

**Addendum to the**

**Program Environmental**

**Impact Report**

**for the**

**San Bernardino County 2007**

**General Plan Program**

**SCH# 2005101038**

## **1.0 INTRODUCTION**

The California Department of Fish and Wildlife (“Department”), in conjunction with the County of San Bernardino (“County”), City of Palmdale (“City”) and Town of Yucca Valley (“Town”), recommend adoption of a special order by the California Fish and Game Commission (“Commission”) pursuant to California Fish and Game Code section 2084 (“Special Order”) in connection with the recent listing of the western Joshua tree as a candidate species under the California Endangered Species Act (“CESA”).

This Addendum evaluates impacts of the Special Order in connection with impacts to western Joshua tree previously analyzed under the Program Environmental Impact Report for the San Bernardino County 2007 General Plan Program, SCH# 2005101038 (“PEIR”). The project description for this addendum therefore consists of implementation of the Special Order, during the candidacy period, to authorize, subject to the terms and conditions prescribed therein, the take of the western Joshua tree (*Yucca brevifolia*), in connection with the issuance of permits or approvals for a single-family residence, accessory structure, or public works project. This Addendum further evaluates the adoption of local ordinances implementing the Special Order by the County.

## **2.0 BACKGROUND**

On October 15, 2019, the Center for Biological Diversity submitted to the Commission “A Petition to List the Western Joshua Tree (*Yucca brevifolia*) as Threatened under the California Endangered Species Act” (“Petition”). On November 12, 2019, the Commission acknowledged receipt of the Petition. In February 2020, the Department issued its “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” (“Report”). This evaluation concluded with the recommendation that:

Pursuant to Section 2073.5 of the Fish and Game Code, the Department has evaluated the Petition on its face and in relation to other relevant information the Department possesses or received. In completing its Petition Evaluation, the Department has determined there is sufficient scientific information to indicate that the petitioned action for western Joshua tree may be warranted. Therefore, the

Department recommends the Commission accept the Petition for further consideration under CESA.

At its regularly scheduled meeting on April 16, 2020, the Commission voted on its consent agenda to receive the Department's Report. The Commission held a noticed public hearing on the Petition on June 25, 2020, received written public comments, and continued the hearing to August 20, 2020. The Commission reopened the continued public hearing on the Petition on August 20, 2020. At the conclusion of the August 20, 2020 public hearing, the Commission closed the public hearing and continued the matter until September 22, 2020.

At its September 22, 2020 hearing, the Commission approved the Petition for consideration. Concurrently with the Commission's approval, the Director of the Department of Fish and Wildlife ("Department") stated that the Department would propose section 2084 regulations, which culminated in part with the proposed Special Order.

The provisions of CESA apply to the western Joshua tree while it is a candidate species. (Fish & G. Code, § 2085.) A species is immediately granted CESA protection, even though the species has not been formally listed as either threatened or endangered, during the twelve-month "candidacy period" following the Commission's approval. (*Ibid.*) As a candidate species, under CESA it is illegal to import, export, take, possess, purchase, sell, or attempt to do any of those actions to a western Joshua tree, unless authorized by permit by the Department or as otherwise authorized by CESA.

Pursuant to Fish and Game Code section 2084, the Commission may authorize the taking of any candidate species, such as the western Joshua tree. In conjunction with this authority, the Special Order would authorize the take of western Joshua trees subject to terms and conditions analyzed below. The terms and conditions of the Special Order are based on the best available scientific information and are designed specifically to reduce the potential environmental effect on the western Joshua tree during the candidacy period. This Addendum therefore evaluates impacts of the proposed Special Order as compared to impacts that were previously analyzed during the baseline period. The baseline period consists of the period preceding the candidacy listing by the Commission, and the impacts to western Joshua tree were previously analyzed in connection with the adoption of local management regulations by the County.

### 3.0 LEGAL OVERVIEW

An agency may prepare an addendum to a certified Environmental Impact Report (“EIR”). California Environmental Quality Act (“CEQA”) Guidelines Section 15164 states, in pertinent part, that the adoption of an addendum is appropriate “if some changes or additions are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR have occurred.” 14 Cal. Code Reg. § 15164. Section 15162 states that a subsequent EIR is required if any of the following conditions exist:

- (1) Substantial changes are proposed in the project which will require major revisions to the previous EIR ... due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified 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 ... 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 ... shows any of the following:
  - (A) The project will have one or more significant effects not discussed in the previous EIR;
  - (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.

