

November 2020 | Addendum to the Town of Yucca Valley General Plan Update EIR  
State Clearinghouse No. 2012111021

# Western Joshua Tree Ordinance

Town of Yucca Valley

*Prepared for:*

**Town of Yucca Valley**

Contact: Shane Stueckle  
57090 29 Palms Highway  
Yucca Valley, California 92284  
Tel: 760.369.6575

*Prepared by:*

**PlaceWorks**

Contact: Nicole Vermilion, Principal  
3 MacArthur Place, Suite 1100  
Santa Ana, California 92707  
714.966.9220  
info@placeworks.com  
www.placeworks.com





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# 1. Introduction

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## 1.1 BACKGROUND, PURPOSE AND SCOPE

This document is an addendum to the Town's General Plan Update certified environmental impact report (EIR), State Clearinghouse No. 2012111021, to address the Town's proposal to enact an urgency ordinance to establish regulations implementing the California Fish and Game Commission's Special Order relating to the take of western Joshua trees during the California Endangered Species Act (CESA) candidacy period and to remove the western Joshua tree from the Town's list of regulated desert native plants during the period the ordinance is effective, by adding new Chapter 9.56 to and amending Sections 9.07.130, 9.09.050 and 9.10.040 of the Town's Development Code (Proposed Project or Urgency Ordinance).

The Town of Yucca Valley regulates development of land uses in the town through its General Plan. In January 2014, the Town of Yucca Valley certified a program EIR for the General Plan Update (Certified EIR or 2014 EIR). The General Plan Update consisted of the adoption and implementation of updated land use, circulation, safety, noise, open space and conservation, and housing elements. The actions analyzed under the Certified EIR are collectively referred to as the Approved Project in this Addendum. The updated land use element established overall development capacity for the Town, and serves as a policy guide for determining the appropriate physical development and character of the town. The 2014 Certified EIR identified air quality, greenhouse gas emissions, noise, transportation, and biological resources (cumulative habitat loss) as a significant unavoidable impacts of the land use changes in the town.

The Town of Yucca Valley's Desert Native Plant Ordinance (Ordinance 253, codified in Sections 9.07.130, 9.09.050, and 9.10.040 of the Town's Development Code.) protects desert native plant species in the town, including the western Joshua tree. As a result of the listing by the California Fish and Game Commission (Commission) of the western Joshua tree as a candidate species under the California Endangered Species Act (CESA) and the proposal by California Department of Fish and Wildlife (CDFW) that the Commission approve an emergency regulation in the form of a-Special Order pursuant to Fish and Game Code Section 2084 (temporary take authorization) for the temporary incidental "take" of the species during the one-year review of its candidacy (Special Order), the Town of Yucca Valley is proposing to adopt an ordinance, as required by the Special Order, to include the specific conditions of approval (COA) requested by CDFW. The Commission's approval of the Special Order and the Town's adoption of the local implementing ordinance would allow for the incidental take of the western Joshua tree for focused activities during the candidacy review period in Yucca Valley.

The purpose of this Addendum is to evaluate whether the Proposed Project would modify the Approved Project in such a way as to result in new environmental impacts or a substantial increase in the severity of previously identified significant effects, or would otherwise trigger a need for subsequent environmental review under the California Environmental Quality Act (CEQA). Because the Proposed Project is singularly focused

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on the western Joshua tree as a result of its listing as a candidate species under CESA, this addendum focuses on impacts from the Proposed Project to biological resources.

### 1.2 ENVIRONMENTAL PROCEDURES

Pursuant to CEQA and the State CEQA Guidelines, this Addendum focuses on whether implementation of the Proposed Project would require major revisions to the Certified EIR due to the potential for new significant environmental effects or a substantial increase in the severity of previously identified significant effects, pursuant to State CEQA Guidelines Section 15162.

Pursuant to Public Resources Code Section 21166 and Section 15162 of the State CEQA Guidelines, when an EIR has been certified or a negative declaration adopted for a project, no subsequent or supplemental EIR or negative declaration shall be prepared for the project unless the lead agency determines that one or more of the following conditions are met:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
  - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
  - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative. (CEQA Guidelines § 15162[a])

A supplement to an EIR (supplemental EIR), which is narrower in scope than a subsequent EIR, may be prepared if any of the above criteria apply, but “only minor changes or additions would be necessary to make the previous EIR adequately apply to the project in the changed situation” (CEQA Guidelines § 15163(a)). In

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the absence of the need to prepare either a subsequent or supplemental EIR, an addendum to a previously Certified EIR may be prepared. Section 15164 states:

- (a) The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.
- (b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.
- (c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.
- (d) The decision making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.
- (e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence. (CEQA Guidelines § 15164)

This Addendum to the previously certified 2014 EIR has been prepared because the Town's evaluation of the Proposed Project has not indicated any of the circumstances requiring a subsequent or supplemental EIR is required. As demonstrated in Section 4 of this Addendum, the Proposed Project would not result in impacts that differ from the Approved Project, and it would not trigger the need for preparation of a subsequent or supplemental EIR under the criteria in CEQA Guidelines Sections 15162(a) and 15163(a). The Proposed Project is consistent with the General Plan Update and would not require changes to the Approved Project. This Addendum demonstrates that no substantial changes are proposed to the Approved Project or have occurred in the Town that would require major revisions to the Certified EIR or substantially increase the severity of previously identified significant effects. Thus, the impacts of the Proposed Project are within the levels and types of environmental impacts disclosed in the Certified EIR.

The Proposed Project would not change the buildout assumptions made under the Approved Project. As discussed in Section 4 of this Addendum, the listing of the western Joshua tree under CESA and the Town's approval of the Proposed Project would not result in new significant impacts or substantially increase impacts of the Approved Project. As a result, no substantial changes in circumstances under Section 15162(a)(2) have occurred since the certification of the 2014 EIR that would indicate new significant impacts or substantially increase the severity of significant impacts previously identified.

In addition, no information that was not known and could not have been known at the time of the 2014 EIR preparation has been revealed that shows new or substantially greater significant impacts would result (see CEQA Guidelines § 15162[a][3]). There are no new or different mitigation measures that would substantially reduce one or more significant impacts of the Approved Project but that are not adopted. The Proposed Project does not identify or require adoption of any further mitigation measures beyond those provided in the Certified

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EIR. However, the Certified EIR's biological resources mitigation measures are modified to address the Special Order's required COAs.

Since this Addendum does not identify new or substantially greater significant impacts, circulation for public review and comment is not necessary (CEQA Guidelines § 15164[c]). However, the Town Council will consider this Addendum at a public meeting together with the previously certified 2014 EIR prior to the adoption of the Proposed Project(CEQA Guidelines § 15164[d]

## 1.3 PREVIOUS ENVIRONMENTAL DOCUMENTATION

### 1.3.1 2014 Environmental Impact Report

In January 2014, the Town Council of Yucca Valley certified the EIR prepared for the General Plan Update. The Certified EIR analyzed adoption and implementation of updated land use, circulation, safety, noise, open space and conservation, and housing elements. The EIR identified the following potentially significant impacts that would be reduced with implementation of mitigation measures:

- Air Quality (Land Use Compatibility)
- Cultural Resources
- Noise (Stationary Sources, Land Use Compatibility/Aircraft and Military Base Noise Exposure, Groundborne Vibration)
- Transportation (Traffic Impacts)

The EIR identified the following significant and unavoidable impacts:

- Air Quality (AQMP Consistency, Operational Emissions, Construction Emissions, Localized Emissions)
- Biological Resources (Cumulative Habitat Loss)
- Greenhouse Gas Emissions
- Noise (Operational Traffic; Construction)
- Transportation and Traffic (Conflict with Congestion Management Program)

A Notice of Determination (NOD) was posted by the Clerk of the Board of the County of San Bernardino and submitted to the State Clearinghouse on February 6, 2014. No action or proceeding challenging the EIR on CEQA grounds was filed during the time periods prescribed by Public Resources Code Section 21167(c).



## 2. Environmental Setting

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### 2.1 PROJECT LOCATION

Yucca Valley is near the southern boundary of the central portion of San Bernardino County, approximately 30 miles (driving distance) north of downtown Palm Springs in neighboring Riverside County. The town is surrounded by portions of unincorporated San Bernardino County and is near the City of Twentynine Palms and the unincorporated communities of Morongo Valley and Joshua Tree. The southern boundary of Yucca Valley is adjacent to Joshua Tree National Park. State Route 62 (SR-62) traverses the town from east to west, and SR-247 crosses the northern half of the town from north to south. The Town's sphere of influence (SOI) has the same boundaries as the Town. These boundaries are generally the same as those established in the current General Plan, except for a one-square-mile area on the northern edge of the town that was annexed in 1996.

