

EXHIBIT "A"

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9.56.010 PURPOSE

The purpose of this Chapter is to establish permitting standards and process for the issuance of take permits for the Western Joshua Tree as authorized pursuant to the Special Order approved by the California Fish and Game Commission pursuant to Fish and Game Code section 2084 on December 10, 2020 ("Special Order"). The requirements set forth in this Chapter are intended to protect the public's health, safety, and welfare by ensuring that take permits for the Western Joshua Tree are only issued consistent and compliant with the Special Order.

9.56.010 DEFINITIONS

The following definitions apply to this Chapter.

Accessory Structure: 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.

Desert Native Plant Specialist: 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 an accredited college and at least two years of professional experience 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.

Department: Department means the Town of Yucca Valley Community Development Department.

Developed Parcel: Developed Parcel means a parcel with an existing single-family

residence.

Participating Agency: Participating agency means the Town of Yucca Valley.

Project Proponent: 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.

Project Site: 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.

Public Works Project: Public Works Project means a project for the erection, construction, alteration, maintenance, or repair of any public structure, building, or road.

Single Family Residence: 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.

Size Class: 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.

Undeveloped Parcel: Undeveloped parcel means a parcel without an existing single-family residence.

Western Joshua Tree: 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.

Western Joshua Tree Mitigation Fund: Western Joshua Tree Mitigation Fund means the State Western Joshua Tree Mitigation fund established pursuant to Section 14 Code Cal. Reg. § 749.10(a)(5).

9.56.040: BI MONTHLY DEPOSITS TO THE WESTERN JOSHUA TREE MITIGATION FUND

The Town shall 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 during the preceding two calendar months.

9.56.50 BI-MONTHLY WESTERN JOSHUA TREE PERMITTING REPORT

A. The Town shall submit to the State Fish and Wildlife Department 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:

1. The number of projects approved by the Town pursuant to Section 9.56.070 that resulted in the removal or relocation of western Joshua trees.
2. The number and size class of western Joshua trees that were relocated pursuant to Section 9.56.100.
3. The number and size class of western Joshua trees removed and not relocated pursuant to Section 9.56.100.
4. The total amount of mitigation fees collected for each of the mitigation categories set forth in Section 9.56.120.
5. Documentation that the total amount of mitigation fees listed pursuant to Section 9.56.120 was paid into the Western Joshua Tree Mitigation Fund.
6. The number of dead western Joshua trees removed and live trees trimmed pursuant to Section 9.56.130.

9.56.060 ANNUAL REPORT ON SURVIVAL OF WESTERN JOSHUA TREES

- A. The Town shall submit an annual report on the survival rates of trees relocated 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:
1. The total number of western Joshua trees relocated pursuant to Section 9.56.100.
 2. For each western Joshua tree relocated:
 - a. The street address for the parcel on which the western Joshua tree was relocated. If no street address is available, the property owner may include the assessor's parcel number.
 - b. The date of the relocation.
 - c. Whether the western Joshua tree is alive or dead as of the date of the annual report.
 - d. A photograph of the relocated western Joshua tree in its current condition.

9.56.070 PERMIT REQUIRED, PLANNING COMMISSION APPROVAL, AND TAKE

PERMIT AUTHORIZATIONS

- A. The Planning Commission may authorize the 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, applications and processes:
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. All applicants shall submit an application to the Department, on forms prescribed by the Department which shall including the following information. Additional information may be required by the Director or by the Planning Commission:
 - i. The name of the desert native plant specialist who conducted the census and the employer of the desert native plant specialist.
 - ii. The name of the desert native plant specialist who will relocate western Joshua trees, if applicable, and the employer of the desert native plant specialist.
 - iii. The date of the census
 - iv. The date or dates of the proposed relocation of western Joshua trees, if applicable.
 - v. 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.
 - vi. Photographs of each western Joshua tree on the project site, including a visual representation of the scale of the height of each tree.

- vii. Aerial imagery of the site in sufficient detail to identify the property and the western Joshua trees that are on the site and are a part of the application submitted.
- viii. Narrative written descriptions of each western Joshua tree, its diameter, height, existing health condition and any other information deemed necessary.

3. Additional Submittals

- a. New construction of single-family residential units as well as accessory structures shall require the submittal of all information on plans measuring approximately 24" x 36", shall be legibly drawn and shall accurately reflect aerial photography and satellite imagery generally available for the subject property.
- b. All property lines, dimensions, and existing structures, if any, shall be depicted on plans submitted with the application materials.
- c. Property owners name, mailing address, phone number, and email address.
- d. Applicant's name, mailing address, phone number and email address.
- e. Assessor parcel number(s), address, and general location of the property for which the application is submitted.
- f. General Plan designation and zoning designation of the subject project site.

4. Approval Process

- a. Authorizations for take may only be granted by the Planning Commission in conjunction with approved building permit plans and applications for public works projects, single family residence and accessory structures. Western Joshua tree take approvals and authorizations shall not be granted by the Planning Commission prior to the applicant receiving construction plan approvals. This does not apply to trimming or removal of dead western Joshua trees pursuant to this Ordinance.

9.56.80 AVOIDANCE

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

9.56.090 MINIMIZATION

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.

9.56.100 RELOCATION

- A. 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.
- B. 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 this ordinance.
- C. The project proponent shall ensure that relocation of western Joshua trees 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.
 - 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.

9.56.110 REMOVAL OF WESTERN JOSHUA TREES

Subject to the limitations of this ordinance, a project proponent may remove western Joshua trees that cannot feasibly be avoided or relocated pursuant to this ordinance.

9.56.120 MITIGATION FEES

- A. Prior to applications being presented to the Planning Commission, the project

proponent shall pay mitigation fees for deposit into the Western Joshua Tree Mitigation Fund as follows:

- B. 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.

- C. 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.

9.56.130 DEAD AND TRIMMING WESTERN JOSHUA TREES

- A. The Planning Commission 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. Planning Commission may issue a permit in accordance with this section 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.

9.56.140 ENFORCEMENT

- A. A violation of any provision of this Chapter shall constitute a misdemeanor and shall be subject to enforcement pursuant to Title 1 or Chapter 9.82 of the Town Code, or any other method permissible by law.
- B. A violation of any provision of this Chapter may be punishable by an administrative citation under Chapter 1.04 of this Code in the amount of \$1,000 per western Joshua tree taken or trimmed without a permit. In addition to the payment of an administrative citation, fine, or any other penalty imposed, any person or entity that takes or trims a western Joshua tree without a permit and in violation of this Chapter shall subsequently pay the applicable per western Joshua tree fee had the permit been issued.
- C. Nothing in this Chapter shall be interpreted as conflicting with or overriding any provision of the California Endangered Species Act (California Fish and Game Code Section 2050, et. seq.) or prohibiting the Department of Fish and Wildlife, or any other entity, from enforcing the California Endangered Species Act as provided by law. If a person or entity takes a western Joshua tree in violation of the California Endangered Species Act, in addition to all other fines and penalties available under the law, the Department of Fish and Wildlife may impose a fine of not less than \$25,000 or more than \$50,000 or imprisonment in the county jail for not more than one year, or both. (See Fish and Game Code Section 12008.1.)