## **4.0 PREVIOUSLY CERTIFIED EIR**

As Lead Agency, the County prepared the PEIR, which analyzed the following three project components: (1) adoption of a new General Plan; (2) adoption of new Community Plans; and (3) Adoption of a new Development Code.

The General Plan provided a projection of growth in the County through the year 2030. Text, tables and maps in the plan and its elements identify goals and policies used to guide the future development of residential, commercial, industrial, public facilities, transportation facilities and other land uses that are desired by the public and County decision-makers. In conjunction with the General Plan, the PEIR analyzed and mitigated potential impacts on the environment that may result from development during the 25-year planning horizon of the General Plan.

The Development Code component implements the goals and policies of the General Plan by classifying and regulating the uses of land and structures within the County. The purpose of the Development Code (Title 8 of the San Bernardino County Code [“SBCC”]) is to promote and protect the public health, safety, and general welfare of County residents. Relevant for purposes of this Addendum, the Development Code includes a Resource Management and Conservation Division (Division 8) which contains a Plant Protection and Management Ordinance (“Plant Protection Ordinance”) designed to provide regulations and guidelines for the management of tree and plant resources in the unincorporated areas of the County, including regulations on the removal of Joshua trees. SBCC, Chapter 88.01.

Implementation of the Plant Protection Ordinance and the enforcement of other development standards were identified as mitigation measures in the PEIR and therefore were designed to reduce the adverse 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 Department during the 25-planning horizon of the General Plan. Final PEIR, Section IV-59 through 59; Mitigation BIO-1 through BIO-13.

As explained in Section 2.0, *infra*, on October 9, 2020, the western Joshua tree obtained the status as a candidate species under CESA. The western Joshua tree candidacy period will therefore occur concurrently with the planning horizon of the General Plan. This Addendum evaluates whether the adoption of the Special Order and the adoption of local ordinances to implement the Special Order would result in any new or substantially more severe environmental impacts compared to the impacts disclosed in the certified PEIR.

#### 4.1.1 Biological Resources

The PEIR analyzed the impacts to biological resources within three sub-regions of the County. The three sub-regions include the Valley, Mountain and Desert Regions. Noting the distinctly different climates and differing biological environments of each region, the PEIR included a Conservation Background Report listing the state and federal sensitive or protected plant and animal species that have the potential to occur in within each region, including the western Joshua tree within the Desert Region. Appendix H, PEIR.

This Addendum is based on information contained in the Department's Report, the Technical Memorandum prepared by Heritage Environmental Consultants for the County dated August 5, 2020 ("Technical Memorandum (2020)"), and the cited reference materials in both documents.

The Department's Report, Technical Memorandum (2020) and the U.S. Fish and Wildlife Service (USFWS) Status Assessment of the Joshua Tree (2018) acknowledged that the western and eastern Joshua trees are distinct species, citing Lenz (2007), Royer and others (2016), and this Addendum treats the western Joshua tree (*Yucca brevifolia*) as a species distinct from the eastern Joshua tree (*Yucca jaegeriana*).

As noted in the Department's Report, western Joshua trees are evergreen, tree-like plants that have recently been treated as members of the asparagus family (Report, p. 7). Western Joshua trees typically have a 5 to 15 meter (m) (16 to 50 feet (ft)) main stem with extensive branching on older plants. The tallest known western Joshua tree was 25 m (82 ft) tall, although trees exceeding 10 m (33 ft) are rare (Ibid). Western Joshua tree is found in many different plant communities occurring on flats and slopes in the Mojave Desert at elevations between 400 and 2200 m (1300 to 7200 ft) (Ibid). The Department's Report cites a Lenz (2001) report that notes Joshua tree plants tolerate temperatures of -25°C to 51°C (-13°F to 124°F) and annual precipitation ranges of 98 to 268 mm (3.9 to 10.6 inches (in)).

