



## **TOWN OF APPLE VALLEY**

# **INTERIM LOCAL POLICY AND PROCEDURES ON THE WESTERN JOSHUA TREE**

### **Section I: Purpose**

The purpose of this policy is to provide helpful direction and clarify the requirements relating to the potential removal, relocation or trimming of a Western Joshua Tree associated grading conducted on a site that may contain the Western Joshua Tree.

### **Section II: Background**

On September 22, 2020 the California Department of Fish and Wildlife (CDFW) accepted a petition to list the Western Joshua Tree (“WJT” or “tree”) as a threatened or endangered species in the State of California under the California Endangered Species Act (CESA). As a candidate for listing, the tree must be protected as if it were already a threatened or endangered species during the candidacy review period, which has been extended through April 2022. Under CESA, it is illegal to harm, remove, damage, or relocate, which are all considered a “take” of the species, without approval of an Incidental Take Permit issued by CDFW. With respect to the Western Joshua Tree, removal of a tree, or any part thereof, or impacts to the seedbank surrounding one or more trees may result in “take” of the species which is prohibited by State law unless otherwise authorized.

During the CDFW review period, the Town is not authorized to issue local permits to remove, relocate or trim WJT and does not have authorization over CDFW’s Incidental Take Permit.

### **Section III: Potential Disturbance Due to Development**

At time of submittal, site and grading plans will be required to include the location of all Western Joshua Trees on-site and/or within a forty (40)-foot radius of any planned disturbance area. This radius is consistent with the County of San Bernardino Land Use guidance. When a project submits an application for a building permit, Town Staff will complete a pre-site inspection to determine the presence or absence of the Western Joshua Tree. If the development requires a land use application, the site plan must identify the location of all existing Western Joshua Trees on-site or within forty (40) feet of the proposed area of disturbance. If a development is subject to the California Environmental Quality Act (CEQA), the Applicant must identify if the WJT will be protected, relocated, or removed consistent with this policy.

Three potential scenarios exist should WJT be present on a site or within forty (40) feet of any ground disturbance:

1. Clear Avoidance: If sufficient evidence is presented, and confirmed through a pre-site inspection, that there will be no disturbance within forty (40) feet of an existing Western Joshua Tree, no further action will be required.
2. Expert Determination of Avoidance: If the proposed grading/construction is within forty (40) feet of a Western Joshua Tree, the applicant may seek a determination from a Desert Native Plant Specialist to attest to and confirm avoidance of the Western Joshua Tree with a reduced separation distance. The specialist's report may specify protective measures to ensure that the proposed grading/construction will avoid any impact resulting in a take of any Western Joshua Tree. The report must include a site plan, drawn to scale, showing the location of proposed grading/construction and all existing Western Joshua Trees, with photos showing all Western Joshua Trees in relation to the proposed grading/construction. The report must contain the findings and avoidance recommendations of the Desert Native Plant Specialist, as well as a signature and all pertinent license/qualifications information.

Per state law, a Desert Native Plant Specialist is all of the following:

- A certified arborist, who appears on the Town's approved local arborist list;
  - An individual with a four-year college degree in ecology or fish and wildlife related biological science and at least two years of professional experience with relocation or restoration of native California desert vegetation; or
  - An individual with at least five years professional experience with relocation or restoration of native California desert vegetation, Examples: Full-time professional nursery or landscape professional experience with native California desert plants, including western Joshua trees.
3. State Permit Required for Take: If it is determined that the proposed development activity would require a take of the Western Joshua Tree, as defined above, the project may be redesigned to avoid impact to the tree, or the applicant must obtain an Incidental Take Permit (ITP) from the California Department of Fish and Wildlife before the project can proceed. No additional approvals are required by the Town if an ITP is obtained from CDFW; in other words, only CDFW, not the Town, can issue ITPs while the WJT is protected.

To obtain an ITP visit: [wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-Take-Permits](https://wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-Take-Permits)

#### **Section IV: Disturbance Not Necessarily Associated with a Development Project**

Because of the public health and safety hazard that may be presented by dead or weakened Western Joshua Trees in public rights-of-way or near structures, the California Fish and Game Commission recently created a special order allowing incidental take of WJT during the CESA candidacy review period for activities that meet certain conditions ([Section 749.11, Title 14, California Code of Regulations \(CCR\)](#)). These emergency regulations are effective January 7, 2021, through April 2022, or as may be further extended by CDFW.

Under the emergency regulations, CDFW can issue permits allowing the removal of a dead WJT or the trimming of a WJT, without payment of mitigation fees or other mitigation, if:

- The dead WJT has fallen over and is within 30' of an existing structure.
- Limb(s) have fallen over
- The dead WJT or limb(s) are leaning against an existing structure; and
- The dead WJT or limb(s) creates an imminent threat to public health or safety.

Under such circumstances, a permit can be obtained from CDFW by emailing or mailing an application, pictures and other documentation as may be needed to CDFW.

Additional information together with the permit and submittal instructions is located on the California Department of Fish and Wildlife website: [wildlife.ca.gov/Conservation/CESA/WJT](http://wildlife.ca.gov/Conservation/CESA/WJT)

#### **Section V: Resource Contact Information**

Question or comments may be directed to the California Department of Fish and Wildlife at (909) 484-0167 or [WJT@wildlife.ca.gov](mailto:WJT@wildlife.ca.gov).

The Town of Apple Valley Planning Division is available at (760) 240-7000, ext. 7200 or via email at [Planning@applevalley.org](mailto:Planning@applevalley.org).

Published: July 21, 2021