

Emergency Regulatory Language

Section 749.10 Title 14, CCR, is added to read:

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

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

(a) Incidental take associated with development of solar energy projects in Kern and San Bernardino counties.

(1) Project list.

(A) Aratina Solar Farm, 8minute Solar Energy/64NB 8ME LLC, Kern County.

(B) Bellefield Solar Farm, 8minute Solar Energy/50LW 8ME LLC, Kern County.

(C) Big Beau Solar, EDF Renewables, Inc./Big Beau Solar, LLC, Kern County.

(D) Camino Solar, Avangrid Renewables, LLC/Aurora Solar, LLC, Kern County.

(E) Chaparral Solar, First Solar, Inc./Chaparral Solar, LLC/Chaparral Springs, LLC, Kern County.

(F) Edwards AFB Solar, Terra-Gen Power Holdings II, LLC/Edwards Solar, LLC, Kern County.

(G) Kudu Solar Farm, 8minute Solar Energy/69SV 8ME LLC, Kern County.

(H) Rabbitbrush Solar, First Solar, Inc./Rabbitbrush Solar, LLC, Kern County.

(I) RE Gaskell West 2, Recurrent Energy, LLC/ RE Gaskell West 2 LLC, Kern County.

(J) RE Gaskell West 3, Recurrent Energy, LLC/ RE Gaskell West 3 LLC, Kern County.

(K) RE Gaskell West 4, Recurrent Energy, LLC/ RE Gaskell West 4 LLC, Kern County.

(L) RE Gaskell West 5, Recurrent Energy, LLC/ RE Gaskell West 5 LLC, Kern County.

(M) Rubita Solar, SF Rubita, LLC, San Bernardino County.

(N) Willow Springs Solar 3, First Solar, Inc./Willow Springs Solar 3, LLC/Chaparral Springs, LLC, Kern County.

(O) Windhub Solar B, First Solar, Inc./Windhub Solar B, LLC, Kern County.

(2) Definitions.

(A) Project impact area means all areas in which there will be permanent or temporary impacts to an individual western Joshua tree and the area around each western Joshua tree, defined by a radius, as measured from a single point at its trunk, of:

1. 40 feet for western Joshua trees five meters or greater in height.
2. 12 feet for western Joshua trees one meter or greater but less than five meters in height.
3. 6 feet for western Joshua trees less than one meter in height.

If the areas around individual western Joshua trees overlap, the area of overlap shall be counted only once to avoid over-counting in assessing the project impact area.

(3) Take authorization.

The commission authorizes each solar project listed in subsection (a)(1) to take western Joshua tree on the project site, in accordance with the project specifications provided to the department pursuant to this section and subject to the terms and conditions set forth in subsection (a)(4).

(4) Take of western Joshua tree.

(A) Prior to removing any western Joshua tree or engaging in ground-breaking activities within a project site, each project proponent shall conduct a complete census (count) of all western Joshua trees within the project site.

1. The census shall be conducted by one or more qualified biologist(s), approved in advance in writing by the department, which approval shall not be unreasonably withheld or delayed.
2. The census shall be conducted by walking transect surveys so that 100 percent visual coverage of the project impact areas is achieved.
3. For purposes of calculating the number of acres to be mitigated and for purposes of providing information for the department's status review of western Joshua tree to be prepared pursuant to Fish and Game Code Section 2074.6, the census shall count and classify western Joshua trees by height into the following three categories: trees less than one meter in height, trees one meter or greater but less than five meters in height, and trees five meters or greater in height.

(B) Within six months of the effective date of this section and prior to removing any western Joshua tree or engaging in ground-breaking activities within project impact areas, the qualified biologist shall prepare, and the project proponent shall submit to the department, a Tree Census Report for department review and approval. Within 15 days of receipt, the department shall either approve the Tree Census Report or inform the project proponent in writing of any additional information required for its approval. The Tree Census Report shall contain, at a minimum, the following:

1. The name(s) and affiliation of the qualified biologist(s) who conducted the census.
2. The date(s) of the census.

3. A map of the project site, indicating the total project footprint and all project impact areas.

4. The number of acres in the census area.

5. The distance between transects.

6. A map of the census area that depicts the number and location of western Joshua trees visually identified.

7. Photographs of the project impact area, including at a minimum two photographs per acre depicting different aspects, such as east and south orientation, and a visual representation of the scale of the height of the trees in the photographs.

8. The number of western Joshua trees in each of the three height categories defined in subsection (a)(4)(A)3.

9. The total number of acres to be mitigated, as calculated pursuant to subsection (a)(4)(F).

(C) The project proponent shall limit herbicide use for invasive plant species and shall use herbicides only after it has documented that hand or mechanical efforts are infeasible and submitted that documentation to the department. To prevent drift, the project proponent shall apply herbicides only when wind speeds are less than seven miles per hour. All herbicide application shall be done by a licensed applicator in accordance with this subsection and all applicable federal, state, and local laws and regulations.

