

IN-LIEU FEE ENABLING INSTRUMENT

COACHELLA VALLEY IN-LIEU FEE PROGRAM

This In-Lieu Fee Enabling Instrument ("Instrument"), dated this 16th day of July, 2014 ("Execution Date"), is made by and between Coachella Valley Conservation Commission ("CVCC"; "Program Sponsor"), the Los Angeles District of the U.S. Army Corps of Engineers ("USACE"), and Region IX of the U.S. Environmental Protection Agency ("USEPA"), in consultation with Region 8 of the U.S. Fish and Wildlife Service ("USFWS"), Region 6 of the California Department of Fish and Wildlife ("CDFW") and the California Regional Water Quality Control Board, Region 8 ("RWQCB"). The USACE, USEPA, USFWS, CDFW, and RWQCB comprise and are referred to jointly as the Interagency Review Team ("IRT"). The Program Sponsor and the IRT members who have agreed to sign this Instrument are hereinafter referred to jointly as the "Parties." This Instrument sets forth the agreement of the Parties regarding the establishment, use, operation and maintenance of the Coachella Valley In-Lieu Fee Program (the "Program").

RECITALS

- A. The Program Sponsor is responsible for establishing and operating the Program.
- B. USACE and USEPA have jurisdiction over Waters of the U.S. pursuant to the Clean Water Act ("CWA"), 33 U.S.C § 1251 *et seq.* Waters of the U.S. include jurisdictional wetlands.
- C. RWQCB is charged with preserving, protecting, enhancing, and restoring water quality pursuant to the Porter-Cologne Water Quality Control Act, California Water Code Section 13000 *et seq.* in addition to Section 401 of the CWA.
- D. CDFW is responsible for the protection and conservation of the fish and wildlife resources of State of California, including but not limited to sections 1600-1616 of Fish and Game Code pertaining to lake or streambed alterations, the California Endangered Species Act, and the California Environmental Quality Act.
- E. The IRT is the interagency group which oversees the establishment, use, operation, and maintenance of the Program.
- F. The primary goal of the Program is to provide effective Compensatory Mitigation for the Functions and Services of Waters of the U.S. lost through authorized Impacts.
- G. The objectives of the Program are (1) to provide an alternative to permittee-responsible Compensatory Mitigation by implementing In-Lieu Fee ("ILF") Projects adequate to meet current and expected demand for Credits in the Service Area; (2) create a Program that has a level of accountability commensurate with mitigation banks as specified in 33 C.F.R. 332; (3) restore and protect aquatic resources on a watershed-basis by siting ILF Projects using the best available decision support tools, and (4) by integrating ILF Projects with ongoing conservation

activities in the Coachella Valley, especially in ways that complement and support the Coachella Valley Multiple Species Habitat Conservation Plan (“CVMSHCP”).

H. The mitigation plan, as referenced in 33 C.F.R. 332.4 and containing the requirements in paragraphs c2-c14 of that section, will be addressed in each proposed ILF Project by submissions required in Exhibits D-F of this Instrument (Development Plan, Interim Management Plan, Long-term Management Plan).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

SECTION I: PURPOSE AND AUTHORITIES

A. Purpose

The purpose of this Instrument is to establish guidelines, responsibilities, and standards for the establishment, use, operation, and maintenance of the Program. The Program will be used for Compensatory Mitigation for (1) unavoidable Impacts to Waters of the U.S. that result from activities authorized under section 404 of the CWA and section 401 of the CWA water quality certifications or (2) completed enforcement actions under the auspices of section 404 and 401 of the CWA.

B. Authorities

The establishment, use, operation and maintenance of the Program will be carried out in accordance with the following authorities:

1. Federal Authorities
 - a. Clean Water Act (33 U.S.C. § 1251 *et seq.*);
 - b. National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*);
 - c. Endangered Species Act (16 U.S.C. § 1531 *et seq.*);
 - d. Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*);
 - e. National Historic Preservation Act (16 U.S.C. § 470);
 - f. Regulatory Program of the USACE (33 C.F.R. Parts 320-332); and
 - g. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 C.F.R. Part 230).

2. Authority of the USACE

The USACE will make the final decision regarding the amount and type of Compensatory Mitigation to be required of federal permittees, and determine whether and how use of Credits from the Program is appropriate to compensate for unavoidable Impacts.

SECTION II: DEFINITIONS

The initially-capitalized terms used and not defined elsewhere in this Instrument are defined as set forth below.

1. “Adaptive Management” means an approach to natural resource management which incorporates changes to management practices, including corrective actions as determined to be appropriate by the IRT in discussion with the Program Sponsor based upon annual report results and IRT review of overall Program performance and compliance.
2. “Advance Credits” means any Credits of the Program that are available for sale prior to being fulfilled in accordance with an approved mitigation plan.
3. “Buffer” means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, stream, and lakes from disturbances associated with adjacent land uses.
4. “Catastrophic Event” shall mean an unforeseen event, such as the Impact of a vehicle or falling aircraft, which has a material and detrimental Impact on the ILF Project site(s), and over which the Program Sponsor has no control.
5. “Compensatory Mitigation” means the Restoration, Establishment, Enhancement, and/or in certain circumstances Preservation of aquatic resources for the purposes of offsetting unavoidable Impacts which remain after all appropriate and practicable avoidance and minimization measures have been achieved.
6. “Conservation Easement” means a perpetual conservation easement, as defined by California Civil Code § 815.1, substantially in the form of **Exhibit H**.
7. “Credit” is a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the accrual or attainment of aquatic functions at an ILF Project site(s). The measure of aquatic functions is based on the resources Restored, Established, Enhanced, or Preserved.
8. “Credit Release” means an action by the USACE to make specified Credits available for Transfer pursuant to this Instrument.

9. "Development Plan" is the document that formally establishes an ILF Project and stipulates the terms and conditions of its construction and habitat establishment activities required to be conducted on the ILF Project site to establish Credits. Each Development Plan will be bound by the terms and conditions of the Instrument by reference.
10. "Enhance" or "Enhancement" means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource Function(s). Enhancement results in the gain of selected aquatic resource Function(s), but may also lead to a decline in other aquatic resource Function(s). Enhancement does not result in a gain in aquatic resource area.
11. "Establish" or "Establishment" means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and Functions.
12. "Force Majeure" shall mean war, insurrection, riot or other civil disorder, flood, drought, lightning, earthquake, fire, landslide, disease, effects of climate change on habitat or hydrology, condemnation or other taking by governmental body. Other conditions beyond the Program Sponsor's control will include: interference by third parties; condemnation or other taking by any governmental body; change in applicable law, regulation, rule, ordinance, or permit condition, or the interpretation or enforcement thereof; any order, judgment, action or determination of any federal, state or local court, administrative agency or governmental body; and/or suspension or interruption of any permit, license, consent, authorization or approval.
13. "Functions" mean the physical, chemical, or biological processes that occur in ecosystems.
14. "ILF Project" means Compensatory Mitigation implemented by the Program Sponsor under the Program.
15. "Impacts" mean adverse effects.
16. "Interim Management Period" means the period from the Program Establishment Date until all the Performance Standards in the mitigation plan have been met.
17. "Interim Management Plan" means the document that describes the management, monitoring, Adaptive Management, reporting and other activities to be implemented by the Program Sponsor during the Interim Management Period. Each Interim Management Plan will be bound by the terms and conditions of the Instrument by reference.
18. "Long-term Management Period" means the period beginning upon conclusion of the Interim Management Period and continuing in perpetuity, during which each ILF

Project is to be managed, monitored and maintained pursuant to the Long-term Management Plan.

19. "Long-term Management Plan" means the document that identifies specific land management activities that are required to be performed at each of the ILF Project sites, including, but not necessarily limited to, biological monitoring, improvements to biological carrying capacity, enforcement measures, and other actions designed to protect or improve the habitat values of the ILF Project site. Each Long-term Management Plan will be bound by the terms and conditions of the Instrument by reference.
20. "Performance Standards" means the minimum standards set forth in the mitigation plan to define the successful development of Waters of the U.S.
21. "Phase I Environmental Site Assessment" is an assessment of the environmental condition of the Property performed in accordance with the American Society of Testing and Materials (ASTM) Standard E1527-05 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process," or any successor to such ASTM Standard which is active at the time of the assessment.
22. "Preservation" means the protection of existing ecologically important wildlife, habitat or other ecosystem resources in perpetuity.
23. "Program Account" means an account established by the Program Sponsor at an institution that is a member of the Federal Deposit Insurance Corporation and that is used by the Program Sponsor for the purpose of providing compensatory mitigation for Department of the Army (DA) permits.
24. "Program Establishment Date" is the date determined pursuant to Section IV.D., when the Program is considered established and Transfer of Advance Credits may begin.
25. "Property Assessment" means the written ILF Project site evaluation signed by the Program Sponsor, using the form attached in **Exhibit I**.
26. "Remedial Action" means any corrective measures which the Program Sponsor is required to take to ameliorate any injury or adverse Impact to the ILF Project Site as Preserved, Restored or Enhanced or as a result of a failure to achieve the Performance Standards.
27. "Re-establishment" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area, Functions and services.

28. “Rehabilitation” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource Function, but does not in a gain in aquatic resource area.
29. “Restore” or “Restoration” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.
30. “RIBITS” means the Regulatory In-Lieu Fee and Bank Information Tracking System.
31. “Services” mean the benefits that human populations receive from Functions that occur in ecosystems.
32. “Service Area” means the geographic area(s) within which Impacts to Waters of the U.S. that occur may be compensated through Credits from the Program.
33. “Subordination Agreement” means a written, recorded agreement in which the holder of an interest in, or lien or encumbrance on the ILF Project site makes the lien or encumbrance subject to and of lower priority than the Conservation Easement or equivalent protection mechanism, even though the lien or encumbrance was recorded before the Conservation Easement or equivalent protection mechanism.
34. “Transfer” means the use, sale, or conveyance of Credits by the Program Sponsor.
35. “Unlawful Act” shall mean the unlawful act of any person or entity other than the Program Sponsor and shall include an event or series of events, such as the intentional release within the ILF Project site(s), or any connected watercourse, of any Hazardous Substance, or the discharge of such a substance in violation of a statute, ordinance, regulation or permit, which event or series of events has a material and detrimental Impact on the ILF Project site.
36. “Waters of the U.S.” mean water bodies, including wetlands, over which there is federal jurisdiction under section 404 of the CWA.

SECTION III: STIPULATIONS

A. Disclaimer

This Instrument does not, in any manner, affect the statutory authorities and responsibilities of the Parties.