Most aspects of the life history of the western Joshua tree have been well-researched and are generally accepted. (Technical Memorandum, pp. 2-3.) Flowering, seed production, dispersal, predation, germination, and growth are generally understood, although several points are worth noting, as follows. Seed production is an episodic event, correlated with increased winter and spring precipitation. Sufficient moisture is also required for establishment and survival of young western Joshua trees. In a desert environment, conditions for recruitment of

western Joshua tree seedlings may only occur a few times in a century and no seed production or seedling survival can be expected in drought years. Esque and others (2015) documented growth and survivorship of a cohort of western Joshua trees that established in 1983-1984, a period of high precipitation. St. Clair and Hoiness (2018) documented a widespread event of flowering and seed production across the range of western Joshua tree and YUJA in 2013, although they did not report subsequent establishment or survival of young Joshua trees. Individual western Joshua tree cannot be aged in the same way as true trees because they lack annual growth rings. In previous studies (for example, Esque and others 2015), height has been used as a surrogate for age on the assumption that larger individuals are older. While this approach is conceptually valid, a high degree of variability exists such that only broad generalizations are possible and precise aging is not. Esque and others (2015) identified a growth rate (with standard deviation) of  $3.12 \pm 1.96$  cm/year for individuals in their 22-year study, a result that is similar to other recent studies they reviewed. This means that a 1-meter-tall individual could be somewhere between about 20 and 86 years old. As a result, any estimate of the demographic structure of Joshua tree populations contains a high degree of uncertainty.

The current range of western Joshua tree is essentially the same as its historical distribution (post-European contact), demonstrating that human actions have not affected its distribution at present. (Technical Memorandum, pp. 3-4.) Cole and others (2011) reported model results that indicate the potential for future reductions in the southern portion of the range caused by warmer temperatures associated with climate change. This same model showed a substantial northward expansion of suitable habitat, albeit without consideration of the dispersal ability of western Joshua tree, which is thought to be slow.

The western Joshua tree range extends beyond San Bernardino County, in unevenly distributed populations throughout the Mojave Desert and to a smaller degree within the Great Basin Desert. The southern extent of the western Joshua tree's range is in the Little San Bernardino Mountains of Joshua Tree National Park. The northern extent of its range is near Alkali, Nevada. The western extent is near the Hungry Valley State Vehicular Recreation Area near Gorman, California, and the eastern extent is in Tikaboo Valley, Nevada. (USFWS 2018). The Department possesses vegetation maps that cover a large portion of the California deserts where western Joshua tree generally occurs (Thomas 2002, Agri Chemical and Supply Inc. 2008, CDFW and USGS 2014, CDFW and Chico State University 2015, CDFW et al. 2017, CDFW and AIS 2019a, 2019b, and 2019c, CDFW 2019, NPS 2019). The *Yucca brevifolia* vegetation alliance is mapped with an

approximate accuracy of 95 percent in the vegetation maps related to the Desert Renewable Energy Conservation Plan, and these maps also denote the cover of Joshua tree canopy in all vegetation polygons by cover class (0, >0-1%, >1-5%, and >5%) (VegCAMP 2013).

#### **4.1.2 Impact Analysis**

This Addendum evaluates the potential for the Special Order and local implementing ordinances to result in new or substantially more severe significant impacts to biological resources in relation to the following questions under the Natural Resources Agency's CEQA Environmental Checklist (Appendix G):

#### **Project Impacts**

*(a) Would the Special Order and Ordinance adopting the Special Order have a substantial adverse 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 CDFW or USFWS?*

The PEIR, Biological Resources section analyzed impacts of planned development on threatened and listed species within the Desert Region of the County:

“Additional conversion of open space that affects desert scrub, alkali scrub, desert pavement or other habitat supporting native species may directly affect occupied habitat, cause, take or harm of individual species as defined by federal and state agencies, or cause indirect effect through the loss of foraging and breeding habitat. Development called for by the proposed update of the General Plan will directly and indirectly affect other plant and wildlife that would result in loss of prey, species diversity, or other resources that resident or migratory species may use. Development of lands around existing desert communities will adversely affect native resident and migratory species. Growth inducing actions will require additional water be taken from other areas possibly outside of the County, development of additional roads and expansion of existing roads, additional landfill, and a significant increase to the area affected by the community. Increases in population are expected to result in additional effects to the buffer habitat between the urban and open space.” PEIR, Section IV-47.



Based on this analysis and studies cited therein, the PEIR concluded that despite the imposition of Mitigation Measures BIO-1 through BIO-13, impacts cannot be mitigated to a level below significance. Id., Section IV-48.

