ORDINANCE NO. 140

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, AMENDING TITLE 8, DIVISION 9 OF THE COUNTY OF SAN BERNARDINO CODE AS ADOPTED BY THE TOWN OF YUCCA VALLEY RELATING TO PLANT PROTECTION AND MANAGEMENT. (DCA-06-01)

The Town Council of the Town of Yucca Valley, California, does ordain as follows:

SECTION 1. Code Amended

Title 8, Division 9 of the San Bernardino County Code as adopted by the Town of Yucca Valley is hereby amended in its entirety to read as follows

"DIVISION 9. PLANT PROTECTION AND MANAGEMENT

Chapters:

1. **Desert Native Plant Protection.**
2. **Riparian Plant Conservation.**
3. **Enforcement**

Chapter 1

DESERT NATIVE PLANT PROTECTION

Sections:

89.0101 Purpose.
89.0105 Intent.
89.0107 Regulated Desert Native Plants
89.0110 Scope.
89.0115 Permit Required.
89.0120 Findings for Removal.
89.0125 Plot Plan Requirements.
89.0130 Construction Standards.
89.0131 Transplanting of Desert Native Plants
89.0132 Findings for the Transplanting of Desert Native Plants
89.0133 Retention of Joshua Trees and Yuccas

89.0101 Purpose.

The Town finds that it is in the public interest to promote the continued health of this Town's abundant and diverse plant resources, by providing regulations and guidelines for the management of the plant resources in the Town of Yucca Valley on property or combinations of property under private or public ownership for the following purposes:

(a) To promote and sustain the health, vigor and productivity of plant life and aesthetic values within the Town through appropriate management techniques;

(b) To conserve the native plant life heritage for the benefit of all, including future generations;

(c) To protect native trees and plants from indiscriminate removal, and to regulate such activity;

(d) To provide a uniform standard for appropriate removal of native trees and plants in public and private places and streets to promote conservation of these valuable natural resources;

(e) To protect and maintain water productivity and quality in local watersheds;

(f) To preserve habitats for rare, endangered and threatened plants and to conserve limited or otherwise natural communities and habitat..

89.0105 Intent.

It is the stated intent and desire of the Town of Yucca Valley to recognize and preserve native plants unique to Yucca Valley and the special contribution that Joshua Trees and Yuccas have made to the desert environment. In conformance with this recognition, no existing regulated native plant shall be disturbed, moved (transplanted or otherwise), removed or destroyed unless such disturbance, move, removal or destruction is first reviewed and approved by the Town of Yucca Valley. The Community Development Director, or his/her designee, shall be responsible for review and approval of any request to disturb, move (transplant or otherwise), remove or destroy any existing protected native plant located on any property in the Town of Yucca Valley. Forms for such review shall be available within the Planning Section of the Community Development Department.

Further, while it is the intent and desire of the Town to preserve and protect all Joshua Trees and Yuccas, this intent and desire shall be balanced against the community's need for growth and the development rights of individual property owners. To achieve this preservation and protection, while protecting both the property rights of property owners and the community's desert environment, anyone submitting an application to disturb, move, remove or destroy an existing Joshua Tree or Yucca shall use all reasonable means to retain and preserve such Tree(s) in its native (present) location in considering and presenting said Native Plant Permit application.

The Native Plant Permit application shall take into consideration lot configuration, potential property development (building envelope), onsite circulation and all associated and related infrastructure needed to support construction within the buildable envelope.

A person(s) submitting an application for a discretionary review or for any subdivision of land within the Town of Yucca Valley upon which protected native plants are present, shall use all reasonable means available to retain and preserve the plants in its native (present) location in considering and presenting said application or subdivision request with regard to lot location and configuration, potential property development (buildable envelope), circulation system and all associated and related infrastructure.

89.0107 Regulated Desert Native Plants.

(a) The following desert native plants are subject to the regulations specified by this Division. In all cases the botanical names shall govern the interpretation of this chapter. The

following desert native plants, or any part thereof except the fruit, shall not be removed except under a permit issued by the Community Development Director

(1) All species of the genus Prosopis (mesquites) with stems two (2) inches or greater in diameter or six (6) feet or greater in height:.

(2) All species of yuccas. Those commonly found in Yucca Valley:
   (A) Mohave Yucca (Yucca schidigera)
   (B) Our Lord's Candle (Yucca whipplei)

(3) Creosote Rings, ten (10) feet or greater in diameter.

(4) All Joshua Trees.