B. Exhibits

The following Exhibits are attached to and incorporated by this reference into this Instrument:

A - Prioritization and Compensation Planning Framework

B - Service Area

C - Instrument Modification Procedure

D - Development Plans

E - Interim Management Plans

F - Long-term Management Plans

G - Statement of Sale of Credit

H - Real Estate Instrument

I - Property Assessment Form

J - Credit Ledger Report Forms

SECTION IV: PROGRAM STRUCTURE

A. Framework

This Instrument is intentionally broad and sets the framework under which Program sponsored ILF Projects will be identified, funded, operated, maintained and managed. The Instrument provides the authorization for the Program to provide Credits to be used as Compensatory Mitigation for DA permits and associated CWA section 401 water quality certifications or as a result of completed enforcement actions under the auspices of section 404 and 401 of the CWA. As ILF Projects are identified, the Program Sponsor will submit site-specific Development Plans, Interim Management Plans, and Long-term Management Plans to the USACE for review and approval as modifications to the Instrument through the process outlined in **Exhibit C**, and included in this Instrument as subparts of **Exhibits D-F**. All ILF Projects should follow the principles and guidelines set forth in the Compensation and Planning Framework in Exhibit A.

B. Service Area

The Service Area for the Program is defined as an area encompassing the Whitewater River watershed and including the eastern portion of Riverside and all of Imperial counties. The Service Area consists of two parts: the primary service area consisting of the Whitewater River watershed as encompassed by the CVMSHCP boundaries and the watersheds adjoining the Salton Sea, and the secondary service area, consisting of the eastern half of Riverside County and all of Imperial County. The primary and secondary service areas are shown in **Exhibit B, Figures B-1 and B-2**. To the maximum extent practicable, Compensatory Mitigation governed

by the Program will be for Impacts to Waters of the U.S. in the primary service area and Impacts mitigated for will be within the same 10-digit HUC as ILF Project sites governed by this Program. USACE may also allow the Program to offer Compensatory Mitigation for Impacts at broader HUC scales and in the secondary service area, provided the permit applicant can demonstrate that no other reasonable Compensatory Mitigation options are available in the watersheds more proximate to the Impact site, and understanding that higher ratios of Compensatory Mitigation-to-Impact may be required in these circumstances. This specific Service Area was chosen based on environmental considerations and the Program Sponsor's jurisdictional boundary.

C. Program Account

1. Upon the Instrument being fully executed by all of the Parties and prior to accepting any fees from federal permittees, the Program Sponsor must establish a Program Account. The Program Account will collect deposits from the sale of Credits, and will be used only for the comprehensive costs associated with site selection, design, acquisition, implementation, and management of ILF Projects, and administrative costs for the Program Sponsor. Administrative costs equal to 15% of each Credit sale will be allowed for the Program Sponsor to manage the Program. All interest and earnings from the Program Account will remain in that account for the purpose of providing Compensatory Mitigation for Impacts to Waters of the U.S. Funds for the operation of the Program may be obtained from other sources and repaid as Credits are sold.
2. Complete budgets for individual ILF Projects will be approved as part of Development Plans.
3. Annual accounting reports will be compiled on a calendar year basis and presented by April 30 for approval by the USACE. Reports will include detailed summaries of Program Account deposits and disbursements for each ILF Project made over the previous calendar year (January 1-December 31) (Section VII). Any deviation in excess of ten percent from the approved budget will require USACE approval before additional funds are disbursed. The USACE may review Program Account records with 14 days written notice. When so requested, Program Sponsor shall provide all books, accounts, reports, files, and other records relating to the Program Account.

D. Program Establishment Date

The Program Establishment Date will occur and Transfer of Advance Credits may begin only after (1) the Instrument has been fully executed by all of the Parties and (2) the Program Account has been established. Within 30 days of the Program Establishment Date, the Program Sponsor shall upload the final, signed Instrument including all of its Exhibits, to RIBITS and provide an electronic copy each member of the IRT.

E. ILF Projects

Program Sponsor will identify potential ILF Projects consistent with the Instrument and submit a

Development Plan, including a project budget, Interim Management Plan, and Long-term Management Plan to the USACE along with a written request for an Instrument Modification (**Exhibit C**). Program Sponsor will implement the ILF Projects upon approval and report annually to the IRT (Section VII).

F. Establishment and Use of Credits

In accordance with the provisions of this Instrument and upon satisfaction of the Credit Release schedule described in Development Plans (contained herein as subparts of **Exhibit D**) and in Section VI.C, Credits are available for Transfer as Compensatory Mitigation in accordance with all applicable requirements for permits issued under section 404 of the CWA and associated CWA section 401 water quality certifications. The USACE, based on recommendations of the IRT, will determine the number of Credits available for each ILF Project based upon the approved design and the resulting habitats achieved, in accordance with the terms and conditions contained herein.

SECTION V: ILF PROJECT ESTABLISHMENT AND OPERATION

This section identifies the general framework in which individual ILF Projects will be established and operated. Each ILF Project will be approved individually, as detailed herein, and the specific requirements for its operation, monitoring, and management will meet the USACE standard operating procedures at the time of its approval. The Program Sponsor shall provide for access to the ILF Project site by members of the IRT or their agents or designees at reasonable times as necessary to conduct inspections and compliance monitoring with respect to the requirements of this Instrument. Inspecting parties shall not unreasonably disrupt or disturb activities on the ILF Project site, and will provide written notice within reasonable time prior to the inspection.

A. Establishment

1. Project Site Selection

All individual ILF Projects will be located within the Program Service Area. Program Sponsor will seek ILF Projects based on the prioritization and compensation planning framework outlined in **Exhibit A**.

2. Instrument Modifications

As ILF Projects are identified, Program Sponsor will prepare a Development Plan, including a project budget, Interim Management Plan, and Long-term Management Plan and submit a written request to the USACE to modify the Instrument. This process is outlined in **Exhibit C**.

3. Permits

The Program Sponsor will obtain all applicable permits and authorizations needed to

construct and maintain the ILF Project(s). This Instrument does not constitute or substitute for any such approval.

4. Financial Assurances

Notwithstanding any other provision of this Instrument, the Program Sponsor's financial obligation for the Program will be limited to funds in the Program Account. The Program Sponsor will take the following actions to ensure funds are available to meet mitigation requirements for Credits Transferred:

- a. Funds outlined in approved ILF Project budgets will be earmarked, held in the Program Account, and disbursed as work is accomplished to operate and monitor the individual ILF Projects.
- b. Funds outlined in approved ILF Project budgets will be earmarked, held in the Program Account to manage the individual ILF Project, including contingency costs, Adaptive Management, and Remedial Actions.
- c. A financial assurance for each ILF Project in accordance with 33 C.F.R. 332.3(n).

Each approved ILF Project will have an identified schedule for the release of the financial assurances as the ILF Project meets its approved Performance Standards.

B. Operation

1. Development Plans

Program Sponsor shall be responsible for preparing Development Plans in accordance with **Exhibit D**. The Development Plans shall outline measurable objectives, Performance Standards, and monitoring requirements. Pre- and post-ILF Project implementation jurisdictional determination and delineations (as appropriate) and functional assessments will be completed using USACE-approved techniques. Development Plans must include a survey or other document acceptable to the USACE, completed by a professional land surveyor or other qualified person or entity, defining the ILF Project site, and a Property Assessment using the Form in **Exhibit I**. Upon approval of the Development Plan by the USACE, the Program Sponsor shall be responsible for implementing the plan, except as outlined immediately below.

In cases where ILF Projects are sited on public lands, an appropriate agreement must be forged between the Sponsor, USACE, and the cooperating agency which specifies who will be responsible for the Development Plan, Interim Management and Monitoring, Long-term Management and Monitoring, Remedial Action Plan, and Long-term Ownership and Protection of the ILF Project Site. ILF Projects on public lands will not be allowed absent agreements of this sort, and that satisfy all USACE requirements for Compensatory Mitigation as specified in 33 C.F.R. § 332.

2. Interim Management and Monitoring

Program Sponsor shall be responsible for preparing Interim Management Plans in accordance with **Exhibit E**, except as otherwise specified in agreements for ILF Projects on public lands. Upon approval of the Interim Management Plan by the USACE, the Program Sponsor shall be responsible for conducting management and monitoring activities according to the Interim Management Plan until completion of the Interim Management Period.

3. Long-term Management and Monitoring

ILF Projects shall be designed, to the maximum extent practicable, to be self-sustaining once Performance Standards have been achieved. Program Sponsor shall be responsible for preparing Long-term Management Plans in accordance with **Exhibit F**, except as otherwise specified in agreements for ILF Projects on public lands. Once the Interim Management Period is completed, the Program Sponsor shall implement long-term management and monitoring of the ILF Project site(s) according to the Long-term Management Plan. Program Sponsor shall be obligated to manage and monitor the ILF Project site in perpetuity to preserve its habitat and conservation values in accordance with this Instrument, the real estate instrument (e.g., Conservation Easement), and the Long-term Management Plan. Such activities shall be funded through the Program Account, including, but not limited to, the potential transfer of long-term management funds to be managed by the steward in a separate endowment account pursuant to 33 C.F.R. § 332.8(u)(3). Program Sponsor and the IRT members shall meet and confer upon the request of any one of them, to consider revisions to the Long-term Management Plan which may be necessary or appropriate to better conserve the habitat and conservation values of the ILF Project site(s). During the Long-term Management Period, Program Sponsor shall be responsible for submitting annual reports to each member of the IRT in accordance with Section VII.A of this Instrument. The Program Sponsor shall upload annual reports into RIBITS.

4. Remedial Action Plan

Prior to Program closure, if any Party discovers any failure to achieve the Performance Standards or any injury or adverse Impact to the ILF Project site as Preserved, Established, Restored, or Enhanced, the Party making the discovery shall notify the other Parties. Subject to the limitations on any duty of the Program Sponsor to remediate outlined in Section VIII.A, the IRT may require the Program Sponsor to develop and implement a Remedial Action plan to correct such condition, as described below. In cases where ILF Projects are sited on public lands, the IRT may instead require the cooperating agency to implement a Remedial Action plan. The annual report required under Section VII.A. shall identify and describe any Remedial Action proposed, approved, or performed and, if the Remedial Action has been completed, evaluate its effectiveness.