### 2.2 EXISTING LAND USE

Yucca Valley encompasses approximately 25,000 acres (or 39 square miles). The vast majority of town land consists of either single-family land uses (24.0 percent) or vacant (65.4 percent). This is due to the town's low density residential character and isolated, high desert location. With a few exceptions, existing commercial and industrial uses are generally within ½ mile of the SR-62 corridor and concentrated in the Old Town and Mid-Town areas. Yucca Valley does not contain any major water bodies. Its abundant vacant land generally consists of undeveloped desert saltbrush scrub, Joshua tree woodland, and pinyon-juniper woodland. The majority of roadways in the less developed portions of the town are unimproved (i.e., dirt roads).

## 2. Environmental Setting

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## 3. Project Description

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### 3.1 CALIFORNIA ENDANGERED SPECIES ACT

#### 3.1.1 Overview of CESA

The California Endangered Species Act (CESA) is a California environmental law enacted in 1970 and amended in 1984 and 1997 that conserves and protects plant and animal species at risk of extinction. Plant and animal species may be designated threatened or endangered under CESA after a formal listing process by CDFW's Fish and Game Commission (Commission). Approximately 250 species are currently listed under CESA. A CESA-listed species, or any part or product of a CESA-listed plant or animal, may not be imported into the state, exported out of the state, "taken" (i.e., killed), possessed, purchased, or sold without proper authorization.

CDFW works with agencies, organizations, and other interested persons to study, protect, and preserve CESA-listed species and their habitats. CDFW also conducts scientific reviews of species petitioned for listing under CESA, administers regulatory permitting programs to authorize take of listed species, maintains an extensive database of listed species occurrences, and conducts periodic reviews of listed species to determine if the conditions that led to the original listing still apply.

#### 3.1.2 CESA Take Prohibition

The take prohibition of CESA specifically states that no person shall import into this state, export out of this state, or take, possess, purchase, or sell within this state, any species, or any part or product thereof, that the commission determines to be an endangered species or a threatened species, or attempt any of those acts (Fish and Game Code [FGC] § 2080; Cal. Code Regs., title 14, § 783.1). In this context, the term "take" is defined by FGC Section 86 as hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. However, CESA contains several exceptions to the take prohibition, and CDFW may permit the take of candidate, threatened, or endangered species for individuals or businesses carrying out otherwise lawful activities.

#### 3.1.3 Incidental Take Permits

Section 2081 subdivision (b) of the Fish and Game Code allows CDFW to authorize take of species listed as endangered, threatened, or candidate or a rare plant if that take is incidental to otherwise lawful activities and if certain conditions are met. These authorizations are commonly referred to as incidental take permits. Under Section 2081 subdivision (b), impacts of taking include all impacts on the species that result from any act that would cause the proposed taking.

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Incidental take permits are most commonly issued for construction, utility, transportation, and other infrastructure-related projects. In most cases, permittees will implement species-specific minimization and avoidance measures, and fully mitigate the impacts of the project.

#### 3.1.4 CDFW Section 2084

Pursuant to section 2084 of the Fish and Game Code, the Commission may authorize, subject to terms and conditions it prescribes, and based on the best available scientific information, the taking of any candidate species, provided that the take is consistent with Chapter 1.5, Endangered Species, of the Fish and Game Code. Furthermore, CDFW may recommend to the commission that the commission authorize, or not authorize, the taking of an endangered, threatened, or candidate species pursuant to this section.

### 3.2 WESTERN JOSHUA TREE LISTING

#### 3.2.1 CDFW Candidacy Evaluation

The Fish and Game Commission has the authority to list certain “species” or “subspecies” as threatened or endangered under CESA (FGC §§ 2062, 2067, and 2070.). The listing process is the same for species and subspecies (FGC §§ 2070 to 2079.1.).

CESA sets a two-step process for listing a species as threatened or endangered. First, the Commission determines whether to designate a species as a candidate for listing by evaluating whether the petition provides “sufficient information to indicate that the petitioned action may be warranted” (FGC § 2074.2, subdivision (e)(2).). If the petition is accepted for consideration, the second step requires the CDFW to produce, within 12 months of the Commission’s acceptance of the petition, a peer-reviewed report based on the best scientific information available that indicates whether the petitioned action is warranted (FGC § 2074.6.). Finally, the Commission, based on that report and other information in the administrative record, determines whether the petitioned action to list the species as threatened or endangered is warranted (FGC § 2075.5.).

Within 10 days of receipt of a petition, the Commission must refer the petition to the CDFW for evaluation (FGC § 2073.). The Commission must also publish notice of receipt of the petition in the California Regulatory Notice Register (FGC § 2073.3.). Within 90 days of receipt of the petition (or 120 days if the Commission grants an extension), CDFW must evaluate the petition on its face and in relation to other relevant information and submit to the Commission a written evaluation report with one of the following recommendations:

- Based upon the information contained in the petition, there is not sufficient information to indicate that the petitioned action may be warranted, and the petition should be rejected; or
- Based upon the information contained in the petition, there is sufficient information to indicate that the petitioned action may be warranted, and the petition should be accepted and considered.

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CDFW's candidacy recommendation to the Commission is based on an evaluation of whether the petition provides sufficient scientific information relevant to the petition components in Fish and Game Code Section 2072.3 and the California Code of Regulations, Title 14, Section 670.1, subdivision (d)(1).

#### 3.2.2 CDFW Western Joshua Tree Petition History

Recent studies separate Joshua tree into two groups: western Joshua tree (*Yucca brevifolia* or *Yucca brevifolia* var. *brevifolia*) and eastern Joshua tree (*Yucca jaegerana* or *Yucca brevifolia* var. *jaegerana*). Both western Joshua tree and eastern Joshua tree were considered for listing under the federal Endangered Species Act (ESA), but on August 15, 2019, the U.S. Fish and Wildlife Service (USFWS) found that listing of the Joshua tree as a threatened or endangered species was not warranted.

On October 21, 2019, the Commission received a petition from the Center for Biological Diversity to list the following as threatened under CESA: (1) the western Joshua tree (*Yucca brevifolia*) throughout its California range; or, in the event the Commission determines that listing of *Yucca brevifolia* throughout its California range is not warranted, (2) the western Joshua tree population within the northern part of western Joshua tree's California range (YUBR North), or (3) the western Joshua tree population within the southern part of western Joshua tree's California range (YUBR South). CESA protects "candidate species" (i.e., species being considered for listing as threatened or endangered) and prohibits take without CDFW authorization.

On November 1, 2019, the Commission referred the petition to CDFW for evaluation. At its meeting on December 11, 2019, the Commission officially received the petition and approved a request from CDFW for a 30-day extension to further analyze the petition and complete its petition evaluation pursuant to Fish and Game Code Section 2073.5, subdivision (b).

In February 2020, CDFW prepared an evaluation of the petition to list the western Joshua tree (*Yucca brevifolia*) as threatened under CESA. Pursuant to Section 2073.5 of the Fish and Game Code, CDFW evaluated the petition on its face and in relation to other relevant information CDFW possesses or received. In completing its petition evaluation, CDFW determined there is sufficient scientific information to indicate that the petitioned action for western Joshua tree may be warranted. Therefore, CDFW recommended that the Commission accept the petition for further consideration under CESA.

On September 22, 2020, the Commission accepted consideration of the petition to list the western Joshua tree (*Yucca brevifolia*) as threatened or endangered under CESA. Pursuant to subdivision (e)(2) of Section 2074.2 of the Fish and Game Code, the Commission determined that the amount of information in the petition, when considered in light of the CDFW 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 that the requested listing could occur. Based on that finding and the acceptance of the petition, the Commission provided notice that the western Joshua tree is listed as a candidate species as defined by Section 2068 of the Fish and Game Code. Pursuant to Section 2074.6 of the Fish and Game Code, CDFW has up to a year to produce and provide a peer-reviewed status report on the western Joshua tree to the Commission to either approve or disapprove permanent threatened status at a public hearing. Accordingly, CDFW is required to submit a status review report on or before October 21, 2021.

### 3. Project Description

During the interim candidacy period, the western Joshua tree must be managed as though it was already listed under CESA, such that “take” of a member of the species is prohibited without a permit or other authorization from CDFW.