(5) California juniper (Juniperus californica)

(6) Desert Willow (Chilopsis linearis)

(7) Pinon Pine (Pinus monophylla)

(8) Palo Verde (Cercidium)

(9) Manzanita (Arctostaphylos)

(10) All plants protected or regulated by the California_Desert Native Plants Act (i.e., California Food and Agricultural Code 80001 et. seq.) shall be required to comply with the provisions of those statutes prior to the issuance of any Town development permit or land use application approval. The Community Development Director is responsible for the issuance of the required permit.

89.0110 Scope.

(a) The provisions of this Division shall apply to all private land within the Town of Yucca Valley and to public lands owned by the Town except as specified by the provisions of this Division.

(b) **Exceptions:**

(1) Removal from lands owned by the United States Government, State of California or local governmental entity, excluding Special Districts.

(2) Removal required by other codes, ordinances or laws of Town of Yucca Valley, County of San Bernardino, the State of California or the United States.

(3) Removal of native trees and plants which are an immediate threat to the public health, safety or welfare and require emergency removal to prevent probable damage to a structure or injury to people or fenced animals.

(4) Removal as part of a bona fide agricultural activity as determined by the Town that is:
   (A) Conducted under a land conservation contract; and or
   (B) An existing agricultural activity; and or
   (C) A proposed bona fide agricultural activity if the Community Development Director or their designee is given thirty (30) days written notice of the removal describing the location of the land and the nature of the proposed activity. The Community Development Director or designee, shall notify the landowner in writing prior to the lapse of the thirty (30) day period if, in the opinion of the Community Development Director or designee the activity is not a bona fide agricultural activity or else the activity shall be deemed bona fide.

A bona fide agricultural activity is one that is served by a water distribution system adequate for the proper operation of such activity.

89.0115 Permit Required.

A removal permit shall be required for the removal of any native tree or plant as regulated in Section 89.0107.

(a) Disturbing, moving (transplanting or otherwise), removal or destruction of an existing Regulated Desert Native Plant shall be subject to the provision of this Chapter.

(b) A land use application, a building permit and all other development permits (e.g., grading, mobilehome setdowns, etc.), shall consider and include a review of any proposed native tree or plant removal.

(c) The reviewing authority may require certification from an appropriate tree expert or desert native plant expert that such tree removals are appropriate, supportive of a healthy environment and are in compliance with the provisions of this Chapter.

(d) The Building Official or Community Development Director shall require a preconstruction inspection prior to approval of development permits.

(e) The Reviewing Authority shall specify the expiration date for all other tree and/or plant removal permits.

89.0120 Findings for Removal.

The Reviewing Authority shall authorize the removal of a native tree or plant subject to provisions of this chapter only if the following findings are made:

(a) The removal of the native tree or plant does not have a significant adverse impact on any proposed mitigation measures, soil retention, soil erosion and sediment control measures, scenic routes, flood and surface runoff and wildlife habitats.

(b) The removal of the native tree or plant is justified for one (1) of the following reasons:

(1) The location of the native tree or plant and/or its dripline interferes with an allowed structure, sewage disposal area, paved area or other approved improvement or ground disturbing activity.

(2) The location of the native 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.

(3) The location of the native tree or plant is hazardous to pedestrian or vehicular travel or safety as determined by the Town Engineer.

(4) The native 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.

(5) The condition or location of the native plant or tree is adjacent to and in such close proximity to an existing structure that the native plant or tree has or will sustain significant damage.

(6) The location of the native plant or tree is located in and within 20 feet of the building footprint and within the proposed driveway.

89.0125 Plot Plan Requirements. Prior to the issuance of a native tree or plant removal permit a plot plan shall be approved by the Community Development Department for each site indicating exactly which trees or plants are authorized to be removed or relocated.

89.0130 Construction Standards. During construction and prior to final inspection under a development permit, the following standards shall apply unless otherwise approved in writing by a Desert Native Plant Expert[1]:

(a) Native tree trunks and plants shall not be enclosed within roof lines or decking.

(b) Utilities, construction signs, or other hardware shall not be attached so as to penetrate or abrade any live native tree or plant.

(c) Grade Alterations. There shall be no grade alterations which buries any portion of a native tree or plant or significantly undercuts the root system within the dripline.

(d) "Trap Fencing" shall be utilized to prevent compaction damage to the root zone; installed a minimum of twenty-five (25) percent beyond the dripline.

89.0131 Transplanting of Desert Native Plants.

(a) The commercial harvesting of desert native plants shall be prohibited. The Community Development Department shall be responsible for the issuance of the Native Plant Permit required by the State or Town for the transplanting of desert plants.