- a. Within 60 days of the date of written notice from the IRT, the Program Sponsor shall develop a Remedial Action plan and submit it to the IRT for approval. The Remedial Action plan must identify and describe proposed actions to achieve the Performance Standards or ameliorate injury or adverse Impact to the ILF Project site and set forth a schedule within which the Program Sponsor will implement those actions. The Program Sponsor shall implement the necessary and appropriate Remedial Action in accordance with the Remedial Action plan approved by the IRT. In the event the Program Sponsor fails to submit a Remedial Action plan to the IRT in accordance with this section, the IRT will notify the Program Sponsor that the Program Sponsor is in default and may identify Remedial Action the IRT members deems necessary. If (a) the Program Sponsor fails to develop a Remedial Action plan or to implement Remedial Action identified by the IRT, in accordance with this section, or (b) conditions have not improved or continue to deteriorate two years after the date that the IRT approved a Remedial Action plan or notified Program Sponsor of Remedial Actions the IRT deemed necessary, then the USACE may direct funds from the Program Account to undertake Remedial Action on the ILF Project site.
- b. If the USACE determines, in consultation with the IRT, that the Program is operating at a Credit deficit (i.e., that Credit Transfers made exceed the Credits authorized for release, as adjusted in accordance with this Instrument), then the USACE shall notify the Program Sponsor. Upon the USACE giving such notice, Program Sponsor shall immediately cease Transfer of Credits. The USACE, in consultation with the IRT, will determine what Remedial Action is necessary to correct the Credit deficit, and Program Sponsor shall implement such Remedial Action, in accordance with this Section V.B.4.

5. Long-term Ownership and Protection

Program Sponsor shall be responsible for ensuring long-term protection of each ILF Project through the use of real estate instruments or, in cases where ILF Projects are cited on public land, appropriate binding agreements, in accordance with 33 C.F.R. 332.7(a). Program Sponsor will ensure that the real estate instrument is in place *prior to* ILF Project implementation, as stipulated in each Development Plan. For Projects on private land, the draft real estate instrument, substantially in the form of **Exhibit H**, shall be submitted to the IRT for review and USACE approval. The real estate instrument shall include, but is not limited to, assigning long-term management responsibility for the ILF Project and will, to the extent practicable, prohibit incompatible uses that might otherwise jeopardize the objectives of the ILF Project. A copy of the recorded real estate instrument shall be furnished to the USACE and become part of the official Program record. If any action is taken to void or modify an ILF Project real estate instrument, Program Sponsor must notify the USACE in writing.

In cases where ILF Projects are sited on public lands, a separate agreement between the Sponsor, USACE, and the cooperating agency must specify a long-term site protection mechanism, such as a conservation land use agreement or similar document. Any

agreement between the Sponsor, USACE, and the cooperating agency must prohibit incompatible uses that might otherwise jeopardize the objectives of the ILF Project, and hold the cooperating agency responsible for providing an alternative source of Compensatory Mitigation in the event of incompatible use (see §33 C.F.R. 332.7(a)(4)).

Section VI: CREDIT ACCOUNTING

A. Advance Credits

Upon the Program Establishment Date, Program Sponsor is permitted to Transfer fifty (50) Advance Credits. The number of Advance Credits that are approved for Transfer was developed in coordination with the USACE and IRT and is based on (1) the projected mitigation opportunities within the Service Area as outlined in the compensation planning framework in **Exhibit A**, (2) the Program Sponsor's past performance for implementing Enhancement, Restoration, Establishment, and/or Preservation activities within the Service Area, and (3) the projected financing necessary to begin planning and implementation of ILF Projects. No more than 25%, or 12.5 Advance Credits, may be Transferred and later fulfilled as Preservation Credits. At least 75% of the Advance Credits must be fulfilled as Establishment, Enhancement, Buffer and/or Restoration Credits. Buffer credits must be combined with Establishment, Enhancement, or Restoration credits and are not available to offset impacts to waters of the U.S. on their own.

Once the Program Sponsor has sold all of its Advance Credits, no more Advance Credits may be sold until an equivalent number of Credits has been released in accordance with the approved Credit Release schedule outlined in an ILF Project-specific Development Plan. Once all Advance Credits are fulfilled, an equivalent number of Advance Credits may be made available for Transfer, at the discretion of the USACE and IRT.

For any given Transfer of Advance Credits to a USACE permittee, Program Sponsor shall complete land acquisition and initial physical and biological improvements at compensatory mitigation project sites designed to produce an equivalent number of Credits by the third full growing season after said Transfer of Advance Credits. If Program Sponsor fails to meet these deadlines, the USACE must either make a determination, in consultation with the IRT, that more time is needed to plan and implement an ILF project or, if doing so would not be in the public interest, direct the Program Sponsor to disburse funds from the Program Account to provide alternative Compensatory Mitigation to fulfill those compensation obligations. USACE may suspend the sale of additional Advance Credits until the Program Sponsor has met their compensation obligations for already Transferred Advance Credits.

B. Generation of Credits

Each approved ILF Project Development Plan will include the method for determining the Credits generated by the individual ILF Project. Program Sponsor may only generate Credits from an ILF Project when there is a net benefit to aquatic resources at the site as determined by the difference between pre- and post-site conditions. Credit generation will be determined using the California Rapid Assessment Method to determine baseline levels and overall ecological

improvements in conjunction with more specific functional assessment methods as defined in the current USACE standard operating procedures in order to show that mitigation sites are meeting specific performance standards. Preservation of existing waters of the United States that support a significant population of rare plant or animal species, or that are a rare aquatic resource type may be proposed to generate Credits. Credits may also be proposed for Preservation or improvements of riparian areas, Buffers and uplands if the resources in these areas are essential to maintain the ecological viability of a water of the United States. Credits generated for Preservation and Buffers will be determined on a case-by-case basis by the USACE, in consultation with the IRT, in accordance with 33 C.F.R. 332.3(h) and (i).

C. Credit Release

Each approved ILF Project Development Plan will include a Credit Release schedule referenced to Performance Standards. As milestones in an individual ILF Project's Credit Release schedule are reached (i.e., Restoration, Establishment, Enhancement and/or Preservation is implemented), Advance Credits are converted to Credits. At a minimum, Credits will not be released until the Program Sponsor has obtained USACE approval of the Development Plan for the ILF Project site, has achieved the applicable milestones in the Credit Release schedule, and has submitted a request for Credit Release to the USACE along with documentation substantiating achievement of the criteria for release to occur and Credit Releases have been approved by the USACE. If the ILF Project does not achieve the performance-based milestones, the USACE may modify the Credit Release schedule, including reducing the number of Credits.

1. Establishment, Enhancement, Restoration Credits. In general, the Credits for Establishment, Enhancement, and Restoration areas may be released according to the following schedule:
 - a. Up to 25% of anticipated Credits may be used to fulfill obligations generated by the sale of Advance Credits upon approval of a Development Plan and recordation of a real estate instrument for the purpose of implementing an ILF Project.
 - b. Up to an additional 25% of anticipated Credits may be used to fulfill obligations generated by the sale of Advance Credits upon completion of improvements per the approved Development Plan and USACE approval of the as-built report.
 - c. Up to an additional 25% of anticipated Credits may be incrementally used to fulfill obligations generated by the sale of Advance Credits upon achievement of short term (i.e., Years 2-4) Performance Standards.
 - d. The remaining generated Credits may be used to fulfill obligations generated by the sale of Advance Credits upon achievement of long-term (i.e., Year 5) Performance Standards.
2. Preservation and Buffer Credits. For Preservation and Buffers that do not involve construction of improvements and thus do not require meeting short term Performance Standards, up to 80% of anticipated Credits associated exclusively with

Preservation and Buffers may be released upon acquisition and full legal protection of the lands to be Preserved. Up to an additional 20% of anticipated Credits may be released upon achievement of long-term Performance Standards, which, under normal circumstances, will be no later than five (5) years after the approval of the Development Plan for the site. If the Program Sponsor plans to improve buffer areas, then associated Credit releases will be subject to a performance-based release schedule as outlined above for Establishment, Enhancement, and Restoration Credits.

D. Balance of Credits

The Program will have available for Transfer the number of available Advance Credits for the Program, plus any released Credits generated by ILF Projects beyond those required to fulfill Advanced Credit Transfers.

E. Fee Schedule

The cost per unit of Credit must include the expected costs associated with the Restoration, Establishment, Enhancement, and/or Preservation of aquatic resources in the Service Area. These costs must be based on full cost accounting, and include, as appropriate, expenses such as land acquisition (including, without limitation, options to purchase), project planning and design, construction, plant materials, labor, legal fees, monitoring, and remediation or adaptive management activities, as well as administration of the Program. This list is not meant to be exhaustive and may include other categories, as appropriate, as determined by the Program Sponsor on a case-by-case basis. The cost per unit of Credit must also take into account contingency costs appropriate to the stage of project planning, including uncertainties in construction and real estate expenses. The cost per unit of Credit must also take into account the resources necessary for the long-term management, protection of the ILF Project, and enforcement of the long-term instrument or other protection mechanism, including a fraction of credit sales as required to fund an endowment to fund the long-term maintenance and management of a Project site in perpetuity. In addition, the cost per unit of Credit must include financial assurances that are necessary to ensure successful completion of ILF Projects. These fees shall be reviewed at least annually and updated as appropriate.

F. Transfer of Credits

1. All activities regulated under section 404 and 401 of the CWA may be eligible to use the Program as Compensatory Mitigation for unavoidable Impacts.
2. Credits purchased may only be used in conjunction with a USACE permit authorization or resolution of an unauthorized activity. State agencies such as CDFW may also direct state-level permittees to this ILF Program to satisfy state-level mitigation requirements, provided that ILF Projects governed by this Program meet state requirements and understanding that USACE approved Compensatory Mitigation may or may not fulfill all state requirements.
3. Deposits for such Credits shall be placed in the Program Account.