#### 3.2.3 Western Joshua Tree Ecology

Western Joshua trees are evergreen, tree-like plants that have recently been treated as members of the asparagus family (Asparagaceae). Western Joshua trees typically have a 16- to 50-foot main stem, with extensive branching on older plants. The tallest known western Joshua tree was 82 feet tall, although trees exceeding 33 feet are rare. Western Joshua tree is found in many different plant communities on flats and slopes in the Mojave Desert at elevations between 1,300 to 7,200 feet. Western Joshua tree plants tolerate temperatures of -13°F to 124°F and annual precipitation ranges of 3.9 to 10.6 inches (CDFW 2020).

Western Joshua trees are capable of both sexual and asexual reproduction—asexual reproduction via growth of rhizomes, branch sprouts, and/or basal sprouts. Sexual reproduction results in seed production. Flowering of western Joshua trees is considered episodic and rare, generally only occurring in wetter years. Flowers of Joshua trees are exclusively pollinated by specialized yucca moths (*Tegeticula synthetica*). In California, western Joshua tree is pollinated by one species of moth, the yucca moth. Female moths transfer pollen between western Joshua tree flowers in specialized mouthparts, inject eggs into the floral ovaries using a bladelike ovipositor, and then actively apply pollen to the stigmatic surface to fertilize the flower. As a western Joshua tree flower develops into a fruit, the moth eggs hatch, and emerging larvae eat a portion of the developing seeds. These moths are the sole pollinators of western Joshua trees in California, and in turn, Joshua tree seeds are the only food source for these moths. This relationship represents an obligate mutualism, where each species relies on the other for survival of its own species. Western Joshua tree relies on the yucca moth for pollination, but in turn has to sacrifice some seeds to the developing moth larvae (CDFW 2020).

Once pollinated, fruits form in early summer and seeds are mature in midsummer. Mature fruits contain 30 to 50 black seeds, which are flat to thickened with a smooth to shallowly bumpy surface. Seeds do not appear to be long-lived in the soil and are therefore unlikely to form a soil seed bank. Joshua tree seeds are harvested by rodents directly from fruits in the tree canopy and gathered quickly from the ground, and these seeds have been found in caches up to 190 feet away from the source plant. Seeds that have been buried in soil have a much greater chance of establishing seedlings than those left on the soil surface, but seed caches are also consumed and moved to different caches by rodents; therefore, Joshua tree and dispersing rodents may form a mutualism. Western Joshua trees’ greatest seedling emergence occurs during spring and summer, when increased soil moisture is accompanied by warm soil temperatures. It can take many years for western Joshua tree seedlings to reach reproductive maturity. Growth rates appear to be dependent on factors including age, precipitation, presence of nearby plants that help seedlings establish, temperature, and (at least in the laboratory) photoperiod (CDFW 2020).

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#### 3.2.4 Western Joshua Tree Mitigation Fund

During the Commission's meeting on September 22, 2020 and as part of its decision to list the western Joshua tree as a candidate species under CESA, the Commission also approved an emergency regulation authorizing incidental take of the species during the candidacy period pursuant to Fish and Game Code Section 2084 (14 CA. Code of Regulations Section 749.10). That regulation only applies to 15 specific solar energy projects that have completed the land entitlement process and are currently in the late stages of development. That regulation also provided for compensatory mitigation to be satisfied by payment into a Western Joshua Tree Mitigation Fund (WJTMF or Fund) administered by CDFW for the acquisition and permanent conservation of comparable western Joshua tree habitat. Projects authorized for incidental take are required to satisfy the compensatory mitigation ratio via payment into the Fund.

The WJTMF fee accounts for biological monitoring, infrastructure, short- and long-term habitat maintenance, and reporting activities. The fee estimate is a per acre mitigation cost for the purpose of calculating the individual project mitigation fee. The fee estimate was derived by the average number of acres and cost per acre of recent sales (previous six months) of land that contained western Joshua trees in the Mojave Desert; the prevailing wage rates for qualified biologists and land managers to conduct biological monitoring and other land management activities such as trash clean-up and removal; the cost (in 2020 dollars) of fencing materials, signage, and prevailing wage rates for fencing installation and repair and equipment and materials for invasive species control; and the cost based on prevailing wage rates for data management and to produce an annual land management report (Commission 2020).

### 3.3 TOWN OF YUCCA VALLEY NATIVE PLANT ORDINANCE REGULATION AND HISTORY

#### 3.3.1 Desert Native Plant Protection

##### History

The Town of Yucca Valley's Native Plant Ordinance protects native plant species in the Town, including Joshua trees. The Town's original Native Plant Ordinance (Ordinance 140) was in effect at the time of the General Plan. However, when the Town was considering the General Plan Update and the Certified EIR, the Town had proposed a Plant Protection and Management Ordinance to replace Ordinance 140. This revised Native Plant Ordinance was ultimately adopted as Ordinance 253 in December 2014 by the Town Council and added to the Town's Development Code Section 9.07.130 for residential, Section 9.09.050 for commercial, and Section 9.10.040 for industrial zoned parcels.

##### Requirements

The Town of Yucca Valley Development Code contains specific regulations with respect to desert native plant protection. Compliance with the Native Plant Protection and Management ordinance helps promote the continued health of the Town's abundant and diverse plant resources, by not allowing their indiscriminate removal, and the protection of native plants and their relationship to the identity of the Town.

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Development Code Sections 9.07.130, 9.09.050, and 9.10.040 apply to residential and hillside reserve districts, commercial districts, and industrial districts, respectively. These sections identify development standards and requirements for native landscaping for residential developments, commercial development projects, and industrial development projects.

Regulated desert native plants for all residential, commercial land development, and industrial land development projects, include the following:

- Joshua tree (*Yucca brevifolia*)
- Mojave yucca (*Yucca schidigera*)
- Parry's nolina (*Nolina parryi*)
- California juniper (*Juniperus californica*)
- Our Lord's candle (*Yucca whipplei*)
- Pinon pine (*Pinus monophylla*)

### 3.4 PROPOSED ACTIONS

#### 3.4.1 CDFW Action: CDFW Section 2084, Take Authorization

As noted above, during the Commission's meeting on September 22, 2020, in addition to listing the western Joshua tree as a candidate species under CEQA the Commission also approved an emergency regulation authorizing incidental take of the western Joshua tree during the candidacy period for 15 specific solar energy projects pursuant to Fish and Game Code Section 2084. Under Section 2084, compensatory mitigation is satisfied by payment into the WJTMF administered by CDFW for the acquisition and permanent conservation of comparable western Joshua tree habitat. Projects not covered by the emergency regulation that result in take of western Joshua tree will now have to secure project-specific incidental take permits from CDFW pursuant to Fish and Game Code Section 2081 or otherwise risk enforcement.

Similarly, CDFW is proposing to approve another 2084 emergency regulation (temporary take authorization) in the form of a Special Order that would also authorize the Town of Yucca Valley, San Bernardino County, and the City of Palmdale to issue incidental take permits for the western Joshua tree for single family residences, accessory structures and public works projects, defined as follows:

- **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.
- **Accessory Structure** is 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.



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

The proposed Special Order also requires the individual jurisdictions, including the Town of Yucca Valley, to adopt a local ordinance requiring specific CDFW-mandated conditions of approval (COA) be imposed on any local western Joshua tree take authorization provided in association with approvals/permits issued for covered single-family residences, accessory structures or public works projects addressing avoidance/relocation and mitigation fee requirements.

#### 3.4.2 Town Action: Proposed Urgency Ordinance

##### 3.4.2.1 ENACTMENT OF NEW CHAPTER 9.56 TO TOWN'S DEVELOPMENT CODE.

The Proposed Project involves adoption of an Urgency Ordinance to establish permitting standards and a process for the issuance of take permits for the western Joshua tree, as authorized pursuant to the California Fish and Game Commission's Special Order. The result of the Urgency Ordinance by the Town and the Commission's approval of the Special Order (temporary take authorization) would allow for the incidental take of the western Joshua tree for focused activities during the candidacy review period in the Town of Yucca Valley.

