each western Joshua tree four meters or greater in height that is removed and not relocated.
  - 4. \$525 for each western Joshua tree under four meters in height that is removed and not relocated.

**9.56.130 DEAD AND TRIMMING WESTERN JOSHUA TREES**

- A. The Planning Commission may issue a permit to authorize either the removal of a dead western Joshua tree or the trimming of a western Joshua tree. The project proponent or its agent may remove a detached dead western Joshua tree or detached limb of a western Joshua tree. All other removals and all trimming of western Joshua trees authorized by permits issued pursuant to this subsection shall be completed by a desert native plant specialist. Planning Commission may issue a permit in accordance with this section without payment of mitigation fees, provided that the dead western Joshua tree or the limb(s) to be removed:



- (1) Has fallen over and is within 30 feet of a structure; or
- (2) Is leaning against an existing structure; or
- (3) Creates an imminent threat to public health or safety.

**9.56.140 ENFORCEMENT**

- A. A violation of any provision of this Chapter shall constitute a misdemeanor and shall be subject to enforcement pursuant to Title 1 or Chapter 9.82 of the Town Code, or any other method permissible by law.
- B. A violation of any provision of this Chapter may be punishable by an administrative citation under Chapter 1.04 of this Code in the amount of \$1,000 per western Joshua tree taken or trimmed without a permit. In addition to the payment of an administrative citation, fine, or any other penalty imposed, any person or entity that takes or trims a western Joshua tree without a permit and in violation of this Chapter shall subsequently pay the applicable per western Joshua tree fee had the permit been issued.
- C. Nothing in this Chapter shall be interpreted as conflicting with or overriding any provision of the California Endangered Species Act (California Fish and Game Code Section 2050, et. seq.) or prohibiting the Department of Fish and Wildlife, or any other entity, from enforcing the California Endangered Species Act as provided by law. If a person or entity takes a western Joshua tree in violation of the California Endangered Species Act, in addition to all other fines and penalties available under the law, the Department of Fish and Wildlife may impose a fine of not less than \$25,000 or more than \$50,000 or imprisonment in the county jail for not more than one year, or both. (See Fish and Game Code Section 12008.1.)

EXHIBIT "B"

Special Order Relating to Take of Western Joshua Tree (*Yucca brevifolia*) During Candidacy Period

**Section 749.12 Title 14, CCR, is added to read:**

**749.12 Special Order Relating to Take of Western Joshua Tree (*Yucca brevifolia*) During Candidacy Period.**

The commission authorizes the take and possession of western Joshua tree during the candidacy period for each of the activities described in this section, subject to the terms and conditions specified for each activity.

(a) The take authorization conferred by this section shall apply only to take authorized, pursuant to subsections (d) and (e), by the following counties, cities, and towns:

(1) City of Palmdale.

(2) County of San Bernardino.

(3) Town of Yucca Valley.

(b) Definitions.

(1) Accessory structure means a subordinate structure, the use of which is incidental to an existing or contemporaneously constructed single-family residence, and includes: an accessory dwelling unit, addition to an existing single-family residence, garage, carport, swimming pool, patio, greenhouse, storage shed, gazebo, septic tank, sewer connection, solar panels, or gravel or paved driveway.

(2) Desert native plant specialist means:

(A) An arborist certified by the International Society of Arborists; or

(B) An individual with a four-year college degree in ecology or fish and wildlife related biological science from an accredited college and at least two years of professional experience with relocation or restoration of native California desert vegetation; or

(C) An individual with at least five years of professional experience with relocation or restoration of native California desert vegetation.

(3) Developed parcel means a parcel with an existing single-family residence.

(4) Participating agency means each of the counties, cities, and towns listed in subsection (a).

(5) Project proponent means the owner of a project site for a single-family residence or accessory structure or the owner's agent or the public agency undertaking a public works project.

(6) Project site means the parcel or parcels on which a project proponent proposes to construct a single-family residence or accessory structure or on which a public agency proposes to undertake a public works project.

(7) Public works project means a project for the erection, construction, alteration, maintenance, or repair of any public structure, building, or road.

(8) Single-family residence means a single detached building that has been or will be constructed and used as living facilities, including provisions for sleeping, eating, cooking, and sanitation as required by the California Building Code for not more than one household. Nothing in this section shall be construed to authorize take of western Joshua tree for a subdivision or other development that includes more than one single-family residence.