4. The USACE will make decisions about the most appropriate Compensatory Mitigation on a case-by-case basis, during evaluation of a DA permit application. This Instrument does not guarantee that the USACE will accept the use of Program Credits for a specific project, and authority for approving use of the Program for Compensatory Mitigation lies with the USACE.
5. The responsibility to provide Compensatory Mitigation remains with the permittee unless and until Credits are purchased from the Program. Upon USACE approval of purchase of Credits from the Program, the permittee may contact the Program Sponsor to secure the necessary amount and resource type of Credits, as outlined in DA permit conditions. Upon Transfer of Credits, the Program Sponsor shall enter the Transfer into RIBITS.
6. Program Sponsor assumes all legal responsibility for fulfilling Compensatory Mitigation requirements for USACE-authorized activities for which fees have been accepted. The transfer of liability is established by: 1) the approval of this Instrument; 2) receipt by the USACE of a Credit sale certificate that is signed by the Program Sponsor and the permittee and dated (see **Exhibit G**); and 3) the transfer of fees from the permittee to the Program Sponsor. A copy of each certificate will be retained in the administrative and accounting records for the Program Instrument. Other than what is described in this paragraph, no other legal responsibility for the permit will transfer to the Program Sponsor, unless a separate agreement is entered into between the Program Sponsor and the permittee.
7. Debits will be reflected in annual accounting reports as outlined in Section VII.
8. Subject to the limitations on any duty of the Program Sponsor to remediate outlined in Section VIII.A, if a ILF Project site is damaged after the Program Establishment Date, and such damage materially impairs Waters of the U.S. or habitat values on such damaged ILF Project site, then the USACE, in consultation with the IRT, may, at its discretion, direct Program Sponsor to suspend the Transfer of Credits and/or reduce the number of Credits allocated to the ILF Project in proportion to such damaged area unless and until the Program Sponsor has reasonably restored such damaged area, if required, pursuant to a Remedial Action plan approved by the IRT.

SECTION VII: PROGRAM REPORTING

A. Annual Report

Program Sponsor shall upload an annual report to RIBITS and furnish a copy to each member of the IRT, in hard copy and in editable electronic format, on or before April 30 of each year following the Program Establishment Date. Each annual report shall cover the period from January 1 of the preceding year (or if earlier, the Program Establishment Date for the first annual report) through December 31 of the preceding year (the "Reporting Period"). To the maximum extent practicable, these reporting requirements should be integrated into annual reporting requirements already specified in section 6 of the CVMSHCP. The annual report shall address

the following:

1. Monitoring and ILF Project Development

The annual report shall document the degree to which each ILF Project site in the Program is meeting its Performance Standards. The annual report shall describe any deficiencies in attaining and maintaining Performance Standards and any Remedial Action proposed, approved, or performed. If Remedial Action has been completed, the annual report shall also evaluate the effectiveness of that action.

2. Interim Management and Long-term Management

The annual report shall contain an itemized account of the management tasks conducted during the reporting period in accordance with the Interim Management or Long-term Management Plan for each ILF Project site, including the following:

- a. The time period covered, i.e. the dates “from” and “to”;
- b. A description of each management task conducted, the dollar amount expended and time required; and
- c. The total dollar amount expended for management tasks conducted during the reporting period.

3. Credit Ledger Report

The annual report shall include an updated Credit Transfer Ledger (**Exhibit J**, for each ILF Project site) showing the beginning and end balance of available Credits and permitted Impacts for each resource type, all additions and subtractions of Credits, and any other changes in Credit availability (e.g., additional Credits released, Credit sales suspended). The Credit Ledger Report must include:

- a. The balance of Advance Credits and Released Credits at the end of the report period for each Service Area, including the beginning and ending balance of available Credits and permitted impacts for each resource type, all additions and subtractions of Credits, and any other changes in Credit availability (e.g., additional Credits Released, Credit Transfers suspended) (33 C.F.R. 332.8(q)(1)). A detailed description of the Credit accounting is included in section VI of the Instrument.
- b. A list of all USACE permits for which Program Account funds were accepted, including a spreadsheet cataloging the USACE permit number, the Service Area where the authorized impacts are located, the specific location and acreage of authorized impacts (including the CVMSHCP conservation area, if applicable), type of habitat and species impacted, the amount and type of required Compensatory Mitigation, date of USACE permit approving acceptance of

Program Credits, the amount paid to the Program Sponsor, and the amount and date the funds were received from the permittee.

4. Program Account

The annual accounting report in accordance with Section IV.C.3. This must include:

- a. All income received, disbursements, and interest earned by the Program Account, as well as a description of Program expenditures from the Program Account, including the costs of land acquisition, planning, construction, monitoring, maintenance, contingencies, Adaptive Management, and administration.

B. Credit Transfer Reporting

Upon the Transfer of each and every Credit, the Program Sponsor shall enter the Credit Transfer into RIBITS and submit to each member of the IRT:

1. A copy of the certification in the form provided at **Exhibit G** that identifies the permit number, a statement indicating the number and resource type of Credits that have been secured from the Program Sponsor, and that legal responsibility has transferred from the permittee to Program Sponsor; and
2. An updated Credit Ledger Report, in hard copy and in editable electronic format in the form provided at **Exhibit J**.

SECTION VIII: OTHER PROVISIONS

A. Force Majeure

1. The Program Sponsor shall be responsible to maintain the ILF Project site and perform Remedial Action except for damage or non-compliance caused by Catastrophic Events, events of Force Majeure or Unlawful Acts. In order for such exception to apply, the Program Sponsor shall bear the burden of demonstrating all of the following:
 - a. That the damage or non-compliance was caused by circumstances beyond the control of the Program Sponsor and any person or entity under the direction or control of the Program Sponsor, including its employees, agents, contractors and consultants;
 - b. That neither the Program Sponsor, nor any person or entity under the direction or control of the Program Sponsor, including its employees, agents, contractors and consultants, could have reasonably foreseen and prevented such damage or non-compliance; and
 - c. The period of damage or non-compliance was a direct result of such circumstances.

2. The Program Sponsor shall cease Transfer of Credits and notify the IRT within seventy-two (72) hours of occurrence of a Catastrophic Event, event of Force Majeure, or Unlawful Act, and as promptly as reasonably possible thereafter Program Sponsor and the IRT shall meet to discuss the course of action in response to such occurrence. In the meantime, Program Sponsor shall continue to manage and maintain the ILF Project to the full extent practicable.

B. Default

1. Notice of Violation

In the event that the Program Sponsor is in violation of the terms of this Instrument or that a violation is threatened, the USACE may demand the cure of such violation. In such a case, the USACE shall issue a written notice to the Program Sponsor (hereinafter “Notice of Violation”) informing the Program Sponsor of the actual or threatened violations and demanding cure of such violations.

2. Time to Cure

The Program Sponsor shall cure the noticed violation within thirty (30) days of receipt of said written Notice of Violation. If said cure reasonably requires more than thirty (30) days, the Program Sponsor shall, within the thirty (30) day period, submit to the USACE for review and approval a plan and time schedule to diligently complete a cure. The Program Sponsor shall complete such cure in accordance with the approved plan. If the Program Sponsor disputes the notice of violation, it shall issue a written notice of such dispute (hereinafter “Notice of Dispute”) to the USACE within thirty (30) days of receipt of written Notice of Violation.

3. Failure to Cure.

If the Program Sponsor fails to cure the violation within the time period(s) described in Section VIII B. 2., the USACE may take appropriate action. Such actions may include, but are not limited to, suspending credit sales, adaptive management, decreasing available credits, directing funds to alternate locations, taking enforcement actions, or terminating the Instrument. The USACE cannot directly accept, retain, or draw upon funds in the Program Account in the event of a default. Any delay or failure of the Program Sponsor to comply with the terms of this Instrument or an approved Development Plan shall not constitute default if and to the extent that such delay or failure is primarily caused by any Force Majeure or other conditions beyond Program Sponsor’s reasonable control and significantly adversely affects its ability to perform its obligations hereunder. Program Sponsor shall give written notice to the USACE and IRT if the performance of its ILF Project is affected by any such event in accordance with Section VIII.A.2.

4. Notice of Dispute.

- a. If the Program Sponsor provides the USACE with a Notice of Dispute, as provided herein, the USACE shall meet and confer with the Program Sponsor at a mutually agreeable place and time, not to exceed thirty (30) days from the date that the USACE receive the Notice of Dispute. The USACE shall consider all relevant information concerning the disputed violation provided by the Program Sponsor and shall determine whether a violation has in fact occurred and, if so, whether the Notice of Violation and demand for cure issued by the USACE is appropriate in light of the violation.
- b. If, after reviewing the Program Sponsor's Notice of Dispute, conferring with the Program Sponsor, and considering all relevant information related to the violation, the USACE determines that a violation has occurred, the USACE shall give the Program Sponsor notice of such determination in writing. Upon receipt of such determination, the Program Sponsor shall have fifteen (15) days to cure the violation. If said cure reasonably requires more than fifteen (15) days, the Program Sponsor shall, within the fifteen (15) day period, submit to the USACE for review and approval a plan and time schedule to diligently complete a cure. The Program Sponsor shall complete such cure in accordance with the approved plan.

C. Dispute Resolution

Resolution of disputes concerning the Parties' compliance with this Instrument shall be in accordance with those stated in 33 C.F.R. 332.8. Disputes related to satisfaction of Performance Standards may be referred to independent review from government agencies or academia that are not part of the IRT. The IRT will evaluate any such input and determine whether the Performance Standards have been met.

D. Modification, Amendment and Termination of Instrument

1. Modification and Amendment.

This Instrument, including its Exhibits, may be amended or modified only with the written approval of the Parties. Instrument modifications, including the addition or expansion of ILF Projects, will follow the process outlined in **Exhibit C**. The USACE may use a streamlined modification review process for changes reflecting Adaptive Management of an ILF Project site, Credit Releases, changes in Credit Releases and Credit Release schedules, and changes that the USACE determines are not significant (**Exhibit C**).

2. Termination/Program Closure.

Any Party to this Instrument may terminate its participation in this agreement by giving 60 days written notice to the other Parties. In the event that the Program operated by Program Sponsor is terminated (i.e., closed), Program Sponsor is responsible for fulfilling any remaining ILF Project obligations including the successful completion of

ongoing mitigation projects, relevant maintenance, monitoring, reporting, and long-term management requirements. Program Sponsor shall remain responsible for fulfilling these obligations until such time as the long-term financing obligations have been met and the long-term ownership of all mitigation lands has been transferred to the party responsible for ownership and all long-term management of the project(s). Funds remaining in the Program Accounts after these obligations are satisfied must continue to be used for the Restoration, Establishment, Enhancement, and/or Preservation of aquatic resources within the Service Area. The USACE shall direct the Program Sponsor to use these funds to secure Credits from another source of third-party mitigation, such as another in-lieu fee program, mitigation bank, or another entity such as a governmental or non-profit natural resource management entity willing to undertake the compensation activities. The funds should be used, to the maximum extent practicable, to provide compensation for the amount and type of aquatic resource for which the fees were collected.

E. Controlling Language

The Parties intend the provisions of this Instrument and each of the documents incorporated by reference in it to be consistent with each other, and for each document to be binding in accordance with its terms. To the fullest extent possible, these documents shall be interpreted in a manner that avoids or limits any conflict between or among them. However, if and to the extent that specific language in this Instrument conflicts with specific language in any document that is incorporated into this Instrument by reference, the specific language within the Instrument shall be controlling. The captions and headings of this Instrument are for convenient reference only, and shall not define or limit any of its terms or provisions.