The temporary take authorization and related mitigation provisions of Urgency Ordinance are limited in scope and only apply to the three project types listed in and covered by the Special Order. Specifically, the temporary take authorization is limited to the Town's approval of single-family residences, accessory structures, and certain public works projects defined by the Special Order as:

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

Once adopted, the Urgency Ordinance's new provisions will be added to Chapter 9.56, *Removal of Western Joshua Trees*, of the Town of Yucca Valley Development Code. The provisions would remain in effect during the period in which the western Joshua tree remains a candidate species as defined by y Section 2068 of the California Fish and Game Code and automatically terminate when the western Joshua tree is no longer

### 3. Project Description

considered a candidate species. A summary of the new provisions to be added via new Chapter 9.56 is as follows:

- **Avoidance, Minimization, and Relocation Measures (Section 9.56.080, Section 9.56.090, and Section 9.56.100).** The Special Order and Urgency Ordinance identify avoidance, minimization, and relocation measures. Under the Urgency Ordinance, a project proponent may remove western Joshua trees that cannot feasibly be avoided or relocated.
- **Removal of Dead Trees and Trimming of Western Joshua Trees (Section 9.56.130).** The Special Order and Urgency Ordinance allow for either the removal of a dead western Joshua tree or the trimming of a limb of a western Joshua tree by a certified arborist, without payment of mitigation fees, provided that the dead western Joshua tree or limb to be removed has (1) fallen over, (2) is leaning against an existing structure, or (3) creates an imminent threat to public health.
- **Project Application Information Required (Section 9.56.070).** Property owners that seek approval for the removal or relocation of western Joshua trees would be required to submit an application to Town of Yucca Valley Community Development Department, that include the following information:
  - The name of the desert native plant specialist who conducted the census and the employer of the desert native plant specialist.
  - 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.
  - The date of the census
  - The date or dates of the proposed relocation of western Joshua trees, if applicable.
  - 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 the proposed placement of each relocated western Joshua tree.
  - Photographs of each western Joshua tree on the project site, including a visual representation of the scale of the height of each tree.
  - 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.
  - Narrative written descriptions of each western Joshua Tree, its diameter, height, existing health condition and any other information deemed necessary.
- **Mitigation Fee for Removal of Western Joshua Trees: Western Joshua Tree Mitigation Fund (WJTTF or Fund) (Section 9.56.110 and Section 9.56.120).** The Special Order and Urgency Ordinance provide a mechanism (i.e., payment of fees into the WJTTF) that is intended to reduce western Joshua tree impacts associated with development. Fees are based on the type of project (single family/public works

### 3. Project Description

or accessory structure), and size of tree, and whether the tree is removed or relocated. Prior to applications being presented to the Planning Commission, the project proponent is required to pay mitigation fees for deposit into the Fund.

- **Bi-Monthly Deposits to the WJTMF (Section 9.56.040).** The Special Order and Urgency Ordinance require that the Town make bi-monthly deposits to the WJTMF by the fifteenth day of January, March, May, July, September, and November, of all mitigation fees collected during the preceding two calendar months.
- **Reporting (Section 9.56.050 and 9.56.060).** The Special Order and Urgency Ordinance require the Town to submit bimonthly reports on projects approved that resulted in loss of western Joshua trees and the number, size, and class of trees relocated or removed, and amount of mitigation fees paid to the WJTMF to the CDFW by the fifteenth day of January, March, May, July, September, and November. The Town would also be required to submit an annual report on the survival rates of trees relocated by January 15 of each year beginning in 2021 and continuing for a total of three years.

#### 3.4.2.2 PROPOSED AMENDMENTS: DEVELOPMENT CODE EXISTING SECTIONS 9.07.130, 9.09.050, 9.10.040

The Urgency Ordinance also involves the amendment of existing Sections 9.07.130, 9.09.050, and 9.10.040 of the Town's Development Code to remove the western Joshua tree from the list of regulated desert native plants set forth in those sections. Sections 9.07.130, 9.09.050, and 9.10.040 apply to residential and hillside reserve districts, commercial districts, and industrial districts, respectively. These sections identify development standards and requirements for native landscaping for residential developments, commercial development projects, and industrial development projects. During the candidacy review period in the Town of Yucca Valley, the Urgency Ordinance's new Chapter 9.56 would control and the development standards and requirements for native landscaping identified in Sections 9.07.130, 9.09.050, and 9.10.040 would not apply to the western Joshua tree.

#### 3.4.3 Relationship of Town Ordinances to General Plan

The Town of Yucca Valley regulates development of land uses within the town through its General Plan. The General Plan sets long-term policies that guide future development. To illustrate its importance, all subdivisions, public works projects, and zoning decisions must be consistent with the General Plan. The General Plan has a long-term outlook, identifying the types of development that will be allowed, the spatial relationships among land uses, and the general pattern of future development.

The Town also adopts ordinances to regulate land uses and to carry out the policies of its General Plan. Many of the ordinances, including the Town's Native Plant Ordinance, are in the Town's Municipal Code, which the Town uses to regulate development. Because the General Plan is the all-encompassing planning tool used by the Town to regulate development activities, the modifications to the Town's Native Plant Ordinance fall under the umbrella of the General Plan.

### 3. Project Description

The General Plan Update EIR was certified at the time of the adoption of the General Plan Update. Pursuant to CEQA Guidelines Section 15064(d), the EIR considered the direct physical changes and reasonably foreseeable indirect physical changes in the environment that would be caused by the General Plan Update. In Chapter 5.3, *Biological Resources*, of the Draft EIR (DEIR), existing regulations and standard conditions are identified. Specifically, the Town's Native Plant Ordinance is identified as a local existing regulation and standard condition for the General Plan Update. DEIR Chapter 5.3, Biological Resources, states that conflicts with a habitat conservation plan or natural community conservation plan (Impact 5.3-9) are less than significant with the implementation of regulatory requirements and standard COAs (i.e., federal, state, and local). Impacts to sensitive species (Impact 5.3-1), riparian habitat (Impact 5.3-3), jurisdictional resources (Impact 5.3-4), wildlife corridor movement (5.3-5), migratory bird movement (Impact 5.3-6), and plants protected by the Town's Native Plant Ordinance (Impact 5.3-7) were reduced to less than significant with implementation of Mitigation Measures 3-1 through 3-8. However, despite Mitigation Measures 3-1 through 3-8, impacts from cumulative impacts of habitat loss were considered a significant unavoidable impact associated with growth in the Town.

## 4. Environmental Analysis

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### 4.1 CONDITIONS

The section briefly summarizes the conclusions of the Certified EIR and discusses three conditions pursuant to CEQA Guidelines Section 15162 for impacts to biological resources:

**Condition 1.** Whether or not the proposed project represents a substantial change that will require major revisions to the Certified EIR due to new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

**Condition 2.** Whether or not substantial changes in the circumstances under which the proposed project is being undertaken will require major revisions to the Certified EIR due to new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

**Condition 3.** If new information shows that the proposed project would have one or more new significant effects; that significant effects would be substantially more severe than previously described; that mitigation measures or alternatives previously found not to be feasible would be feasible and substantially reduce impacts, but project proponents decline to adopt them; or that new or previously rejected mitigation measures or alternatives would be feasible and would substantially reduce one or more project impacts, but project proponents decline to adopt them.

If none of the above conditions are met, the analysis identifies where impacts of the Proposed Project would not require major revisions to the Certified EIR or substantially increase the severity of previously identified significant effects that would trigger the need to prepare a subsequent or supplemental EIR under Sections 15162(a) and 15163(a). t.

### 4.2 BIOLOGICAL RESOURCES

#### 4.2.1 Thresholds of Significance

According to Appendix G of the CEQA Guidelines, a project would normally have a significant effect on the environment if the project would:

- B-1 Have a substantial effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.

## 4. Environmental Analysis

- B-2 Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.
- B-3 Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.
- B-4 Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites.
- B-5 Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.
- B-6 Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

### 4.2.2 Summary of Impacts Identified in the EIR

The following summarizes the biological resources impacts identified in the Certified EIR.

- **Habitat Inhabited by Sensitive Species.** Buildout of the General Plan Update would impact habitat types inhabited by sensitive species. Growth accommodated through long-term buildout of the Town of Yucca General Plan would result in significant loss of habitat. CESA and ESA regulate the loss of habitat as it pertains to special status plant and animal species. Coordination with the USFWS and CDFW would ensure that, on a project-by-project basis, habitat is replaced or conserved in accordance with the agency-determined ratios if it is determined, through consultation, that special status plant and animal species occur or are likely to occur on-site. Implementation of Mitigation Measures 3-1 through 3-4 would also mitigate impacts for each individual project site. However, no regional habitat conservation plan/natural communities conservation plan has been prepared for the Morongo Basin that mitigates the cumulative loss of habitat as a result of future development. Consequently, while impacts from loss of habitat would be mitigated for each individual development through consultation with the relevant federal and state agencies, cumulative impacts of habitat loss are considered a significant and unavoidable impact associated with full buildout of the General Plan.
- **Sensitive Species.** Development pursuant to the General Plan Update would impact sensitive plant and animal species known to occur in and/or near the Town of Yucca Valley. Implementation of Mitigation Measures 3-1 through 3-4—including required preparation of a biological resources assessment surveying existing biological resources in the project area, in compliance with the CESA and ESA—would ensure that impacts to special status species are avoided and/or minimized in accordance with local, state, and federal requirements. Impacts would be less than significant.