As part of its mitigation to species identified as a candidate, sensitive, or special status species, development within the Desert Region during the 25-year planning horizon of the General Plan relies upon the County's Plant Protection Ordinance, in addition to other measures, to mitigate adverse effects of development to native tree and plant species, including the western Joshua tree. As further explained below, the adoption of the Special Order and ordinances implementing the Special Order will result in a further reduction of the adverse effects to the western Joshua tree from what was previously authorized and evaluated as part of the PEIR.

The PEIR took into consideration the County's Plant Protection Ordinance for impacts on candidate and sensitive status species. Unless an exception applies, the removal of a Joshua tree is prohibited by the County's Plant Protection Ordinance without first obtaining a tree removal permit ("Permit"). SBCC, Sections 88.01.040(b) and 88.01.060(c). Before a Permit is issued, an applicant must demonstrate to the satisfaction of the County that the removal is necessary based on one of five different justifications:

- a. The location of the regulated tree or plant and/or its dripline interferes with an allowed structure, sewage disposal area, paved area, or other improvement or ground disturbing activity and there is no other alternative feasible location for the improvement.
- b. The location of the regulated tree or plant and/or its dripline interferes with the planned improvement of a street or development of an approved access to the subject or adjoining private property and there is no other alternative feasible location for the improvement.
- c. The location of the regulated tree or plant is hazardous to pedestrian or vehicular travel or safety.
- d. The regulated tree or plant or its presence interferes with or is causing extensive damage to utility services or facilities, roadways, sidewalks, curbs, gutters, pavement sewer line(s), drainage or flood control improvements, foundations, existing structures, or municipal improvements.
- e. The condition or location of the regulated tree or plant is adjacent to and in such close proximity to an existing or

proposed structure that the regulated tree or plant has or will sustain significant damage. SBCC, Section 88.01.050(f)(1)(A)-(E).

In addition to one of the justifications above, the Plant Protection Ordinance requires additional findings before authorizing the removal of a Joshua tree. SBCC, Section 88.01.050(f)(3). The findings are intended to ensure a project or activity for which a Permit is sought considers feasible alternative designs to avoid indiscriminate take of a Joshua tree and, where unfeasible, require transplantation or stockpiling *when possible*. However, these restrictions are not applicable when an exemption applies. Relevant for this Addendum, the County's permit requirement does not apply to removal of a Joshua tree associated with the development of a primary structure (excluding a sign structure) on a parcel with a net area of 20,000 square feet or less. *Id.* Section 88.01.030(j). Thus, many of the projects intended to be regulated as part of the Special Order were previously considered exempt from the County's Plant Protection Ordinance and an impact to the Joshua tree was presumed based on future development of these types of projects.

**Finding: The adoption of the Special Order will not cause impacts to the western Joshua tree beyond what was previously evaluated in the PEIR.**

Before the County can issue the take of a western Joshua tree, the Special Order requires the "adopt[ion] [of] an ordinance that requires, as a condition of any approval or permit for a single-family residence, accessory structure, or public works project that has one or more western Joshua trees on the project site, satisfaction of each of the requirements set forth in subsection (d)." Title 14, CCR Section 749.11(c)(1). Specifically, Subsection (d) of the Special Order provides, in pertinent part, that:

- a. No project shall be eligible to receive take authorization if it will result in the take, including relocation or removal, of more than ten western Joshua trees. *Id.*, Section 749.11(d)(1).
- b. Requires a census report that identifies the name of the desert native plant specialist who conducted the census and who will be relocating the tree, a map of the project site that depicts the location of the proposed structure and the proposed placement of each relocated tree, and photographs of each tree on the project site. *Id.*, Section 749.11(d)(2)(A)-(B).
- c. Requires that a project proponent avoid take of western Joshua tree to the maximum extent practicable. *Id.*, Section 749.11(d)(3).

- d. Requires minimization by not allowing any ground-disturbing activities within 10 feet of any western Joshua tree, the relocation of all western Joshua trees that cannot be avoided to another location on the project site, and setback requirements that prohibit the placement of a relocated tree within 25 feet from any existing or proposed structure or improvement and at least 10 feet from any other western Joshua tree. Id., Section 749.11(d)(4)(A)-(D).