F. Entire Agreement

This Instrument, and all exhibits, appendices, schedules and agreements referred to in this Instrument, constitute the final, complete and exclusive statement of the terms of the agreement between and among the Parties pertaining to the Program, and supersede all prior and contemporaneous discussions, negotiations, understandings or agreements of the Parties. No other agreement, statement, or promise made by the Parties, or to any employee, officer, or agent of the Parties, which is not contained in this Instrument, shall be binding or valid. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment in accordance with Section VIII.D. Each of the Parties acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any of the other Parties or anyone acting on behalf of any of the Parties unless the same has been embodied herein.

G. Reasonableness and Good Faith

Except as specifically limited elsewhere in this Instrument, whenever this Instrument requires a Party to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld or delayed. If a Party disagrees with any determination covered by this provision and reasonably requests the reasons for that determination, the determining Party shall furnish its reasons in writing and in reasonable detail within 30 days following the request.

H. Successors and Assigns

This Instrument and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns subject to the limitations on transfer set forth in this Instrument.

I. Partial Invalidity

If a court of competent jurisdiction holds any term or provision of this Instrument to be invalid or unenforceable, in whole or in part, for any reason, the validity and enforceability of the remaining terms and provisions, or portions of them, shall not be affected unless an essential purpose of this Instrument would be defeated by loss of the invalid or unenforceable provision.

J. Notices

1. Any notice, demand, approval, request, or other communication permitted or required by this Instrument shall be in writing and deemed given when delivered personally, sent by receipt-confirmed facsimile, or sent by recognized overnight delivery service, addressed as set forth below, or five days after deposit in the U.S. mail, postage prepaid, and addressed as set forth below.
2. Notice by any Party to any other Party shall be given to all Parties. Such notice shall not be effective until it is deemed to have been received by all Parties.
3. Addresses for purposes of giving notice are set forth below. Any Party may change its notice address by giving notice of change of address to the other Parties in the manner specified in this Section VIII.J.

Program Sponsor:

Coachella Valley Conservation Commission
Attn: Executive Director
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260
Telephone: (760) 346-1127
Fax: (760) 340-5949

IRT Members:

U.S. Army Corps of Engineers
Los Angeles District
5900 La Place Court, Suite 100
Carlsbad, CA 92008
Attn: Therese Bradford
Telephone: (760) 602-4850

Fax: (760) 602-4848

U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Paul Amato
Telephone: 415-947-8707
Fax: (415) 947-3549

U.S. Fish and Wildlife Service
Palm Springs Field Office
777 E. Tahquitz Canyon Way, Suite 208
Palm Springs, CA 92262
Attn: Felicia Sirchia
Telephone: (760) 322-2070
Fax: (760) 322-4648

California Regional Water Quality Control Board
Region 7
Attn: John Carmona
73-720 Fred Waring Drive
Palm Desert, CA 92260
Telephone: (760) 340-4521
Fax: (760) 341-6820

California Department of Fish and Wildlife
Region 6
Attn: Kim Nicol
78078 Country Club Drive, Suite 109
Bermuda Dunes, CA 92203
(760) 200-9358
Fax: (760) 200-9358

K. Counterparts

This Instrument may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute a single executed agreement.

L. No Third Party Beneficiaries

This Instrument shall not create any third party beneficiary hereto, nor shall it authorize anyone not a Party hereto to maintain any action, suit or other proceeding, including without limitation, for personal injuries, property damage or enforcement pursuant to the provisions of this Instrument. The duties, obligations and responsibilities of the Parties to this Instrument with

respect to third parties shall remain as otherwise provided by law in the event this Instrument had never been executed.

M. Availability of Funds

Implementation of this Instrument by the IRT is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341, and the availability of appropriated funds. Nothing in this Instrument may be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury or the California State Treasury. No agency of the IRT is required under this Instrument to expend any appropriated funds unless and until an authorized official affirmatively acts to commit to such expenditures as evidenced in writing.

N. No Partnerships

This Instrument shall not make or be deemed to make any Party to this Instrument an agent for or the partner or joint venturer of any other Party.

O. Governing Law

This Instrument shall be governed by and construed in accordance with the CWA, 33 U.S.C. § 1251 *et seq.*, and other applicable federal and laws and regulations.

P. Headings and Captions

Any paragraph heading or captions contained in this Instrument shall be for convenience of reference only and shall not affect the construction or interpretation of any provisions of this Instrument.

Q. Right to Refuse Service


USACE approval of Transfer of Credits from the Program does not signify Program Sponsor's acceptance or confirmation of Program Sponsor's offer to Transfer. Program Sponsor reserves the right to refuse to Transfer Credits from the Program for any reason.

SECTION IX: EXECUTION

Each of the undersigned certifies that he or she has full authority to bind the Party that he or she represents for purposes of entering into this Instrument. This Instrument shall be deemed executed on the date of the last signature by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Instrument as follows:


Program Sponsor
Coachella Valley Conservation Commission



Richard W. Kite
Chair, CVCC

Date 6-12-14

U.S. Army Corps of Engineers, Los Angeles District



Kimberly Colloton, P.M.P.
Colonel, US Army Commander and District Engineer

Date 7-16-14

U.S. Environmental Protection Agency, Region IX



for Director, Water Division

Date 6/18/14

Exhibit A

Compensation Planning Framework

1. §332.8(c)(2)(i): Service Area

The Service Area for the Program is defined as an area encompassing the Whitewater River watershed and including the eastern portion of Riverside and all of Imperial counties (Exhibit B). The primary service area for the Program includes the entire Whitewater River watershed in Riverside County and in northern Imperial County, as encompassed by the CVMSHCP boundaries and the watersheds adjoining the Salton Sea (Figure B-1). The secondary service area includes all of Imperial County and the portion of Riverside County east of Coachella Valley (Figure B-2). Defining the service area in this way allows for a direct overlap of this Program with the CVMSHCP, such that Compensatory Mitigation governed by this Program complements and adds to other conservation efforts as governed by the CVMSHCP. This service area further allows the Program to provide Compensatory Mitigation for Impacts to Waters of the U.S. for most of the Coachella Valley and desert cities, where land development, public works projects, and energy development projects planned or under way are creating needs for mitigation, but where permittee-responsible mitigation is currently the only option for satisfying Corps mitigation requirements. The result is that at present, small piecemeal mitigation sites often present high costs for permittees, questionable ecological benefits at watershed-scales, poor habitat connectivity, and are generally implemented without any systematic effort to ensure greater ecological benefits vis-à-vis coordination with other mitigation projects or by achieving complementarity with existing conservation and environmental protection efforts, such as those of the CVMSHCP.

In order to maximize the ecological benefits of compensation for losses to desert ecosystems in the Coachella Valley, Compensatory Mitigation projects should, to the maximum extent practicable, be in the same watershed (at a 10-digit HUC scale) as any Corps permitted Impacts to the Waters of the U.S. However, given the difficulty of finding mitigation sites that are both proximate and ecologically commensurate with Impacts in the desert ecology of the Coachella Valley, the Corps will also have the discretion to allow mitigation in 10-digit HUCs outside of the permitted Impact but still within the ILFP service area, especially as a means to maximize the ecological value of Compensatory Mitigation sites. Generally, Corps permitted projects with Impacts in the secondary service area will only be allowed to purchase Compensatory Mitigation through this ILFP if the permittee can demonstrate that no other reasonable mitigation options are available in the watersheds more proximate to the Impact site. All Compensatory Mitigation ratios will be determined by the Corps and stipulated in Corps permits on a case-by-case basis, but in general ratios will reflect standard Corps requirements, with the assumption that higher mitigation ratios will be used if the mitigation site is located within the secondary service area, or if the mitigation site is very far from the Impact site but still within the primary service area.

2. §332.8(c)(2)(ii): Threats to Aquatic Resources

While the CVMSHCP provides a strong framework for governing Impacts to 27 species in

27 natural communities in the Coachella Valley, it does not specifically aid with providing compensation for Impacts to Waters of the United States in the same regions.¹ Indeed, it has been estimated that the acreage of natural wetland habitats in southern California has been reduced by 90 percent due to human activities.² The negative ecological effects of these kinds of losses and disturbances to aquatic resources are magnified in the California deserts characteristic of the Coachella Valley, where limited moisture and low fertility of desert soils make natural recovery very slow.

Despite the sensitivity of desert ecosystems, human-related Impacts continue to grow in the Coachella Valley. The CVMSHCP identifies 8 primary natural communities which face threats (see CVMSHCP 10.2-9), including several habitats likely to include Waters of the U.S., such as mesquite hummocks, cismontane alkali marsh, coastal and valley freshwater marsh, several varieties of riparian woodland and forest, mesquite bosque, desert dry wash woodland, and desert fan palm oasis woodland. The introduction of tamarisk and other invasive species in these areas is an ongoing problem, contributing to the channelization of rivers and streams, the displacement of native species, and the restriction of human access to waterways and drainages. Other major Impacts in the Coachella Valley stem from planned and implemented land development and infrastructure projects, including desert solar, wind, and geothermal energy developments. The exact levels of future impacts are impossible to know, but predicting the *potential* magnitude of these and other development projects is not difficult: in total, the CVMSHCP incidental take permit allows exactly 207,205 acres of habitat take, 11,914 acres of which are anticipated in natural communities likely to contain waters of the United States (e.g. alkali marsh and riparian woodland).³ Beyond the effects of urbanization and growth of the desert cities in Coachella Valley, these Impacts are likely to come from infrastructure and energy projects, including work anticipated or already underway by the Coachella Valley Water District and Caltrans.

3. §332.8(c)(2)(iii): *Historic Aquatic Resource Loss*

Historic aquatic loss in the Coachella Valley, like many places, has been driven by land development, infrastructure projects and invasive species. As mentioned in the above section, the spread of tamarisk in particular has degraded fluvial systems in the desert, leading to a loss of suitable habitat for native species and altered hydrological as well as eolian sand transport systems in the area. Separately, the lining of the Coachella Canal has decreased the amount of water that seeps into the aquifer below, potentially altering the hydrologic function of the Saltwater Creek and Dos Palmas marsh areas. Urban development in the desert cities in Coachella Valley has also contributed to aquatic resources losses via commercial and residential development, as well as infrastructure projects designed to support growing human populations. Historic wetland and riparian areas in the Coachella Valley storm channel and delta have been degraded or destroyed by agriculture, and a number of species dependent upon these hydrologic systems, including Desert Pupfish, California Black Rail, Southwestern willow flycatcher, and Yuma clapper rail, are faced with significant habitat

¹ See CVMSHCP Section 6.11.