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- **Jurisdictional Resources.** As stated in the Certified EIR, development pursuant to the General Plan Update would result in the loss of an undetermined amount of riparian habitat. Mitigation Measure 3-5 would require preparation of jurisdictional delineations mapping waters, wetlands, and riparian habitats jurisdictional to the US Army Corps of Engineers, CDFW, and the Colorado River Basin Regional Water Quality Control Board (CRBRWQCB) specifying impacts to such resources. Mitigation Measure BIO 3-6 would require project applicants to obtain permits and authorizations from the Corps, CDFW, and CRBRWQCB specifying measures to avoid, minimize, and mitigate impacts. Impacts to jurisdictional riparian habitats would be less than significant.
- **Wetlands.** Buildout of the proposed General Plan Update could impact undetermined amounts of water and wetlands jurisdictional to the Corps, CDFW, and CRBRWQCB. Mitigation Measures 3-5 and 3-6 would require preparation of jurisdictional delineations, and issuance of permits, and authorizations to avoid, minimize, and mitigate impacts. Impacts to jurisdictional waters and wetlands would be less than significant.
- **Wildlife Corridors.** Developments pursuant to the proposed General Plan Update would impact wildlife movement in wildlife linkages that regional wildlife connectivity studies identified in the town and that the Town designated as Wildlife Corridor Evaluation Areas. Mitigation Measure 3-7 would require preparation of habitat connectivity evaluations for each project proposed in a Wildlife Corridor Evaluation Area or an Open Space Resource Area, and it specifies measures to be taken, to the extent practicable, to minimize impacts on wildlife movement. Impacts on wildlife movement would be less than significant.
- **Migratory Birds** Buildout of the General Plan Update could impact migratory birds protected under the Migratory Bird Treaty Act and the California Fish and Game Code. Mitigation Measure 3-8 would require preconstruction general surveys of nesting birds and avoidance of impacts to active nests of bird species protected by federal and state laws. Impacts to migratory birds would be less than significant.
- **Consistency with the Town's Native Plant Ordinance.** Projects developed according to the proposed General Plan Update could impact plants protected by the Town's Native Plant Ordinance, including western Joshua tree. Implementation of Mitigation Measures BIO 3-1 through 3-4 would reduce impacts to plants protected by the Town's Native Plant Ordinance to less than significant.
- **Consistency with the Town's Open Space Resource Areas.** Buildout of the proposed General Plan Update would include development of projects within the Open Space Resource Areas and would thus impact biological resources in those areas. Implementation of Mitigation Measures 3-1 through 3-4 and 3-7 would reduce impacts to biological resources within Open Space Resource Areas to less than significant.
- **Consistency with a Habitat Conservation Plan or Natural Community Conservation Plan.** Implementation of the General Plan Update would not conflict with a habitat conservation plan (HCP) or natural community conservation plan (NCCP). At the time of the General Plan Update, two HCPs/NCCPs were being drafted within the Mojave Desert/Sonoran Desert—the West Mojave Plan (WMP) and the Desert Renewable Energy Conservation Plan (DRECP). The WMP had been adopted by the Bureau of Land Management (BLM), but some provisions of the plan were being revised pursuant to a US District Court order. According to the BLM, the Town is no longer a participating agency in the WMP, and the

## 4. Environmental Analysis

proposed HCP would apply to projects conducted on BLM lands only. Similarly, though the draft DRECP HCP/NCCP would encompass the town, no projects (i.e., energy projects) subject to the draft DRECP HCP/NCCP are planned or proposed within the town. The town is not in the plan area of any other existing or planned HCP or NCCP. Therefore, implementation of the proposed General Plan Update would not conflict with any HCP or NCCP.

### 4.2.3 Impacts Associated with the Proposed Project

Would the Proposed Project:

- a) **Have a substantial effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?**

#### General Plan Update EIR

**Less Than Significant with Mitigation.** According to the Certified EIR, development pursuant to the General Plan Update could impact sensitive plant and animal species known to occur in and/or near the Town of Yucca Valley. Development according to the land use plan would replace existing natural lands in the town with developed land uses, resulting in a loss of habitat. The Certified EIR concluded that development of natural lands could impact sensitive plant and animal species known to occur in the town. Sensitive species other than those listed in the certified EIR may also be impacted.

Sensitive biological resources are regulated by the USFWS and CDFW. These agencies require an assessment of the presence or potential presence of special status species and the vegetation communities in which they are likely to occur within the project vicinity prior to the approval and construction of a proposed development project. While these actions would assist in reducing impacts, under CESA and ESA, future development projects consistent with the land use plan would require more detailed evaluations of biological resources and formulation of mitigation measures by a qualified biologist. Consequently, impacts to sensitive plant and animal species are considered potentially significant in the absence of mitigation.

Implementation of Mitigation Measures 3-1 through 3-4, including required preparation of a biological resources assessment surveying existing biological resources in the project area in compliance with the CESA and FESA, would ensure that impacts to special status species are avoided and/or minimized in accordance with local, state, and federal requirements. The Certified EIR found that impacts to sensitive species would be avoided and/or minimized through compliance with the CESA and ESA and implementation of Mitigation Measures 3-1 through 3-4. As a result the Certified EIR found impacts to be *less than significant with mitigation*.

#### Proposed Project

**Less Than Significant/No Changes or New Information Requiring Preparation of an EIR.** On September 22, 2020, the Commission accepted consideration of the petition submitted by the Center for Biological Diversity to list the western Joshua tree (*Yucca brevifolia*) as threatened or endangered under CESA. The western Joshua tree is not listed as threatened or endangered under the ESA. During the interim candidacy



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period, the western Joshua tree must be managed as though it were already listed under CESA, and “take” of a member of the species is prohibited without a permit from CDFW.

The Town of Yucca Valley’s Native Plant Ordinance protects native plant species in the town, including western Joshua trees. The Proposed Project involves adoption of the Urgency Ordinance to include the specific COAs mandated by CDFW. Approval of the Special Order by the Commission and the subsequent adoption of the Urgency Ordinance by the Town would allow for the incidental take of the western Joshua tree for focused activities during the candidacy review period in the Town of Yucca Valley.

The Certified EIR’s Mitigation Measures 3-1 through 3-4 did not previously apply to the western Joshua tree because, at the time of the Certified EIR, it was not considered a sensitive species under the CESA. However, with the petition to accept consideration of the western Joshua tree as threatened or endangered under the CESA, these mitigation measures would be applicable to discretionary projects subject to CEQA in the Town. Implementation of Mitigation Measures 3-1 through 3-4 would require a biological resources assessment surveying existing biological resources in a project area to ensure compliance with the CESA, and would ensure that impacts to special status species are avoided and/or minimized in accordance with local, state, and federal requirements.

However, the Proposed Project would allow for relocation and/or removal of western Joshua trees on single-family residential parcels to construct a single-family residence or accessory structure or public works projects. For these projects, the Proposed Project would require a census of western Joshua trees on the project site, avoidance of Joshua trees to the maximum extent practicable, minimization of disturbance to Joshua trees that are not relocated and removed (prohibit ground-disturbing activities within 10 feet if those activities disturb the soil to a depth of greater than 12 inches), and prohibition of relocation or removal of more than 10 western Joshua trees at a project site. For Joshua trees that require “take,” the Proposed Project would require payment for each western Joshua tree removed or relocated (based on size, type of project, and whether it is removed or relocated) into the WJTMF. Compliance with the avoidance, minimization, and other measures in Mitigation Measures 3-1 through 3-4, modified herein, would ensure that impacts to the western Joshua tree are avoided and/or minimized in accordance with local and state requirements.

The Certified EIR analyzed impacts to sensitive plant and animal species known to occur in and/or near the Town of Yucca Valley. It found that development could impact sensitive plant and animal species because existing natural lands would be replaced, resulting in a loss of habitat. The Proposed Project would allow for the take of the western Joshua tree in the form of relocation or removal of the species. As a result, impacts to the western Joshua tree (i.e., a sensitive species known to occur in the town) could occur due to development. While there may be impacts to the western Joshua tree as a result of the Proposed Project (i.e., via incidental take) from removal and relocation allowed under the Proposed Project. Mitigation Measures 3-1 has been modified to include the specific provisions requested by the CDFW, including avoidance, minimization, and relocation provisions, to mitigate impacts from removal and relocation of the western Joshua tree for single-family residential, accessory structures, and public works projects only. . Furthermore, the Proposed Project would provide a mechanism (i.e., payment of fees into the WJTMF), which has been included in Mitigation Measure 3-1, that would help further ensure that impacts are reduced to a less than significant level. Mitigation Measures 3-1 through 3-4 have been revised to reflect the additional COAs identified by CDFW to mitigate

## 4. Environmental Analysis

impacts to the western Joshua tree until the final decision to list the species as threatened is determined. Therefore, impacts of the Proposed Project are *less than significant*.