(D) The project proponent shall submit as-built development plans in portable document format (PDF) to the department at CESA@wildlife.ca.gov within 90 days of completing all construction and ground-disturbing activities. The as-built plans shall:

1. Delineate and quantify the extent of permanent project features, including roads, utilities, and all other facilities associated with the project.

2. Include an estimate of the permanent disturbance area.

3. Be at a scale of 1":250' (one inch to 250 feet) or smaller.

4. Be derived from survey data acquired after project construction has been completed and shall be verified by the project proponent and the qualified biologist(s).

(E) Compensatory mitigation ratios for impacts to western Joshua tree shall be determined by the functional quality of the habitat based on the size and reproductive class of trees within the project impact area as confirmed in the department-approved census. The compensatory mitigation ratio for impacts to western Joshua tree shall be at 1.5:1 of the project impact area as confirmed in the department-approved census.

(F) The number of acres to be mitigated shall be calculated by multiplying the total number of acres of the project impact area by the applicable mitigation ratio set forth in subsection (a)(4)(E).

(G) To satisfy the compensatory mitigation requirement, prior to commencing any project activities in areas that may contain western Joshua trees, the project proponent shall pay a mitigation fee to be deposited into the Western Joshua Tree Mitigation Fund established pursuant to subsection (a)(5). The fee for each project shall be \$10,521.95 per acre to be mitigated, as calculated pursuant to subsection (a)(4)(F).

(5) The department shall establish a Western Joshua Tree Mitigation Fund to receive project fees required by subsection (a)(4)(G). The department shall ensure the fund is expended for the purpose of addressing threats to western Joshua tree, including but not limited to, acquiring and conserving western Joshua tree mitigation lands to offset impacts of the projects listed in subsection (a)(1). Prior to removing any western Joshua tree or engaging in ground-breaking activities within project impact areas, each participating project listed in subsection (a)(1) shall contribute the sum of \$10,000 to cover the account fees and the cost of retaining a land acquisition specialist to assist the department in locating, acquiring, and conserving the mitigation lands.

(6) Credit for existing mitigation.

(A) If a project listed in subsection (a)(1) has already completed or is legally obligated to complete compensatory mitigation for take of or impacts to western Joshua tree woodlands, the project proponent may elect to provide the department with information about the project impacts, the mitigation obligation, and all compensatory mitigation land acquired and conserved. The department shall assess this information and, if it determines in its reasonable discretion that the mitigation land has comparable western Joshua tree density as the density in the project impact area or is otherwise reasonably comparable in western Joshua tree habitat quality to the project impact area and is subject to a conservation easement or reasonably comparable instrument with adequate management funding, the department shall credit the project at a 1:1 ratio for all such mitigation lands acquired by the project proponent.

(B) If a project listed in subsection (a)(1) has already completed or is legally obligated to complete compensatory mitigation for take of or impacts to a species other than western Joshua tree, the project proponent may elect to provide the department with information about the project impacts, the mitigation obligation, all compensatory mitigation acquired and conserved, and the existence of suitable habitat for and individual western Joshua trees on the mitigation land. The department shall assess this information and, if it determines in its reasonable discretion that the mitigation land has comparable western Joshua tree density as the density in the project impact area or is otherwise reasonably comparable in western Joshua tree habitat quality to the project impact area and is subject to a conservation easement or reasonably comparable instrument with adequate management funding, the department shall credit the project at a 1:1 ratio for all such mitigation lands acquired by the project proponent.

(7) Limitations.

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

(B) Nothing in this section is intended to be or shall be construed to prohibit any of the projects listed in subsection (a)(1) from electing to obtain incidental take coverage through Fish and Game Code Section 2081, subdivision (b).

(C) Nothing in this section is intended to or shall be construed to limit the terms and conditions, including those relating to mitigation ratios and compensatory mitigation, the department includes in incidental take permits for western Joshua tree.

(b) Ongoing research and monitoring.

(1) Public agencies and private parties.

(A) Take of western Joshua tree in the course of ongoing research and monitoring for this species by public agencies other than the department and by private parties is authorized provided that a written, detailed project progress report describing objectives, methods (gear, sampling schedules and locations), efforts to minimize adverse effects to the species, and estimated level of take of the species shall be provided to the department's Habitat Conservation Planning Branch chief.

(B) Take of western Joshua tree incidental to the course of research and monitoring by public agencies other than the department and by private parties is authorized subject to the restrictions in subsection (b)(1)(A).

(C) Research and monitoring activities not addressed by the procedures in subsections (b)(1)(A) and (B) may receive separate authorization for take of western Joshua tree pursuant to Fish and Game Code Section 2081.

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