(9) Size class means the classification of western Joshua trees by the following three sizes:

(A) Less than one meter in height;

(B) One meter or greater but less than four meters in height; and

(C) Four meters or greater in height.

(10) Undeveloped parcel means a parcel without an existing single-family residence.

(11) Western Joshua tree means an individual western Joshua tree (*Yucca brevifolia*) that has emerged from the ground, regardless of age or size, including all stems that have emerged from the ground within a one-meter radius measured from a single point at the base of the largest stem.

(12) Western Joshua Tree Mitigation Fund means the fund established pursuant to Section 749.10(a)(5).

(c) Each participating agency shall:

(1) Within sixty days of the effective date of this section, adopt an ordinance that:

(A) Requires as a condition of any approval or permit for a single-family residence, accessory structure, or public works project that has one or more western Joshua trees on the project site satisfaction of each of the requirements set forth in subsection (d).

(B) Provides for the permitting of take of dead trees and trimming of limbs pursuant to subsection (e).

(2) Within sixty days of the effective date of this section, deposit moneys in the Western Joshua Tree Mitigation Fund as follows:

(A) The City of Palmdale shall deposit the sum of \$10,000.

(B) The County of San Bernardino shall deposit the sum of \$10,000.

(C) The Town of Yucca Valley shall deposit the sum of \$10,000.

(3) Make bi-monthly deposits to the Western Joshua Tree Mitigation Fund, by the fifteenth day of March, May, July, September, November, and January of all mitigation fees collected pursuant to subsection (d)(6) during the preceding two calendar months.

(4) Submit to the department at [WJT@wildlife.ca.gov](mailto:WJT@wildlife.ca.gov) by the fifteenth day of March, May, July, September, November, and January a bi-monthly report that includes the following information for the preceding two calendar months:

(A) The number of projects approved pursuant to subsection (d) that resulted in the removal or relocation of western Joshua trees.



(B) The number and size class of western Joshua trees that were relocated pursuant to subsection (d).

(C) The number and size class of western Joshua trees removed and not relocated pursuant to subsection (d).

(D) The number of dead western Joshua trees removed and live trees trimmed pursuant to subsection (e).

(E) The total amount of mitigation fees collected for each of the mitigation categories set forth in subsection (d)(6).

(F) Documentation that the total amount of mitigation fees listed pursuant to subsection (c)(4)(E) was paid into the Western Joshua Tree Mitigation Fund.

(5) Submit to the department at [WJT@wildlife.ca.gov](mailto:WJT@wildlife.ca.gov) an annual report on the survival rates of trees relocated pursuant to subsection (d) by January 15 of each year beginning in 2022 and continuing for a total of three years. The annual report shall include, at a minimum, the following:

(A) The total number of western Joshua trees relocated pursuant to subsection (d).

(B) For each western Joshua tree relocated:

1. The street address for the parcel on which the western Joshua tree was relocated. If no street address is available, the property owner may include the assessor's parcel number.

2. The date of the relocation.

3. Whether the western Joshua tree is alive or dead as of the date of the annual report.

4. A photograph of the relocated western Joshua tree in its current condition.

(d) Upon compliance with subsections (c)(1) and (2), each participating agency may authorize take of western Joshua tree associated with developing single-family residences, accessory structures, and public works projects concurrent with its approval of the project and subject to the following conditions:

(1) No project shall be eligible to receive take authorization pursuant to this section if it will result in the take of more than ten western Joshua trees from the project site.

(2) Census.

(A) The project proponent proposing to relocate or remove a western Joshua tree shall cause a census of western Joshua trees to be conducted on the project site by a desert native plant specialist. The census shall tag and count all western Joshua trees on the project site and classify them by size class.

(B) Prior to receiving take authorization from the participating agency, the project proponent shall submit to the participating agency a census report that shall include the following:

1. The name of the desert native plant specialist who conducted the census and the employer of the desert native plant specialist.

2. If applicable, the name of the desert native plant specialist who will relocate western Joshua trees pursuant to subsection (d)(4)(D) and the employer of the desert native plant specialist.

3. The date of the census.

4. The date or dates of the proposed relocation of western Joshua trees, if applicable.

5. A map of the project site that depicts: the location of the proposed single-family residence, accessory structure, or public works project; the number and location of all western Joshua trees on the project site; and, if applicable, the proposed western Joshua trees for removal, or the proposed placement of each relocated western Joshua tree.