Consequently, the Proposed Project would not trigger the need for preparation of a subsequent or supplemental EIR under the criteria in Sections 15162(a) and 15163(a). The Proposed Project is consistent with the General Plan Update and would not require changes to the Approved Project. No substantial changes are proposed to the Approved Project or have occurred in the town that would require major revisions to the Certified EIR or substantially increase the severity of previously identified significant effects. Thus, the impacts of the Proposed Project are within the levels and types of environmental impacts previously disclosed in the Certified EIR.

- b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?**

### General Plan Update EIR

**Significant and Unavoidable.** According to the Certified EIR, buildout of the General Plan Update would impact habitat types inhabited by sensitive species. Each of the habitat/land cover types in the town, except for disturbed lands and urban/developed lands, are identified as habitats for one or more sensitive species. Watercourses in the town have the potential to support riparian habitat. In addition, vegetation communities may become sensitive and/or species may become listed in the future. The Certified EIR concluded that buildout of the General Plan Update would convert some of each the sensitive habitat types in the town to developed land uses. Growth accommodated through long-term buildout of the Town of Yucca General Plan would result in significant loss of habitat, including riparian habitat.

The Certified EIR states that no regional HCP/NCCP has been prepared for the Mojave Desert/Sonoran Desert that mitigates the cumulative loss of habitat as a result of future development. Consequently, while impacts from loss of habitat would be mitigated on a case-by-case basis for each individual development through consultation with the relevant federal and state agencies, cumulative impacts of habitat loss are considered significant. The area over which cumulative impacts are considered is the Mojave Desert Bioregion designated by the California Natural Resources Agency, which spans 20 million acres covering most of San Bernardino and Inyo Counties and parts of Riverside, Los Angeles, Kern, Tulare, and Mono counties.

Implementation of Mitigation Measures 3-5 and 3-6 would reduce impacts to riparian habitat to less than significant. Mitigation Measures 3-1 through 3-4 would reduce project-level impacts to sensitive habitat to less than significant. As stated in the Certified EIR, while impacts from loss of habitat would be mitigated on a case-by-case basis for each individual development through consultation with the relevant federal and state agencies, cumulative impacts of habitat loss associated with the Certified EIR are considered *significant and unavoidable*.

### Proposed Project

**Less than Significant/No Changes or New Information Requiring Preparation of an EIR** The Proposed Project involves amending the Town's Native Plant Ordinance to implement temporary take

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authorization approved by the Commission's Special Order and to include the specific COAs requested by CDFW for the western Joshua tree. Approval of the Special Order by the Commission and the subsequent adoption of the Urgency Ordinance by the Town would allow for the incidental take of the western Joshua tree for focused activities during the candidacy review period in the Town of Yucca Valley. As a result, impacts to habitat inhabited by the western Joshua tree could occur. However, the Proposed Project's authorization for removal and relocation of western Joshua trees narrowly applies to single-family residential, accessory structures, and public works projects only.

Mitigation Measures 3-1 has been modified to include the specific provisions requested by the CDFW, including avoidance, minimization, and relocation provisions, to mitigate impacts from removal and relocation of the western Joshua tree. In addition, payment of impact fees to the WJTMF would mitigate the potential loss of the western Joshua trees on a project-by-project basis. Payment of mitigation fees to the WJTMF would fund biological monitoring, infrastructure, short- and long-term habitat maintenance, and reporting activities. The fee estimate is a per acre mitigation cost that would fully mitigate project-level impacts. However, cumulative impacts would be similar to those identified in the Certified EIR since, at this time, there is no HCP or NCCP for the conservation of western Joshua trees and their habitat.

Additionally, the Proposed Project would not increase the amount of disturbed area identified in the Town's General Plan. As a result, the proposed project would not result in an increase in habitat loss greater than that identified in the Certified EIR.

With the modifications to Mitigation Measure 3-1, the Proposed Project would not result in a new impact or a substantial increase in magnitude of impacts identified in the Certified EIR. Therefore, impacts of the Proposed Project would be *less than significant*.

The Proposed Project would not trigger the need for preparation of a subsequent or supplemental EIR under the criteria in Sections 15162(a) and 15163(a). The Proposed Project is consistent with the General Plan Update and would not require changes to the Approved Project. No substantial changes are proposed to the Approved Project or have occurred in the town that would require major revisions to the Certified EIR or substantially increase the severity of previously identified significant effects. Thus, the impacts of the Proposed Project are within the levels and types of environmental impacts disclosed in the Certified EIR.

- c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?**

### General Plan Update EIR

**Less Than Significant Impact With Mitigation.** As stated in the certified EIR, developments according to the General Plan Update could impact waters and wetlands jurisdictional to CDFW, the U.S. Army Corps of Engineers (Corps), and the Colorado River Basin Regional Water Quality Control Board (CRBRWQCB). Waters of the US are jurisdictional to the Corps; Waters of the State are jurisdictional to the CRBRWQCB and CDFW; and wetlands meeting certain criteria are jurisdictional to the Corps and/or CDFW. Watercourses in the town could be jurisdictional to these agencies. Mitigation measures for impacts to jurisdictional waters,

## 4. Environmental Analysis

wetlands, and/or riparian habitat would be required if jurisdictional resources were impacted onsite. Consequently, impacts to jurisdictional waters are considered potentially significant in the absence of mitigation. As identified in the Certified EIR, impacts to jurisdictional resources and wetlands from development in the town would be avoided and/or minimized through implementation of Mitigation Measures 3-5 through 3-6. Thus, impacts of the Certified EIR would be *less than significant with mitigation*.

### Proposed Project

**Less Than Significant/No Changes or New Information Requiring Preparation of an EIR.** The Proposed Project narrowly applies to western Joshua trees. Additionally, the Proposed Project would not increase the amount of disturbed area identified in the Town's General Plan. As a result, the proposed project would not result in an increase in habitat loss greater than that identified in the Certified EIR. Thus, the Proposed Project would not have the potential to affect jurisdictional resources or wetlands. Impacts of the Proposed Project would be *less than significant*. Consequently, the Proposed Project would not trigger the need for preparation of a subsequent or supplemental EIR under the criteria in Sections 15162(a) and 15163(a). The Proposed Project is consistent with the General Plan Update and would not require changes to the Approved Project. No substantial changes are proposed to the Approved Project or have occurred in the town that would require major revisions to the Certified EIR or substantially increase the severity of previously identified significant effects. Thus, the impacts of the Proposed Project are within the levels and types of environmental impacts disclosed in the Certified EIR.

- d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites?**

### General Plan Update EIR

**Less Than Significant Impact With Mitigation.** According to the Certified EIR, developments pursuant to the proposed General Plan Update could impact wildlife movement in wildlife linkages and migratory birds.

Joshua Tree-29 Palms linkage crosses the northern "pan handle" portion of the town, as well as a portion of the town on its eastern border. This linkage is somewhat constrained in the northern part of the town as it passes through a developed industrial area. While constrained, it still provides east-west connectivity between larger open space areas. The area within this linkage on the eastern border of the town is on a hilly area and supports mostly undisturbed native habitat. General Plan land uses in this linkage include hillside residential, rural living, rural residential, open space, industrial, and commercial.

The San Bernardino-Little San Bernardino linkage passes through mostly undeveloped, hilly terrain in the southwestern corner of the town. This area supports high quality native habitat and provides connectivity between Joshua Tree National Park, Big Morongo Canyon, and open space areas to the west. General Plan land uses in the San Bernardino-Little San Bernardino linkage include hillside residential, rural living, rural residential, medium-density residential, and open space.

Numerous species of migratory birds occur in the town, including sensitive species. The town is in the Pacific Flyway, an interconnected set of bird migration routes in the western portions of Mexico, the United States

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including Alaska, and Canada. Many bird species are abundant at the Big Morongo Canyon Preserve during spring and fall migration seasons.