² See Southern California Wetland Recovery Project, Chapter 2 “Southern California Wetlands” for an overview. Available at http://scwrp.org/regional_strategy.htm. Last accessed May 13, 2013.

³ See page 21 of the Federal Fish and Wildlife Permit issued to the CVMSHCP permittees.

loss.⁴ Mesquite hummocks have been fragmented by road projects and residential development.⁵ Off-highway vehicle traffic in riverbeds and alterations in flooding patterns caused by inadequate culvert systems pose significant threats to species in dry desert wash woodlands.⁶ Of particular relevance to this Program are Impacts to freshwater marsh systems, which are particularly prone to the effects of fluctuating water availability, infestation by invasive species, and pollution from agricultural and other runoff.⁷ Increases in the salinity of the Salton Sea and even efforts to control this problem could also have adverse effects on wetland systems in the area, and may require Compensatory Mitigation measures.⁸

4. §332.8(c)(2)(iv): *Current Aquatic Resource Conditions*

Despite both historic loss and continuing threats, many aquatic resources in the Coachella Valley have strong potential for restoration and enhancement, and could, with careful planning and management, provide important ecological functions in the area. In general, high levels of invasive populations are the most consistent and obvious threat that can be addressed, and acquisition of agricultural land and restoration to original wetland status also provides strong opportunities for credit establishment under this Program.

One area with high restoration potential is the 25,380 acre Dos Palmas Conservation Area, where Salt Creek drains into the northeast quadrant of the Salton Sea (figure A-1; see also figure A-3, which includes all the conservation areas within the CVMSHCP boundaries). This area includes the existing Dos Palmas Area of Critical Environmental Concern (ACEC) and the Oasis Springs Ecological Reserve. Of special concern in the Dos Palmas Conservation Area are threats posed by invasive species (especially by tamarisk) and degradation of the hydrological regime in the area as a result of the lining of the Coachella Canal, which had historically helped recharge groundwater and thus supported riparian and identified as a high conservation priority by the Program Sponsor in order to protect species such as the Yuma clapper rail and desert pupfish, which depend upon wetland habitat, and also to ensure that CVMSHCP conservation goals are met for cismontane alkali marsh, mesquite bosque, desert dry wash woodland, and desert fan palm oasis.⁹ Land acquired by CVCC under its obligations pursuant to the CVMSHCP in this area could be restored and enhanced under this ILFP, ensuring improved ecological value and Compensatory Mitigation that goes above and beyond Program Sponsor's requirements under the CVMSHCP.

⁴ See the CVMSHCP p. 4-141 for a complete list of protected species that call the Coachella Valley Storm Water Channel and Delta Conservation Area home.

⁵ See CVMSHCP p 10-39 to 10-41.

⁶ See CVMSHCP p 10-129.

⁷ See CVMSHCP 10-99.

⁸ See again CVMSHCP 10-99.

⁹ See CVMSHCP Final Recirculated Version, section 4.3.19, page 4-135-6 for a summary of these conservation objectives, or section 10 for more detailed accounts of each natural community. Note that acreages given below do not include additional acreage of allowed Impacts in the Conservation Area. In particular, the CVMSHCP requires protecting 228 acres of cismontane alkali marsh (CVMSHCP p. 10-97), 319 acres of mesquite bosque (p. 10-127), 746 acres of the desert dry wash woodland (p. 10-132), and 50 acres of fan palm oasis (p. 10-123), all in the Dos Palmas Conservation Area. Each of these habitat types is likely to contain aquatic resources, and thus to provide opportunities for the restoration or enhancement of aquatic resources that could generate credits for this ILFP.

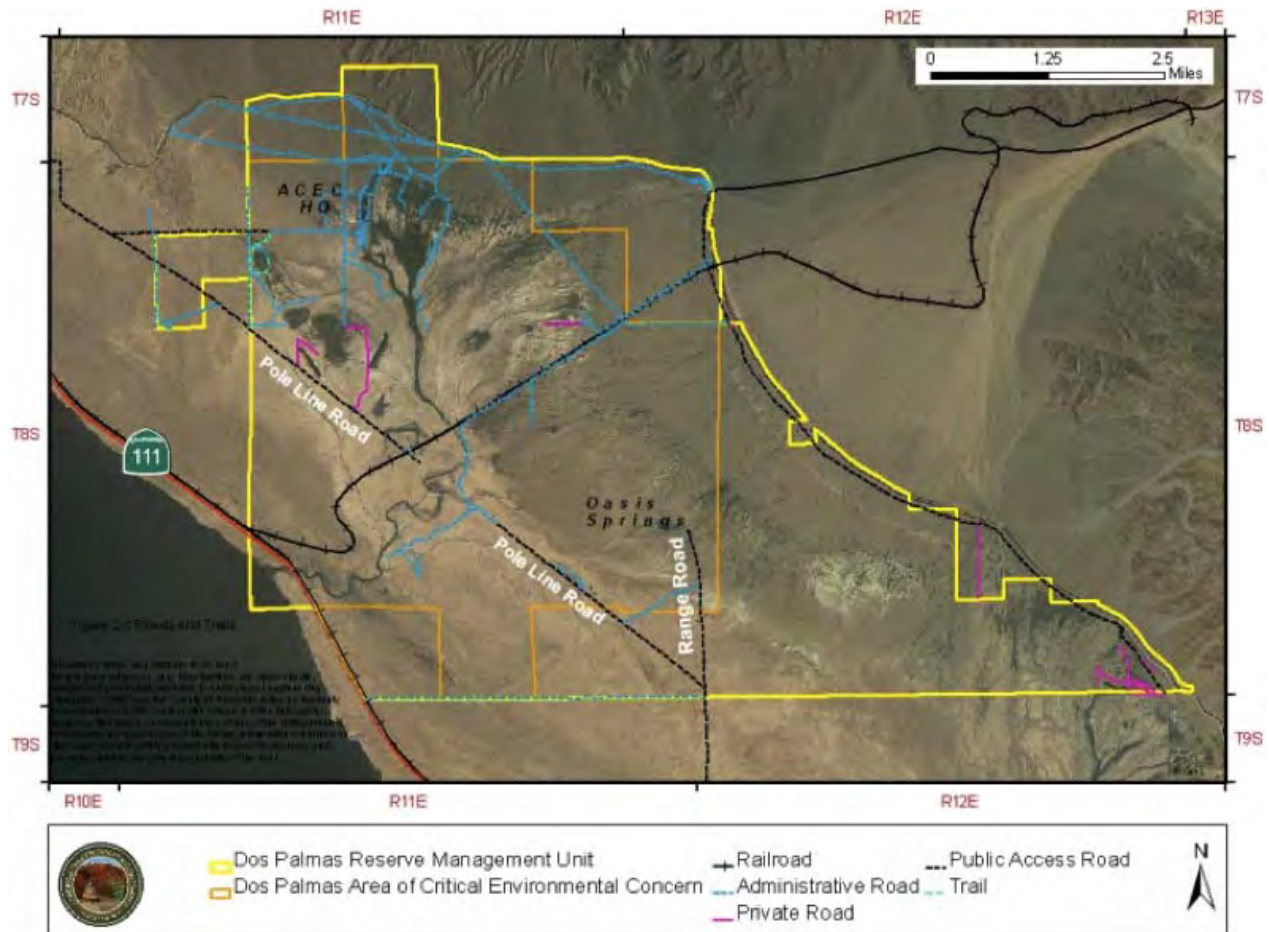


Figure A-1: Dos Palmas Reserve Management Unit, as specified in the CVMSHCP

A second area of concern and potential restoration and enhancement work is in the area surrounding the Coachella Valley storm water channel and delta, where the Whitewater River drains into the north end of the Salton Sea (figure A-2; see again figure A-3 for larger context). Here again invasive species pose a significant threat to native ecosystems. In contrast to the Dos Palmas area, however, where BLM already owns, manages, and works to restore some lands, in the Whitewater River storm water channel there is a larger proportion of privately owned agricultural and hunting club lands that remain unrestored and thus provide prime opportunities for acquisition and restoration of degraded wetlands. In addition to providing important hydrological functions, this area provides a source of scarce riparian habitat in the desert, and is thus critical for supporting a host of wildlife species, including Yuma clapper rail and the California black rail, both protected under the CVMSHCP. The area also has high restoration potential for, among other things, mesquite hummocks, Sonoran cottonwood-willow riparian forest, and coastal and valley freshwater marsh. As with the Dos Palmas area, Compensatory Mitigation created under this Program could

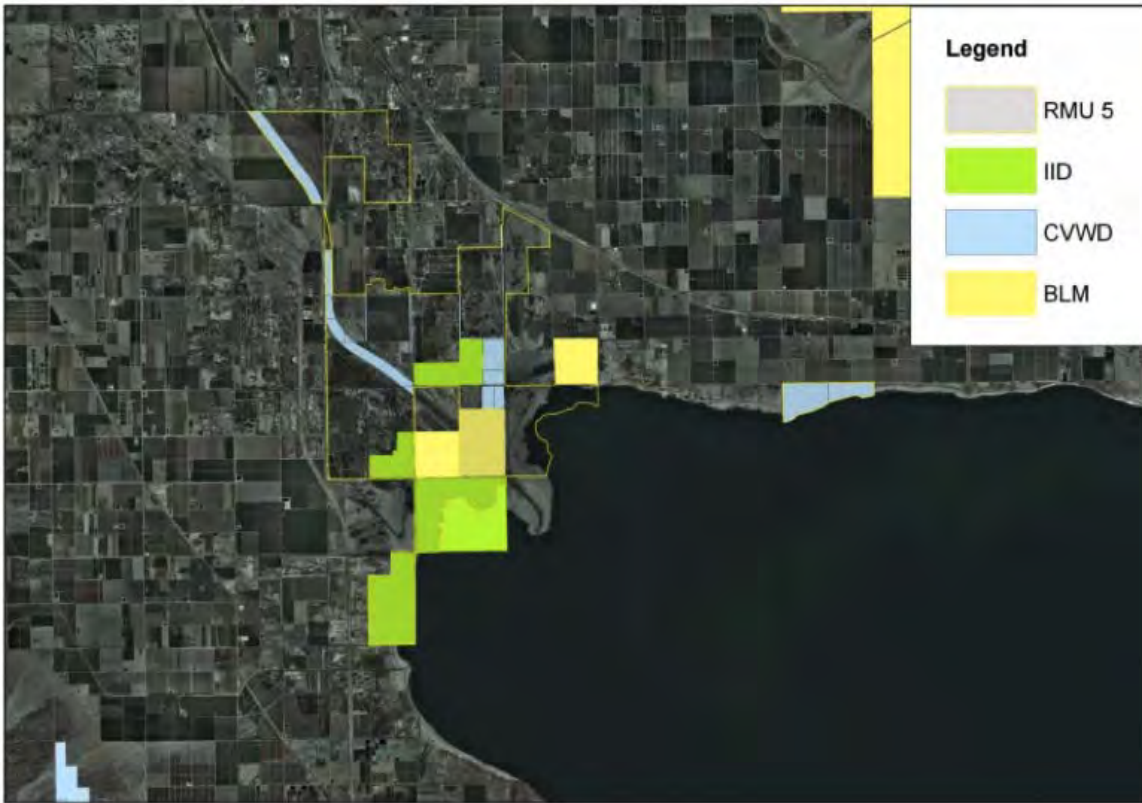


Figure A-2 - Whitewater River Stormwater Channel and Delta Reserve Management Unit, as specified in the CVMSHCP.