6. Photographs of each western Joshua tree on the project site, including a visual representation of the scale of the height of each tree.

(3) Avoidance: To the maximum extent practicable, the project proponent shall avoid take of western Joshua trees on the project site.

(4) Minimization.

(A) Notwithstanding subsection (d)(3), the project proponent shall avoid all ground-disturbing activities within 10 feet of any western Joshua tree, unless those activities will be temporary, will not physically impact the western Joshua tree or its root system, and will not disturb the soil to a depth of greater than twelve inches.

(B) To the maximum extent feasible, the project proponent shall relocate all western Joshua trees that cannot be avoided to another location on the project site.

(C) For purposes of this subsection, relocation of a western Joshua tree shall be determined to be infeasible if any of the following applies:

1. Relocation of the western Joshua tree on the project site would pose a threat to public health or safety.

2. Relocation of the western Joshua tree on the project site would interfere with existing roadways, sidewalks, curbs, gutters, utility lines, sewer lines, drainage improvements, foundations, - structures, or setbacks to any of those structures or improvements.

3. There is no location on the project site that satisfies the requirements of subsection (d)(4)(D)2.

(D) The project proponent shall ensure that relocation of western Joshua trees pursuant to this section satisfies the following requirements:

1. All relocations of western Joshua trees one meter or greater in height shall be completed by a desert native plant specialist. All relocations of western Joshua trees less than one meter in height shall be relocated according to the terms of the applicable participating agency's ordinance adopted pursuant to subsection (c)(1).

2. All western Joshua trees to be relocated shall be placed at least twenty-five feet from any existing or proposed structure or improvement and at least ten feet from any other western Joshua tree.

3. Within thirty days of completing the relocation, the project proponent shall provide the participating agency with a map of the project site indicating where each western Joshua tree was relocated.

(5) Removal. Subject to the limitations of subsection (d)(1), a project proponent may remove western Joshua trees that cannot feasibly be avoided pursuant to subsection (d)(3) or relocated pursuant to subsection (d)(5).

(6) Mitigation. Prior to receiving take authorization from the participating agency, the project proponent shall pay mitigation fees to the participating agency for deposit into the Western Joshua Tree Mitigation Fund as follows:

(A) For single-family residence projects and sewer connection projects undertaken on undeveloped parcels and public works projects to erect or construct a new public structure, building, road, or improvement, the project proponent shall pay mitigation fees as follows:

1. \$2425 for each western Joshua tree four meters or greater in height that is relocated.
2. \$625 for each western Joshua tree under four meters in height that is relocated.
3. \$4175 for each western Joshua tree four meters or greater in height that is removed and not relocated.
4. \$1050 for each western Joshua tree under four meters in height that is removed and not relocated.

(B) For accessory structure projects undertaken on developed parcels and for public works projects to alter, maintain, or repair an existing public structure, building, road, or improvement, the project proponent shall pay mitigation fees as follows:

1. \$700 for each western Joshua tree four meters or greater in height that is relocated.
2. \$175 for each western Joshua tree under four meters in height that is relocated.
3. \$2100 for each western Joshua tree four meters or greater in height that is removed and not relocated.
4. \$525 for each western Joshua tree under four meters in height that is removed and not relocated.

(e) Each participating agency may issue a permit to authorize either the removal of a dead western Joshua tree or the trimming of a western Joshua tree. The project proponent or its agent may remove a detached dead western Joshua tree or detached limb of a western Joshua tree. All other removals and all trimming of western Joshua trees authorized by permits issued pursuant to this subsection shall be completed by a desert native plant specialist. Each participating agency may issue permits pursuant to this subsection, without payment of mitigation fees, provided that the dead western Joshua tree or the limb(s) to be removed:

- (1) Has fallen over and is within 30 feet of a structure; or
- (2) Is leaning against an existing structure; or
- (3) Creates an imminent threat to public health or safety.



(f) During the candidacy period, no participating agency shall authorize take pursuant to subsection (d), collectively, in excess of the following limits:

(1) The City of Palmdale shall not authorize take, in the form of relocation or removal, of more than 190 western Joshua trees pursuant to subsection (d).

(2) The County of San Bernardino shall not authorize take, in the form of relocation or removal, of more than 450 western Joshua trees pursuant to subsection (d).