The Certified EIR states that residential, and nonresidential development within the Wildlife Corridor Evaluation Areas (WCEA) could interfere with wildlife movement and migratory birds protected under the Migratory Bird Treaty Act and the California Fish and Game Code. However, impacts to wildlife movement in wildlife linkages and migratory birds would be avoided and/or minimized through implementation of Mitigation Measures 3-7 and 3-8. Thus, impacts of the Certified EIR would be *less than significant with mitigation*.

### Proposed Project

#### **Less Than Significant Impact/No Changes or New Information Requiring Preparation of an EIR.**

The Proposed Project narrowly applies to the western Joshua tree. While nesting habitat for migratory birds could be impacted from the removal or relocation of the western Joshua tree, impacts resulting from the Proposed Project would not exceed the less than significant finding in the Certified EIR. Additionally, the Proposed Project would not increase the amount of disturbed area identified in the Town's General Plan. As a result, the proposed project would not result in an increase in habitat loss greater than that identified in the Certified EIR that would affect wildlife movement and migratory birds. Impacts would be *less than significant*.

Consequently, the Proposed Project would not trigger the need for preparation of a subsequent or supplemental EIR under the criteria in Sections 15162(a) and 15163(a). The Proposed Project is consistent with the General Plan Update and would not require changes to the Approved Project. No substantial changes are proposed to the Approved Project or have occurred in the town that would require major revisions to the Certified EIR or substantially increase the severity of previously identified significant effects. Thus, the impacts of the Proposed Project are within the levels and types of environmental impacts disclosed in the Certified EIR.

#### **e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?**

### General Plan Update EIR

**Less Than Significant Impact with Mitigation.** Projects developed according to the proposed General Plan Update could impact plants, such as the western Joshua tree, protected by the Town's Native Plant Ordinance. Several plant species within the town are considered valuable resources that warrant protection. At the time of the certified EIR, the Town proposed a Plant Protection and Management Ordinance (Ordinance No. 253) to protect these locally important plant species. This ordinance was adopted in December 2014.

As stated in the Certified EIR, buildout of the proposed General Plan Update could impact plants protected under the Town's Native Plant Ordinance. Projects considered for approval by the Town of Yucca Valley would require biological resources assessments of each respective project site by a qualified biologist. Consequently, impacts to locally protected plants are considered potentially significant in the absence of mitigation. As identified in the Certified EIR, implementation of Mitigation Measures 3-1 through 3-4 would reduce impacts to plants protected by the Town's ordinance to *less than significant with mitigation*.

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### Proposed Project

#### **Less Than Significant Impact/No Changes or New Information Requiring Preparation of an EIR.**

The Proposed Project would allow for relocation and/or removal of western Joshua Trees on single-family residential parcels to construct a single-family residence or accessory structure or on public works projects (e.g., alteration, maintenance, or repair of public structures, buildings, or roads). For these projects, the Urgency Ordinance would require a census of western Joshua trees on the project site to ensure that impacts to Joshua trees are avoided or minimized. For those Joshua trees that are removed or relocated, the Town would require payment of mitigation fees into the WJTMF. Compliance with the avoidance and minimization requirements and payment of impact fees to the WJTMF would ensure that impacts to the western Joshua tree are less than significant and follow the COAs outlined in the Special Order pursuant to Fish and Game Code Section 2084. Mitigation Measures 3-1 through 3-4 been revised to reflect CDFW's additional requirements to mitigate impacts to the western Joshua tree until the decision to list the species as threatened is determined. Consequently, impacts to locally important biological resources are *less than significant*.

Consequently, the Proposed Project would not trigger the need for preparation of a subsequent or supplemental EIR under the criteria in Sections 15162(a) and 15163(a). The Proposed Project is consistent with the General Plan Update and would not require changes to the Approved Project. No substantial changes are proposed to the Approved Project or have occurred in the town that would require major revisions to the Certified EIR or substantially increase the severity of previously identified significant effects. Thus, the impacts of the Proposed Project are within the levels and types of environmental impacts disclosed in the Certified EIR.

- f) **Conflict with the provisions of an adopted habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?**

### General Plan Update EIR

**Less Than Significant Impact.** According to the Certified EIR, implementation of the General Plan Update would not conflict with an HCP or NCCP. There are two HCPs/NCCPs within the Mojave Desert/Sonoran Desert: the WMP and the DRECP. The WMP has been adopted by BLM. According to the BLM, the Town is no longer a participating agency in the WMP, and the HCP would apply to projects conducted on BLM lands only. Similarly, while the draft DRECP HCP/NCCP would encompass the town, no projects subject to the draft DRECP HCP/NCCP are planned or proposed within the town. The town is not in the plan area of any other existing or planned HCP or NCCP. As stated in the certified EIR, implementation of the proposed General Plan Update would not conflict with any HCP or NCCP and impacts would be *less than significant*.

### Proposed Project

**No Impact/No Changes or New Information Requiring Preparation of an EIR.** The Proposed Project narrowly applies to the western Joshua tree. No HCP or NCCP has been prepared for the western Joshua Tree. Therefore, the Proposed Project does not have the potential to conflict with a HCP or NCCP. *No impact* would occur.

## 4. Environmental Analysis

Consequently, the Proposed Project would not trigger the need for preparation of a subsequent or supplemental EIR under the criteria in the CEQA Guidelines, Sections 15162(a) and 15163(a). The Proposed Project is consistent with the General Plan Update and would not require changes to the Approved Project. No substantial changes are proposed to the Approved Project or have occurred in the town that would require major revisions to the Certified EIR or substantially increase the severity of previously identified significant effects. Thus, the impacts of the Proposed Project are within the levels and types of environmental impacts disclosed in the Certified EIR.

### 4.2.4 Biological Resources Mitigation Measures Identified in the Certified EIR

The following biological resources mitigation measures were taken directly from the Certified EIR and would be implemented for and applied to the Proposed Project. Modifications to the mitigation measures are necessary to update them in response to the Special Order and the Town's Urgency Ordinance. These mitigation measures have been incorporated into the Mitigation Monitoring Program for this Addendum and have been modified as applicable to clarify the language and to reflect minor changes caused by the Proposed Project. Modifications to the original mitigation measures are identified in ~~strikeout~~ text to indicate deletions and underlined to reflect the COAs required by the Special Order and included in the proposed ordinance:

#### Sensitive Species and Habitat

3-1 **A. Discretionary Projects:** The Town of Yucca Valley shall require applicants for future discretionary development projects subject to CEQA that disturb undeveloped land to prepare a biological resources survey. The biological resources survey shall be conducted by a qualified biologist. The biological resources survey shall include, but not be limited to:

- Analysis of available literature and biological databases, such as the California Natural Diversity Database, to determine sensitive biological resources that have been reported historically from the proposed development project vicinity.
  - Review of current land use and land ownership within the proposed development project vicinity.
  - Assessment and mapping of vegetation communities present within the proposed development project vicinity.
  - Evaluation of potential local and regional wildlife movement corridors.
  - General assessment of potential jurisdictional areas, including wetlands and riparian habitats.
- a) If the proposed development project site supports vegetation communities that may provide habitat for special status plant or wildlife species, a focused habitat assessment shall be conducted by a qualified biologist to determine the potential for special status plant and/or animal species to occur within or adjacent to the proposed development project area.

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- b) If one or more special status species has the potential to occur within the proposed development project area, focused species surveys shall be conducted to determine the presence/absence of these species to adequately evaluate potential direct and/or indirect impacts to these species.
- c) If construction activities are not initiated immediately after focused surveys have been completed, additional preconstruction special status species surveys may be required, in accordance with the California Endangered Species Act and Federal Endangered Species Act, to assure impacts are avoided or minimized to the extent feasible. If preconstruction activities are required, a qualified biologist will perform these surveys as required for each special status species that is known to occur or has a potential to occur within or adjacent to the proposed development project area.

The results of the biological survey shall be presented in a biological resources survey letter report (for proposed development projects with no significant impacts) or biological resources technical report (for proposed development projects with significant impacts that require mitigation to reduce the impacts to below a level of significance) and submitted to the Town's Planning Department.

**B. Single-Family, Accessory Structure, and Public Works Projects.** The Town of Yucca Valley shall require applicants for a single-family residential project, accessory structure, or public works projects identified in Chapter 9.56 of the Town's Development Code that require relocating or removing a western Joshua tree to prepare a census of western Joshua trees on the project site. The census shall count all western Joshua trees on the project site and classify them by size class. The census shall be submitted to the Town's Community Development Department and include the following:

- The name of the desert native plant specialist who conducted the census and the employer of the desert native plant specialist.
- 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.
- The date of the census.
- The date or dates of the proposed relocation of western Joshua trees, if applicable.
- 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 the proposed placement of each relocated western Joshua tree.
- Photographs of each western Joshua tree on the project site, including a visual representation of the scale of the height of each tree.