(1) Written permission must be obtained from and signed by the owner of the property on which the plants are located. A copy of the document granting such permission shall be submitted to the Community Development Director prior to issuance of the permit.

(2) Transplanting approved by the Town of Yucca Valley must be initiated and completed under the supervision of a Desert Native Plant Expert. Approval of such transplant must take into consideration the time of year, the plant's original and transplanted physical orientation, prevailing wind direction, soil type of the original and transplanted locations, and other related attributes which may affect the successful transplantation of the Joshua Tree(s) and Yuccas in question as determined by the Town and the retained Desert Native Plant Expert.

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[1] A Desert native Plant Expert is one of the following:

a. State of California Agricultural Biologist, or
b. State of California Registered Forester, or
c. I.S.A Certified Arborist, or
d. County Certified Plant Expert, or
e. Others approved by the Community Development Director.

Joshua Trees and Yuccas that are proposed to be removed shall be transplanted or stockpiled for future transplanting wherever possible. In the instance of stockpiling and/or transplanting the permittee has submitted and has had the approval of a Joshua Tree and Yucca maintenance plan prepared by a Desert Native Plant Expert. This plan shall include a schedule for maintenance and a statement by the Desert Native Plant Expert that this maintenance plan and schedule will be implemented under his/her supervision. The schedule shall include the requirement that a maintenance report is required at the end of the project or at six (6) month intervals, evidence to the satisfaction of the Planning Section that the Desert Native Plant Expert has supervised the scheduled maintenance to the extent that all transplanted and stockpiled plants have been maintained in such a manner to insure the highest practicable survival rate. In the event that this report is not satisfactory, a tree and plant replacement plan and implementation schedule prepared by a Desert Native Plant Expert may be required by the Planning Section of the Community Development Department.

89.0132 Findings for the Transplanting of Desert Native Plants.

The Town shall only authorize the transplanting of protected desert native plants subject to the provisions of this Chapter only if one (1) or more of the following findings are made:

(a) The desert native plants are to be transplanted in a manner approved by the Community Development Director or other reviewing authority.

(b) The desert native plant is to be transplanted to another property within the same plant habitat under the supervision of a Desert Native Plant Expert and the removal of such plant will not adversely affect the desert environment on the subject site.

(c) Any desert native plant on the site which is determined by the Community Development Director or other reviewing authority as requiring transplanting will be transplanted or stockpiled for transplanting in accordance with methods approved by the Community Development Director. A Desert Native Plant Expert shall supervise and manage any required transplanting of desert native plants.

89.0133 Retention of Joshua Trees and Yuccas.

(a) It is acknowledged that community development may be more appropriately served if some existing Joshua Trees and Yuccas are allowed to be relocated. The following shall be the minimum criteria for the preservation of Joshua Trees and Yuccas in its native (present) location. While Joshua Trees and Yuccas that do not conform to the following criteria must be preserved, they may be transplanted to another location on the same property or may be made available for adoption through the Town's Joshua Tree Preservation and Adoption Program. A Joshua Tree(s) that conforms to the following shall be preserved in place unless its removal, transplantation or destruction is approved as prescribed within this Section of the ordinance.

(b) For any Joshua Tree(s) that conform to the criteria listed below, for which the property owner/applicant has made a request for a Building Permit, application for a discretionary review or application for a subdivision of land within the Town of Yucca Valley, said owner/applicant shall submit, as part of the application for approval, documentation of

their best efforts to retain and preserve all Joshua Tree(s) within the limits of the development or subdivision in its native (present) location. Such documentation of best effort shall include how alternative lot configurations (including building envelopes on lots with existing Tree(s), circulation, physical or environmental constraints of the site, allow no alternative subdivision configuration which would retain and preserve the Tree(s) in its native (present) location.

(1) A Joshua Tree that is known, by historic record, including pictures or written description, to be at least forty (40) years old.

(2) A Joshua Tree which has a width of at least fifteen (15) feet as measured from the furthest point of outstretched branches (measured parallel to the ground).

(3) A Joshua Tree which is at least fifteen (15) feet in height as measured from the base of the trunk to the highest point of the Tree.

(4) A Joshua Tree which has a trunk measuring at least twelve (12) inches in diameter as measured four (4) feet from the ground.

(c) **Adoption Program**. In the Town's effort to retain and preserve, in place, existing Joshua Trees and Yuccas, the Planning Section of the Town of Yucca Valley shall establish and maintain a Joshua Tree and Yucca Preservation and Adoption Program. This Program shall be a listing, available to the public, of locations where individuals have applied to disturb, move (transplant or otherwise), remove or destroy an existing Joshua Tree(s). The Program shall include the name of the property owner, the address of the property containing the Joshua Tree(s) and Yuccas, a mailing address for the property owner, a daytime contact phone number, the number of Trees disturbed, moved, removed or destroyed, and the approximate size, physical characteristics and physical condition of the available Tree(s) as of the date the Tree(s) was listed on the program. The Program shall also list a date that each individual Tree was disturbed, moved, removed or destroyed.

