

Regulatory Language

Section 749.12 Title 14, CCR, is amended to read:

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

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

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

(1) City of Palmdale.

(2) Town of Yucca Valley.

(b) Definitions.

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

(2) Desert native plant specialist means:

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

(B) An individual with a four-year college degree in ecology or fish and wildlife related biological science from a college accredited by the U.S. Department of Education, and at least two years of professional experience (i.e., formal employment) with relocation or restoration of native California desert vegetation; or

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

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

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

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

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

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

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

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

(A) Less than one meter in height;

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

(C) Four meters or greater in height.

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

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

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

(c) Each participating agency shall:

(1) No later than March 8, 2021, adopt an ordinance that:

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

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

(2) No later than March 8, 2021, deposit moneys in the Western Joshua Tree Mitigation Fund as follows:

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

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

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

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

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

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

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

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

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

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

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

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

(B) For each western Joshua tree relocated:

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

2. The date of the relocation.

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

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

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

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

(2) Census.

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

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

1. The name of the desert native plant specialist who conducted the census and the employer of the desert native plant specialist.
2. If applicable, the name of the desert native plant specialist who will relocate western Joshua trees pursuant to subsection (d)(4)(D) and the employer of the desert native plant specialist.
3. The date of the census.
4. The date or dates of the proposed relocation of western Joshua trees, if applicable.
5. A map of the project site that depicts: the location of the proposed single-family residence, accessory structure, or public works project; the number and location of all western Joshua trees on the project site; and, if applicable, the proposed western Joshua trees for removal, or the proposed placement of each relocated western Joshua tree.
6. Photographs of each western Joshua tree on the project site, including a visual representation of the scale of the height of each tree.

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

(4) Minimization.

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

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

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

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

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

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

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

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

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

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

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

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

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

1. \$2425 for each western Joshua tree four meters or greater in height that is relocated.

2. \$625 for each western Joshua tree under four meters in height that is relocated.

3. \$4175 for each western Joshua tree four meters or greater in height that is removed and not relocated.

4. \$1050 for each western Joshua tree under four meters in height that is removed and not relocated.

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

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

(7) Refunds. Once mitigation fees have been paid and deposited into the Western Joshua Tree Mitigation Fund, no refunds will be provided, even if the project proponent does not take any western Joshua trees.

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

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

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

- (1) The City of Palmdale shall not authorize take, in the form of relocation or removal, of more than 190 western Joshua trees pursuant to subsection (d).
- (2) The Town of Yucca Valley shall not authorize take, in the form of relocation or removal, of more than 450 western Joshua trees pursuant to subsection (d), of which no more than 100 western Joshua trees shall be relocated or removed in relation to sewer connection projects.

(g) Enforcement.

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

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

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

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

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

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

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

(h) Limitations.

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

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

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