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- 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.
- Narrative written descriptions of each western Joshua tree—its diameter, height, existing health condition, and any other information deemed necessary.

**Avoidance.** If the western Joshua tree is identified within or adjacent to the proposed development project area, the project proponent of single-family, accessory structure, or public works project shall avoid species on the project site to the maximum extent practicable.

**Minimization.** The project proponent shall avoid all ground-disturbing activities within 10 feet of any western Joshua tree that will not be relocated or removed, if those activities will disturb the soil to a depth of greater than 12 inches.

**Relocation.** To the maximum extent feasible, the project proponent of single-family, accessory structure, or public works projects shall relocate all western Joshua trees that cannot be avoided to another location on the project site. The project proponent shall ensure that relocation of western Joshua trees satisfies the following requirements:

- All western Joshua tree relocations shall be completed by a desert native plant specialist.
- All western Joshua trees to be relocated shall be placed at least 25 feet from any existing or proposed structure or improvement and at least 10 feet from any other western Joshua tree.
- Within 30 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.

**Mitigation for Removal and Relocation of Western Joshua Trees.** For western Joshua trees that are removed and/or relocated, the Town of Yucca Valley shall require applicants to obtain a take permit for the western Joshua tree as authorized pursuant to Section 2084 of the Fish and Game Code and approved by the California Fish and Game Commission. 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 in accordance with the requirements in Section 9.56.120, Mitigation Fees, of the Development Code to mitigate impacts to the western Joshua trees.

3-2 If sensitive biological resources are identified within or adjacent to the proposed development project area, as outlined in the biological resources survey letter report/biological resources technical report or census, the construction limits shall be clearly flagged to ~~ass~~ensure impacts to sensitive biological resources are avoided or minimized, to the extent feasible. Prior to implementing construction activities, the Town of Yucca Valley shall require applicants to

## 4. Environmental Analysis

contract with a qualified biologist to verify that the flagging clearly delineates the construction limits and sensitive resources to be avoided.

3-3 If sensitive biological resources are known to occur within or adjacent to the proposed development project area, as outlined in the biological resources survey letter report/biological resources technical report or census, the Town of Yucca Valley shall require applicants to contract with a qualified biologist to develop and implement a project-specific contractor training program to educate project contractors on the sensitive biological resources within and adjacent to the proposed development project area and measures being implemented to avoid and/or minimize impacts to these species.

3-4 If sensitive biological resources are present within or adjacent to the proposed development project area and impacts may result from construction activities, as outlined in the biological resources survey letter report/biological resources technical report or census, a qualified biological monitor may be required during a portion or all of the construction activities to ensure impacts to the sensitive biological resources are avoided or minimized to the extent feasible. The specific biological monitoring requirements shall be evaluated on a project by project basis. The qualified biological monitor shall be approved by the Town on a project by project basis based on applicable experience with the sensitive biological resources that may be impacted by the proposed development project activities.

### **Jurisdictional Resources and Wetlands**

The following measures are not applicable to the Western Joshua Tree Ordinances:

3-5 The Town of Yucca Valley shall require applicants of development projects that have the potential to affect jurisdictional resources, to contract with a qualified biologist to conduct a jurisdictional delineation following the methods outlined in the 1987 US Army Corps of Engineers Wetland Delineation Manual and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (2008) to map the extent of wetlands and non-wetland waters, determine jurisdiction, and assess potential impacts. The results of the delineation shall be presented in a wetland delineation letter report and shall be incorporated into the CEQA document(s) required for approval and permitting of the proposed development project.

3-6 The Town of Yucca Valley shall require applicants of development projects that have the potential to impact jurisdictional features to obtain permits and authorizations from the US Army Corps of Engineers, California Department of Fish and Wildlife, and/or Colorado River Basin Regional Water Quality Control Board. The agency authorization would include impact avoidance and minimization measures as well as mitigation measures for unavoidable impacts. Specific avoidance, minimization, and mitigation measures for impacts to jurisdictional resources shall be determined through discussions with the regulatory agencies during the proposed development project permitting process and may include monetary contributions to a mitigation bank or habitat creation, restoration, or enhancement.

## 4. Environmental Analysis

### Wildlife Corridors

The following measure is not applicable to the Western Joshua Tree Ordinances:

3-7 The Town of Yucca Valley shall require a habitat connectivity evaluation for development projects proposed within a Wildlife Corridor Evaluation Area (WCEA) and/or an Open Space Resource Area (OSRA). The results of the evaluation will be incorporated into the project's biological report required under Mitigation Measure 3-1. The habitat connectivity evaluation shall assess the potential for the project to adversely affect the intended functions of the WCEA and/or OSRA. The evaluation shall also identify project design features that would reduce potential impacts and maintain functionality as habitat and for wildlife movement. To this end, the Town shall incorporate the following measures, to the extent practicable, into projects that would propose development within a WCEA and/or an OSRA:

- Adhere to low density zoning standards
- Encourage clustering of development
- Avoid known sensitive biological resources
- Provide shielded lighting adjacent to sensitive habitat areas
- Encourage development plans that maximize wildlife movement
- Provide buffers between development and wetland/riparian areas
- Protect wetland/riparian areas through regulatory agency permitting process
- Encourage wildlife-passable fence designs (e.g., 3-strand barbless wire fence) on property boundaries
- Encourage preservation of native habitat on the undeveloped remainder of developed parcels
- Minimize road/driveway development to help prevent loss of habitat due to roadkill and habitat loss
- Use native, drought-resistant plant species in landscape design
- Require implementation of mitigation measures within an OSRA
- Encourage participation in local/regional recreational trail design efforts

### Migratory Birds

The following measure is not applicable to the Western Joshua Tree Ordinances:

## 4. Environmental Analysis

- 3-8           The Town of Yucca Valley shall require applicants for new development projects to conduct a pre-construction general nesting bird survey within all suitable nesting habitat that may be impacted by active construction during the general avian breeding season (February 1 through August 31). The pre-construction surveys shall be conducted no more than seven days prior to initiation of construction. If no active avian nests are identified within the proposed development project area or within a 300-foot buffer of the proposed development project area, no further mitigation is necessary. If active nests of bird species covered by the Migratory Bird Treaty Act are detected within the proposed development project area or within a 300-foot buffer of the proposed development project area, construction shall be halted until the young have fledged, until a qualified biologist has determined the nest is inactive, or until appropriate mitigation measures that respond to the specific situation have been developed and implemented in consultation with the regulatory agencies.

## 5. Finding

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As indicated in this Addendum, the impacts of the Proposed Project have already been adequately identified and addressed in the certified EIR, and no substantial changes have occurred with respect to the circumstances under which the project is undertaken that would require major revisions to the Certified EIR. Analysis of the Proposed Project shows that there are no new significant environmental effects and no substantial increase in the severity of previously identified significant effects.

Impacts beyond those identified in the EIR would not be expected to occur as a result of the Proposed Project, which would still be subject to all applicable, previously required mitigation measures from the Certified EIR. The proposed project would not result in any new information of substantial importance that would have new, more severe impacts, new mitigation measures, or new or revised alternatives from what was identified in the Certified EIR.

Based on the record as a whole, there is no substantial evidence that the proposed project would result in significant environmental impacts not previously studied in the EIR, and accordingly, the project changes would not result in any conditions identified in CEQA Guidelines, Section 15162. Thus, a subsequent EIR or mitigated negative declaration is not required for the changes to the project, and the Town adopts this Addendum to the Town of Yucca Valley General Plan Update EIR in accordance with CEQA Guidelines Section 15164.

## 5. Finding

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## 6. List of Preparers

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### 6.1 TOWN OF YUCCA VALLEY

Shane Stueckle, Deputy Town Manager

### 6.2 PLACEWORKS

Nicole Vermilion, Associate Principal

Miles Barker, Project Planner

## 6. List of Preparers

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## 7. References

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CDFW (California Department of Fish and Wildlife). 2020, February. Report to the Fish and Game Commission: Evaluation of a Petition from the Center for Biological Diversity to List Western Joshua Tree (*Yucca brevifolia*) as Threatened Under the California Endangered Species Act.

Commission (California Fish and Game Commission). 2020, September. California Fish and Game Commission Statement of Proposed Emergency Regulatory Action: Emergency Action to Add Section 749.10, Title 14, California Code of Regulations; Re: Take of Western Joshua Tree.

## 7. References

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