No Joshua Tree(s) or Yucca shall be approved for transplantation more than once in any ten (10) year period. Although no Joshua Tree(s) may be approved for transplantation more than once in any ten (10) year period, the Planning Commission may, at the time of a discretionary review, approve an interim location, for up to one (1) year for storing Joshua Tree(s) and Yucca(s) to allow for a phased development of a project or property.

The Program shall also include, reviewed and updated annually, a list of the names, mailing addresses and daytime contact phone number of individuals who have expressed a desire to receive transplantable Joshua Tree(s) or Yucca(s).

(d) **Definition of Disturbance.** A protected native plant shall be determined to be disturbed by any human activity that changes the environmental setting of or around an existing native plant to the extent that the amount of sun or water the plant traditionally receives, the direction or amount of wind against and around the plant, introduces, directly or indirectly, substances which may be harmful or unhealthy for the Tree, interferes with the plant's potential for growth and reproduction or causes direct physical contact/damage to the plant

(e) **Deviation.** In the event that the documentation of the best effort to preserve an existing specimen size Yucca(s) or Joshua Tree(s) in its native (present) location within a proposed commercial or industrial project demonstrates that the plants cannot be retained and preserved in place unless a required development standard applicable to the underlying zoning designation is modified or reduced, the Planning Commission may allow for minor deviations to a development standard specifically to allow the retention of specimen Joshua Tree and Yuccas in its native (present) location:

Chapter 2

RIPARIAN PLANT CONSERVATION

Sections:
89.0201 Purpose.
89.0205 Scope.
89.0210 Subject Areas and Plants

89.0201 Purpose. The Town finds that it is in the public interest to promote healthy and abundant riparian habitats. Riparian habitats are located along the sides of canyon bottoms, streams and rivers, providing watershed protection as well as control transmission and storage of natural water supplies. Riparian areas provide a unique wildlife habitat and contribute to an attractive environment. Riparian areas also provide natural soil erosion and sedimentation control protecting stream banks subject to erosion and undercutting. In addition riparian areas provide sufficient shade to reduce temperature and evaporation and the growth of algae in streams. The provisions of this Chapter are designed to augment and coordinate with the responsibilities of the California Department of Fish and Game.

89.0205 Scope

(a) The provisions of this Chapter shall apply to all riparian areas growing on private land within the Town of Yucca Valley and to riparian areas growing on public land owned by the County of San Bernardino, Town of Yucca Valley, or State of California, except as specified by Chapter 1.

(b) **EXCEPTIONS**.

The provisions of this Chapter are not applicable to emergency Flood Control District operations.

89.0210 Subject Areas and Plants

Except as otherwise provided or excepted by the provisions of this Chapter, the removal of any vegetation within two hundred (200) feet of the bank of a stream indicated as a blue line on United States Geological Survey Quadrangle topographic maps or in an area indicated as a protected riparian area on an overlay map or Specific Plan, shall be subject to a native plant permit in accordance with the procedures detailed by Chapter 1 of this Division for each respective regional area and shall be subject to environmental review. Any necessary conditions of approval for removal of riparian vegetation may be imposed in addition to and in combination with any conditions imposed pursuant to this Division.

Chapter 3

ENFORCEMENT

Sections:

89.0340 Enforcement.
89.0345 Penalties

89.0340 Enforcement.

(a) The provisions of this Division shall be enforced by any authorized member of the Building and Safety, Code Compliance, or Planning Sections of the Community Development Department

(b) **Extension of Time.** If any of the land governed by this Division shall be subject to snow, flooding, or other condition which shall render compliance with the provisions of this Division within the specified time periods impractical because of inaccessibility, an enforcement officer may extend the period of time for compliance.

(c) A peace officer or any authorized enforcement officer may, in the enforcement of this chapter, make arrests without warrant for a violation of this Chapter, which he or she may witness, and may confiscate regulated native trees or plants, or parts thereof which are unlawfully harvested, possessed, sold, or otherwise obtained in violation of this Chapter. Also any designated enforcement officer is hereby authorized and directed to enter in or upon any premises or other place, train, vehicle, or other means of transportation within the Town of Yucca Valley which is suspected of containing or having present therein or thereon native plants in violation of this Division in order to examine permits and to otherwise enforce the provisions of this Chapter.