(3) The Town of Yucca Valley shall not authorize take, in the form of relocation or removal, of more than 450 western Joshua trees pursuant to subsection (d), of which no more than 100 western Joshua trees shall be relocated or removed in relation to sewer connection projects.

(g) Enforcement.

(1) The department shall suspend a participating agency's authority to issue take authorization pursuant to subsections (d) and (e) if the participating agency does any of the following:

(A) Fails to make bi-monthly deposits of mitigation fees into the Western Joshua Tree Mitigation Fund, as required by subsection (c)(3).

(B) Fails to provide bi-monthly reports to the department, as required by subsection (c)(4).

(C) Authorizes take for a project not eligible to receive take authorization under this section.

(D) Authorizes take in excess of the limits set forth in subsection (f).

(2) The department shall provide the participating agency with written notice of a suspension within ten days of the department's discovery of facts supporting the suspension. A notice of suspension shall provide the participating agency with thirty days to remedy the failure identified in the notice. If the participating agency provides the department with written documentation that it has remedied the failure within thirty days of receipt of the notice, the department shall lift the suspension.

(3) The department shall revoke a participating agency's authority to issue take authorization pursuant to subsections (d) and (e) if the participating agency fails to remedy a failure identified in a notice of suspension within thirty days of receipt of the notice. All revocations shall be permanent.

(h) Limitations.

(1) Nothing in this section is intended to be or shall be construed to be a general project approval. It shall be the responsibility of each project proponent receiving take authorization pursuant to this section to obtain all necessary permits and approvals and to comply with all applicable federal, state, and local laws.

(2) Nothing in this section is intended to or shall be construed to limit the terms and conditions, including those relating to compensatory mitigation, the department includes in incidental take permits for western Joshua tree issued pursuant to Fish and Game Code section 2081, subdivision (b).

Note: Authority cited: Sections 399 and 2084, Fish and Game Code. Reference: Sections 399 and 2084, Fish and Game Code.

STATE OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
TOWN OF YUCCA VALLEY

I, Lesley R. Copeland, Town Clerk of the Town of Yucca Valley, California hereby certify that the foregoing Urgency Ordinance No. 291 was adopted at a meeting of the Town Council on the 19<sup>th</sup> day of January 2021 by the following vote, to wit:

Ayes:	Council Members Denison, Drozd, Lombardo, Schooler and Mayor Drozd
Noes:	None
Abstain:	None
Absent:	None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Town of Yucca Valley, California, this 22<sup>nd</sup> day of January 2021.

  
Town Clerk of the Town of Yucca Valley

## CHAPTER 9.60

**PERMIT PROCEDURES; GENERAL PROVISIONS**

## SECTION:

- 9.60.010: Purpose  
 9.60.020: Types Of Procedures  
 9.60.030: Review Authority For Land Use And Zoning Decisions  
 9.60.040: Referral To Next Higher Review Authority

9.60.010: **PURPOSE:** This chapter establishes the procedures to process land use entitlements and development proposals in any land use zoning district. (Ord. 243, 10-15-2013)

9.60.020: **TYPES OF PROCEDURES:**

- A. This development code utilizes the following three (3) basic procedures to review all types of applications:

## 1. Public Hearing:

a. **Formal Open Forum For Public Review:** Public hearing procedures are distinguished by a formal open forum for public review of a proposal. During the course of the public hearing, the applicable review authority invites public testimony for and against the land use proposal, reviews evidence and then renders its decision in compliance with chapter 9.85, "Public Notices And Hearings", of this title. A public hearing may be conducted before the council, the commission, or the director.

b. **Review Evidence And State Relative Positions:** Public hearing procedures shall be used to give all interested parties an opportunity to review the evidence and to state their relative positions in a common public forum before the applicable review authority.



## 2. Staff Review With Notice:

a. Based Upon Specific Findings Or Conditions: Staff review with notice procedures are distinguished by land use decisions that are based upon specific findings or conditions that limit the discretion of the applicable review authority.

b. Rendering Of A Decision With Notice: Staff review with notice procedures shall provide written or published notice given to affected and interested parties followed by a decision by the applicable review authority. The notice shall be designed to ensure that all interested parties are aware of the pending decision and are given a chance to comment before the review authority renders its decision.