significantly support ecological restoration and conservation goals outlined by CVMSHCP, and would ensure that Compensatory Mitigation required by USACE has the maximum ecological utility.¹⁰

The Dos Palmas and Coachella Valley Storm Water Channel Conservation Areas are but two high-priority areas where this Program could support ongoing conservation and restoration work. This compensation planning framework is designed to guide restoration, enhancement, creation and preservation of wetlands throughout the proposed service area, and would ensure that required mitigation projects support rather than work in isolation from existing conservation facilitated by the CVMSHCP.

5. §332.8(c)(2)(v): *Aquatic Resource Goals and Objectives*

The goal of this Program is to complement and improve ecological functions of aquatic resources within the CVMSHCP boundaries by adopting a watershed approach to planning, siting, and managing Compensatory Mitigation a) in the conservation areas and b) for the habitat types where the most ecological Impact is expected.

¹⁰ As with the Dos Palmas Conservation Area, the CVMSHCP outlines specific conservation objectives within the Coachella Valley Storm Water Channel Conservation Area. In particular, the CVMSHCP requires that 67 acres of mesquite hummocks (CVMSHCP p. 10-37), 51 acres of coastal and valley freshwater marsh (p. 10-100) and 8 acres of Sonoran cottonwood-willow riparian forest (p. 10-109).

The CVMSHCP provides a clear planning tool for estimating where and to what extent Impacts to aquatic resources are most likely, and generally where Compensatory Mitigation might be sited to help offset these Impacts. Specifically, the CVMSHCP Endangered Species Act section 10 permit authorizes specific quantities of take of particular habitat types within specified conservation areas (figure A-3 shows these conservation areas; table A-1 outlines take authorizations and land acquisition requirements). Where these take authorizations overlap with Waters of the U.S. they provide a potential source of demand for the Credits that could be offered under this Program. This is because such take authorizations may require USACE permittees to comply with USACE and State requirements to compensate for Impacts to Waters of the U.S. In fact, under a full development scenario, the CVMSHCP authorizes 11,914 acres of take in habitat types where Impacts to aquatic resources are likely. If even only 5% of this area is also USACE jurisdictional, approximately 596 acres of Impact will need to be compensated for under the CWA.¹¹

Simultaneously, the CVMSHCP also mandates that CVCC acquire and protect large tracts of land to prevent development on these parcels, in order to protect 27 different species and meet habitat-specific conservation objectives. Some of these land acquisitions by CVCC are also likely to overlap with Waters of the U.S. When such overlap occurs (i.e., when land acquired by CVCC happens to include Waters of the U.S.) a supply of potential Compensatory Mitigation Credits is generated, since at least a fraction of the acquired lands will include wetland and fluvial systems that could be Enhanced and Restored and, with an appropriate Development Plan, counted as Credits under this Program. Removal of tamarisk, restoration of wetlands and dry desert washes, and replanting of riparian forests are but a smattering of the kinds of restoration work generally possible on CVCC acquired lands, which could provide a source of Credits offered for Transfer under this Program.

Taken together, take authorizations balanced with land acquisition/conservation requirements governed by the CVMSHCP provide a pre-established framework for achieving the goals and objectives of this Program. By authorizing specific levels of take of specific habitats in specific areas, the CVMSHCP increases the chances that some fraction of these Impacts will overlap with Waters of the U.S. and require Compensatory Mitigation that will be made available via this Program. By also mandating acreage-based requirements for conservation of specific habitat types in particular conservation areas, the CVMSHCP simultaneously ensures a steady supply of potential ILF Project sites where this Program could be used to Restore and Enhance aquatic resources on land CVCC is required to acquire. While exact acreage goals are difficult to state because exact levels of development are impossible to predict, table A-1 gives a precise sense of the *possible* levels of Impact and the amount of conservation CVCC is mandated to provide, by habitat type and by conservation area.

¹¹ Note that this may be a conservative estimate. Actual Impacts to Waters of the U.S. could be higher, and would also be made so by Impacts outside CVMSHCP boundaries that might be mitigated for under this ILFP. Also note that requirements for compensatory mitigation are often not 1:1; 3:1, 9:1 and 12:1 mitigation-to-Impact ratios are very common. Acres of compensatory mitigation under the ILFP could thus be several times greater than the acres of Impact.

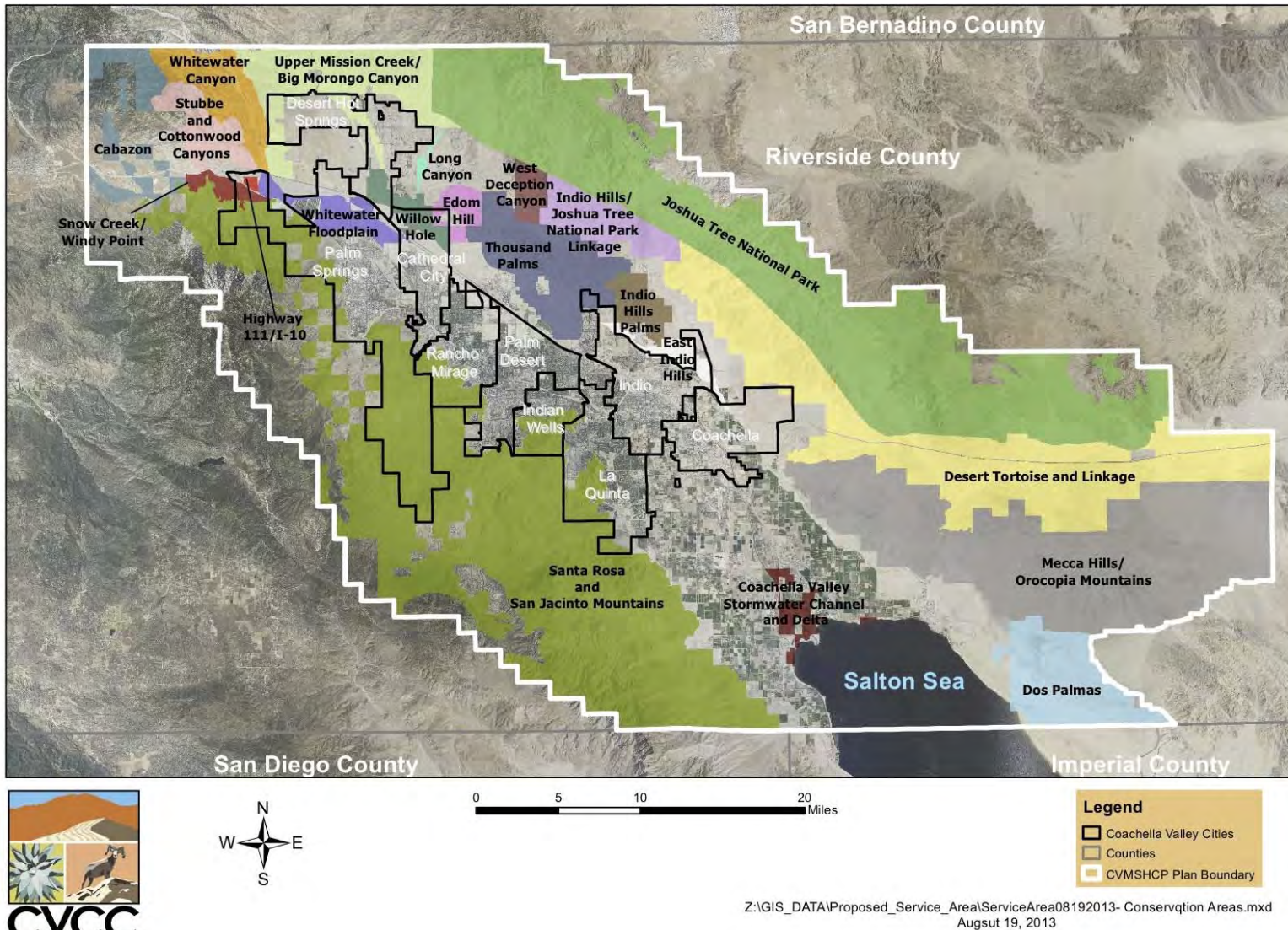


Figure A-3. Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) Conservation Areas.