(d) When any power or authority is given by any provision of this Chapter to any person, it may be exercised by any deputy, inspector, or agent duly authorized by that person. Any person in whom the enforcement of any provision of this Chapter is vested has the power of a peace officer as to that enforcement, which shall include state or federal agencies with which cooperative agreements have been made by the Town to enforce the provisions of this Chapter.

(d) No person shall remove or damage all or part of any native tree or plant on another property without first obtaining notarized written permission from the landowner and any required Town permit. Also it is unlawful for any person to falsify any document offered as evidence of permission to enter upon the property of another to harvest all or parts of a native tree or plant, whether it be alive or dead.

(f) No person, except as provided in this Chapter, shall destroy, dig up or mutilate or have in his or her possession any regulated native plant or tree, or the living or dead parts of such unless the plant or tree was disturbed under a valid Town permit. Any such person shall exhibit the permit, upon request for inspection by any duly authorized Town Code Compliance Officer or any peace officer.

(g) No person, except as provided in this Chapter, shall commence with a disturbance of land (e.g.. grading or land clearing) without first obtaining approval to assure that said disturbance will not result in the removal or harm of any regulated native trees or plants. Said approval may be in the form of a development permit, or a tree removal permit issued by the appropriate authority.

89.0345 Penalties. Penalties shall include the following and any other penalties specified by individual Chapters of this Division.

(a) **ILLEGAL REMOVED NATIVE TREE OR DESERT NATIVE PLANT FINE.** In addition to other penalties and fees imposed by this Code or other law, any person, firm, or corporation convicted of a violation of the provisions of this Division shall be guilty of a misdemeanor upon conviction. Where one (1) or more plants or trees are removed in violation of the provisions of this Division, the removal of each separate plant or tree shall be a new and separate offense. The penalty for such offense shall be a fine of not less than five hundred dollars ($500) nor more than one thousand ($1,000) or six months in jail or both. Payment of any penalty herein provided shall relieve a person, firm or corporation from the responsibility of correcting the conditions resulting from the violation.

(b) **ILLEGALLY REMOVED NATIVE TREE OR DESERT NATIVE PLANT REPLACEMENT REQUIREMENT.**

(1) In addition to other penalties imposed by this Code or other law, any person, firm, or corporation convicted of violating the provisions of this Division regarding improper removal of regulated native trees and plants shall be required to retain as appropriate, a tree or Desert Native Plant expert to develop and implement a replacement program. Such expert shall determine the appropriate number, size, species, location and planting conditions for replacement plants or trees in sufficient quantities to revegetate the illegally disturbed area.

If it is inappropriate to revegetate the illegally disturbed area, another appropriate location (e.g. public parks) may be substituted at the direction of the court.

(2) The violator shall post a bond in an amount sufficient to remove and reinstall plant/tree materials that were planted as a part of such a replacement program and failed within two (2) years.

(c) **REVOCATION OF PERMITS.** Upon conviction of a violation of this Division, all native trees and desert native plant removal permits issued to the person, firm, or corporation convicted shall be revoked and no new or additional removal permits shall be issued to the permittee for a period of one (1) year from the date of conviction, and the permittee shall be required to surrender any permits to the Community Development Director."

SECTION 2. NOTICE OF ADOPTION. Within fifteen (15) days after the adoption hereof, the Town Clerk shall certify to the adoption of this Ordinance and cause it to be published once in a newspaper of general circulation printed and published in the County and circulated in the Town pursuant to Section 36933 of the Government Code.

SECTION 3. EFFECTIVE DATE. This Ordinance shall become effective thirty (30) days from and after the date of its adoption.

APPROVED AND ADOPTED by the Town Council and signed by the Mayor and attested by the Town Clerk this 5th day of June, 2003.

MAYOR

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

APPROVED AS TO CONTENT:

Town Manager

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STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

TOWN OF YUCCA VALLEY

I, Janet M. Anderson, Town Clerk of the Town of Yucca Valley, California hereby certify that the foregoing Ordinance No. 140 as duly and regularly introduced at a meeting of the Town Council on the 15th day of May, 2003, and that thereafter the said ordinance was duly and regularly adopted at a meeting of the Town Council on the 5th day of June, 2003, by the following vote, to wit:

Ayes: Council Members Cook, Leone, Mayes, Neeb and Mayor Earnest

Noes: None

Absent: None

Abstain: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Town of Yucca Valley, California, this 9th day of June, 2003.

(SEAL)

Town Clerk of the Town of
Yucca Valley