Such notice will be given at least fifteen (15) days prior to the scheduled hearing date. If no response has been received by the town five (5) days prior to the scheduled hearing date and the applicant has no objections to the conditions of approval, the community development director may elect not to hold a formal hearing.

## 3. Staff Review Without Notice:

a. Decisions Based Upon Adopted Standards: Staff review without notice procedures are distinguished by land use decisions made by the applicable review authority based upon standards that have been adopted by the town as law or as policy.

b. Rendering Of A Decision Without Notice: Staff review without notice procedures shall be used when sufficient standards have been adopted by the commission or the council to allow the applicable review authority to render a decision without giving notice to surrounding property owners and other parties. (Ord. 243, 10-15-2013)

## 9.60.030: REVIEW AUTHORITY FOR LAND USE AND ZONING DECISIONS:

- A. Table 4.1: Table 4.1, "Review Authority", of this section identifies the town official or authority responsible for reviewing and making initial decisions on each type of application or land use entitlement required by this development code, the nature of the initial decision (i.e., decision or recommend), and the nature of the response of the subsequent review authority.

- B. Concurrent Processing: Multiple applications for the same project shall be processed concurrently, and shall be reviewed, and approved or disapproved by the highest review authority designated by this development code for any of the required applications (e.g., a project with applications for both a zoning map amendment and a conditional use permit shall have both applications decided by the council, instead of the commission acting on the conditional use permit as otherwise provided by table 4.1, "Review Authority", of this section).

TABLE 4.1  
REVIEW AUTHORITY

Type Of Entitlement Or Decision	Applicable Code Section	Director <sup>1,2</sup>	Planning Commission <sup>3</sup>	Town Council <sup>4</sup>
Amendments to development code or zone change	Ch. 9.62	Recommend <sup>5</sup>	Recommend	Decision
Conditional use permits	Ch. 9.63	Recommend	Decision	Appeal <sup>5</sup>
Development agreements and amendments	Ch. 9.64	Recommend	Recommend	Decision
General plan amendments	Ch. 9.65	Recommend	Recommend	Decision
Home occupation permits	Ch. 9.50	Decision	Appeal	Appeal
Interpretations	Sec. 9.02.010	Decision	Appeal	Appeal
Land use compliance review	Ch. 9.66	Decision	Appeal	Appeal
Minor revisions to approved actions	Varies	Decision	Appeal	Appeal
Native plant permits	Ch. 9.77	Decision	Appeal	Appeal
Planned development permits	Ch. 9.67	Recommend	Recommend	Decision
Sign permits	Ch. 9.76	Decision	Appeal	Appeal
Site plan and design review	Ch. 9.68	Recommend	Decision	Appeal
Special use permits	Ch. 9.69	Decision	Appeal	Appeal
Specific plans and amendments	Ch. 9.70	Recommend	Recommend	Decision
Temporary special event permits	Ch. 9.71	Decision	Appeal	Appeal

Type Of Entitlement Or Decision	Applicable Code Section	Director <sup>1,2</sup>	Planning Commission <sup>3</sup>	Town Council <sup>4</sup>
Temporary use permits	Ch. 9.72	Decision	Appeal	Appeal
Variances	Ch. 9.73	Recommend	Decision	Appeal

## Notes:

1. The director may defer action and refer any permit or approval application to the commission for final determination.
2. All decisions of the director are appealable to commission, and then to the council, in compliance with chapter 9.81, "Appeals", of this title.
3. The commission may refer consideration of an appeal to the council.
4. All decisions of the council are final.
5. "Recommend" means that the review authority makes a recommendation to a higher review authority; "appeal" means that the review authority may consider and decide upon appeals to the decision of an earlier review authority, in compliance with chapter 9.81, "Appeals", of this title.

(Ord. 243, 10-15-2013)

**9.60.040: REFERRAL TO NEXT HIGHER REVIEW AUTHORITY:**

- A. A review authority may refer any application to the next succeeding review authority, based upon the following criteria:
1. Impact upon public services and facilities greater than typical for the type of project proposed;
  2. Impact upon surrounding properties greater than typical for the type of project proposed;
  3. Floor or site square footage greater than typically found in the type of project;
  4. Intensity of use greater than typically found in the type of projects;
  5. Operating characteristics not typical of the type of project proposed;
  6. Other factors including, but not limited to, public opposition to development of the project;
  7. The need for town interpretation of the general plan and/or development code as related to the project. (Ord. 243, 10-15-2013)