Prior to receiving take authorization the project proponent will also be required to pay a mitigation fee that will be deposited into the Western Joshua Tree Mitigation Fund. Title 14, CCR Section 749.11(d)(6)(A)-(B). The mitigation fund will be overseen by the Department and mitigation funds are intended to be utilized to protect the western Joshua tree and its habitat. The Special Order requires strict oversight, including bi-monthly reports that will ensure proper and timely deposits are made by the County and other participating agencies. Id., Section 749.11(c)(4).

The Special Order also limits the total number of permits that the County may issue during the candidacy period to a maximum total of 450 Joshua trees. Title 14, CCR Section 749.11(f)(2). Should the County fail to comply with the requirements of the Special Order, the Department may suspend or revoke the County's take authorization. Id., Section 749.11(g).

The terms and conditions identified above evidence that the Special Order will not result in a substantial increase in the severity of the previously identified significant effects to biological resource. Instead the Special Order will reduce impacts by (a) establishing a compensatory mitigation fund, (b) limiting the amount of western Joshua tree removal per project, (c) providing a maximum take threshold, excluding exemptions, (d) and increasing relocation and avoidance requirements. None of these provisions previously existed under local ordinances. Title 14, CCR Sections 749.11(c)(1), (d)(1), (d)(4), (d)(5) and (f).

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

The proposed Special Order is analyzed above in detail. As noted above, the Special Order establishes new requirements that exceed the protection measures that were in place prior to the Commission's candidacy determination. Additionally, activities that were previously exempt from permit obligations under local ordinances, such as construction of single family homes, will be subject to the

Special Order. In instances where the Special Order is not applicable, an applicant will be required to seek take authorization.

With the Commission's approval of the candidacy listing, and adoption of the proposed Special Order, revisions will need to be made to local ordinances to authorize removal of western Joshua trees in compliance with the Special Order. Local ordinances will therefore need to be revised to authorize local permitting where the applicant shows compliance with the Special Order or, if the Special Order is not applicable, the Department's regular take authorization. Local ordinances will also need to be revised to implement the Special Order as prescribed therein.

**Finding: Implementation of the Special Order will not conflict with local ordinances in a manner that would create new impacts or require further analysis under CEQA.** Revisions to local ordinances, however, will be required to implement the Special Order, and to provide additional exemptions for applicants that have complied with the local implementation of the Special Order or the Department's regular take authorization. In the event the western Joshua tree candidacy determination results in an endangered or threatened listing, local plant protection ordinances may require further revision, or repeal, so that local ordinances do not unlawfully require duplicative compensatory or other mitigation for the take or removal of western Joshua trees pursuant to CESA.

*Appendix G checklist items b), c), d) and f) are not discussed in this Addendum because the Special Order does not raise any issues concerning those potential impacts.*

Based on the above, the Special Order and adoption of local ordinances to implement the Special Order will not change the findings in the certified PEIR. No new or revised mitigation measures are required since the requirements of the Special Order itself establish additional mitigation of impacts to the western Joshua tree. The Special Order will not result in any new or substantially more significant impacts to western Joshua trees beyond what was disclosed in the prior certified PEIR.

## **5.0 CEQA REQUIRED CONCLUSIONS**

The discussion of the environmental topics in the certified PEIR as discussed in Section 4.0 above remains accurate and is unchanged by this Addendum. Pursuant to Section 15162 of the CEQA Guidelines, a subsequent EIR is not required for the

Special Order and adoption of an ordinance implementing the Special Order based on the following conclusions:

- (1) Substantial changes have NOT been proposed by the Special Order and adoption of an ordinance implementing the Special Order that will require major revisions of the certified PEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes have NOT occurred with respect to the circumstances under which the Special Order and adoption of an ordinance implementing the Special Order is undertaken that will require major revisions of the certified PEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
- (3) There is no 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 certified PEIR was certified, that shows any of the following: (a) that the Special Order and adoption of an ordinance implementing the Special Order will have one or more significant effects not discussed in the certified PEIR, (b) that significant effects previously examined will be substantially more severe than shown in the certified PEIR, (c) that mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Special Order and adoption of an ordinance implementing the Special Order, but the lead or responsible agency have declined to implement the mitigation measure or alternative, or (d) that mitigation measures or alternatives which are considerably different from those analyzed in the certified PEIR would substantially reduce one or more significant effects on the environment, but the lead or responsible agency decline to adopt the mitigation measure or alternative.