Habitat Type	Total Acres Authorized for Impact	Total Acres Required for Preservation	Total Acres Conserved Since 1996	CVMSHCP Conservation Areas with Habitat Present
Active Desert Sand Fields	1,519	3,990	1036.2	Whitewater Floodplain, Willow Hole, Edon Hill, Thousand Palms
Arrowweed Scrub	14	277	0.2	Dos Palmas
Cismontane Alkali Marsh	23	321	200	Dos Palmas
Coastal & Valley Freshwater Marsh	27	55	0	Coachella Valley Stormwater Channel and Delta
Desert Dry Wash Woodland	8,711	30,716	338.5	Stubbe and Cottonwood Canyons, Upper Mission Creek/ Big Morongo Canyon, Thousand Palms, Indio Hills Palms, Joshua Tree National Park, Desert Tortoise Linkage, Mecca Hills/ Orocopia Mountains, Dos Palmas, Santa Rosa and San Jacinto Mountains
Desert Fan Palm Oasis Woodland	79	1,232	88.7	Whitewater Canyon, Willow Hole, Thousand Palms, Indio Hills Palms, Joshua Tree National Park, Mecca Hills/ Orocopia Mountains, Dos Palmas, Santa Rosa and San Jacinto Mountains
Ephemeral desert sand fields	860	4,888	1096.7	Snow Creek/ Windy Point, Whitewater Floodplain, Willow Hole
Mesquite Bosque	36	446	135	Dos Palmas
Mesquite Hummocks	549	344	111.4	Cabazon, Willow Hole, Thousand Palms, Indio Hills Palms, East Indio Hills, Dos Palmas, Coachella Valley Stormwater Channel and Delta
So. Arroyo Willow Riparian Forest	4	32	0	Santa Rosa and San Jacinto Mountains
Sonoran Cottonwood-Willow Riparian Forest	65	595	183.1	Stubbe and Cottonwood Canyons, Whitewater Canyon, Upper Mission Creek/ Big Morongo Canyon, Thousand Palms, Santa Rosa and San Jacinto Mountains
Southern Sycamore-Alder Riparian Woodland	27	652	64.5	Upper Mission Creek/ Big Morongo Canyon, Santa Rosa and San Jacinto Mountains
Total	11,914	43,548	3254.3	All those listed above

Table A-1: Habitat Impact limits and preservation requirements for CVMSHCP habitat types that are also likely to overlap with Waters of the U.S. Source: CVMSHCP table 10-1a, pages 10-3 to 10-7, and CVMSHCP Federal Fish and Wildlife Permit, Attachment 3, Extent of Take Authorized for the Coachella Valley MSHCP Natural Communities.

Land already conserved within the CVMSHCP since 1996 (when the CVMSHCP first began to be developed) provides a foundational set of potential ILF Project sites for Compensatory Mitigation that would be governed by this Program. Early Credit Releases will most likely derive from tamarisk removal in Dos Palmas, and wetland restoration in the Coachella Valley Storm Water Channel and Delta Conservation Area. By taking advantage of this preexisting conservation land and by also focusing on ILF Projects in conservation areas and habitat types with the highest levels of forecast Impact, this Program will help maximize ecological benefits of Compensatory Mitigation required in USACE permits.

6. *§332.8(c)(2)(vi): Prioritization Strategy for Selecting and Implementing Compensatory Mitigation*

The CVMSHCP is an “acreage-based” planning tool. It outlines specific amounts of species and habitat take and sets clear acreage-based conservation objectives for CVCC, as well as for state/federal and complementary conservation efforts. For example, the section 10 permit issued by the U.S. Fish and Wildlife Service stipulates that take of desert fan palm oasis woodland by CVMSHCP permittees is limited to 79 acres, and take of desert dry wash woodland is limited to 8,711 acres.¹² What is more, the CVMSHCP further specifies the extent of take of each of the protected species and natural communities within specific conservation areas. Thus, of the 79 acres of Impact to desert fan palm oasis woodland within all of the CVMSHCP, only 6 acres of this is allowed within the Dos Palmas Conservation Area.¹³ This results in very specific acreage-based and area-by-area regulation of allowed Impacts to species and natural communities.

With this in mind, CVCC intends to incorporate this Program into its existing planning strategies related to its responsibilities to implement and administer the CVMSHCP. Most obviously, this involves identifying ILF Project sites that are of the highest priority for overall conservation objectives and that support the overall goals of the CVMSHCP. In addition, and in accordance with the watershed approach to aquatic resource management mandated by 33 C.F.R. 332.3(b-c), ILF Projects, siting decisions, and Restoration and Enhancement work governed by this Program will also be developed with 10-digit HUC scales in mind. This means that ILF Projects will be prioritized in HUCs and overlapping conservation areas where Impacts are more likely, and that as much as possible CVCC will consider the ways specific ILF Projects might influence the entire 10-digit HUC watershed they are sited within. These watershed-scale considerations will be included in the Development Plans for those projects. By interweaving the species and habitat-based planning characteristic of the CVMSHCP with the watershed approach taken by the USACE, this Program will help create Compensatory Mitigation that not only helps mitigate for Impacts to aquatic resources, but also supports the conservation work promoted by the CVMSHCP.

¹² See page 21 of the Federal Fish and Wildlife Permit issued to the CVMSHCP permittees for a full list of authorized take by species and by natural community.

¹³ See CVMSHCP p. 10-123, table 10-24. Note that specified “Total Acres Subject to Impact” in table 10-24 only includes acreage in Conservation Areas and thus the total Impacts allowed in the table (65 acres) sums to less than the total overall permitted impact, as specified in the USFWS Section 10 permit (79 acres).

Beyond foundational ecological considerations, it is also true that in order for Credits developed under the Program to be marketable, there must be some need for them. Therefore, site selection for the ILF Projects may need to consider criteria other than pure potential for ecological restoration, such as which habitats are the most likely to be heavily Impacted by urban or infrastructure development. ILF Project sites in 10-digit HUCs with higher levels of Impact, for example, should be prioritized over those where no or little development is occurring. By taking the requirements of the CVMSHCP and likely future Impacts to aquatic resources into account, CVCC will be able to select ILF Project sites that are both ecologically valuable and likely to provide Compensatory Mitigation to USACE permittees.

In general, once ILF Project sites have been selected, three types of Compensatory Mitigation may be undertaken:

- a. Restoration, Enhancement, and Establishment of areas on existing conservation lands;
- b. Acquisition of sites with degraded or potential aquatic resource values and the subsequent Restoration, Enhancement or Establishment of aquatic resources on those sites;
- c. Acquisition of lands with wetland values that require protection but not Restoration. Note that Restoration, Enhancement, and Establishment of aquatic resources is generally preferable to Preservation of existing resources, as per the policy of promoting no net loss of wetlands.

7. *§332.8(c)(2)(vii): Use of Preservation Credits*

Credits established through Preservation do not contribute to the goal of no-net-loss to aquatic resources. As such, wherever possible, ILF Projects under this Program should prioritize Restoration, Enhancement, or Establishment to generate Credits. Advance Credits will be based most heavily on these three categories of Compensatory Mitigation, and not on Preservation. Where Preservation is intended to provide Compensatory Mitigation, to the extent appropriate and practicable, the Preservation shall be done in conjunction with aquatic resource Restoration, Establishment, and/or Enhancement activities. As per 33 C.F.R. 332.3(h)(1), Preservation may be used to generate Credits only when *all* of the following criteria are met:

- a. The resources to be preserved provide important physical, chemical, or biological functions for the watershed;
- b. The resources to be preserved contribute significantly to the ecological sustainability of the watershed;
- c. Preservation is determined by the district engineer to be appropriate and practicable;

- d. The resources are under threat of destruction or adverse modifications; and
- e. The preserved site will be permanently protected through an appropriate real estate or other legal instrument (e.g., easement, title transfer to state resource agency or land trust).

8. §332.8(c)(2)(viii): *Stakeholder Involvement Plan*

To the maximum extent possible, all ILF Projects governed by this Program will involve relevant stakeholders at appropriate points in project planning processes (e.g. during the development of a Development Plan for an ILF Project site), including CVCC, Coachella Valley Association of Governments (CVAG), likely Credit users (e.g. land developers, energy companies, infrastructure and utility agencies including the Coachella Valley Water District), and resource and conservation agencies, including members of the Reserve Management Oversight Committee (RMOC) and Reserve Management Unit Committees (RMUCs) established by the CVMSHCP. ILF Project proposals will follow ordinary requirements for public notice, comment, and are subject to approval by the IRT, as required.

9. §332.8(c)(2)(ix): *Long Term Management Strategies*

The responsible agency will be CVCC, which will own lands acquired under this Instrument or will secure appropriate conservation easements for ILF Project sites, substantively in the form of **Exhibit H**. ILF Projects may also be sited on lands already owned by public agencies or other conservation organizations (e.g. BLM land), provided that a) appropriate agreements can be forged between the Sponsor, USACE, and the cooperating agency to ensure long-term protection of the ILF Project site and b) ILF Projects on public land are based solely on aquatic resource functions provided by the ILF Project, over and above those provided by public programs already planned or in place (33 C.F.R. 332.3(a)(3)).

For ILF Project sites acquired under this Program or already owned by CVCC, oversight and long-term management will be the responsibility of CVCC, supported by the Reserve Management Oversight Committee (RMOC) and Reserve Management Unit Committees (RMUCs) as established under the CVMSHCP. The membership and duties of the RMOC and RMUCs are set forth in sections 6.1.3 and 6.1.4 of the CVMSHCP.

For ILF Projects sited on public lands, oversight and long-term management will be the responsibility of the organization specified in the Development Plan, Interim Management Plan, and Long-Term Management Plan for each ILF Project, in coordination with the IRT and RMOC and RMUCs, and with deference to any other superseding agreements (e.g. a memorandum of understanding between CVCC, USACE, and the owner and manager of the land). Memoranda of understanding, conservation land use agreement, or equivalent agreements between CVCC, USACE and the cooperating agency will be established as needed to ensure that oversight and long-term management meets CVCCs and USACE requirements.

All ILF Project sites governed by this Program will be provided long-term protection through real estate instruments (e.g. conservation easements held by CVCC), and will include a provision requiring 60-day advance notification to the USACE district engineer before any action is taken to void or modify the instrument, management plan, or long-term protection mechanism, including transfer of title to, or establishment of any other legal claims over, the ILF Project site (33 C.F.R. 332.7(a)(3)). For Compensatory Mitigation on public lands, if changes in statute, regulation, or agency needs or mission results in an incompatible use on public lands originally set aside for Compensatory Mitigation, the public agency authorizing the incompatible use will be responsible for providing alternative Compensatory Mitigation that is acceptable to the USACE district engineer (33 C.F.R. 332.7(a)(4)).

Long-term financing to fund monitoring and management for ILF Projects must be specified in the Development Plan for each project. Substantively, this will take the form of a percentage of fees collected from Credit sales in order to fund an endowment account for each ILF Project, where the percentage allotted to the Project endowment is based on detailed cost estimates of long-term maintenance and monitoring of the Project site, the related size of the endowment fund, and the estimated number of credit sales from the Project site.

Reporting required by the USACE on status and management of ILF Project sites as outlined in this Instrument may be integrated into existing work conducted by the RMOC and RMUCs, in particular by including these assessments and the identification of potential ILF Project sites in the annual work plan prepared by the RMUCs and as required by the CVMSHCP.

10. §332.8(c)(2)(x): Reporting

CVCC will provide an annual report to the USACE with four primary components, as specified section VII of the Instrument above, and in compliance with in 33 C.F.R. 332.8(i)(3):

- a. An assessment of ILF Project development and monitoring;
- b. Interim Management and Long-term Management;
- c. Credit Ledger Report;
- d. Program Account.

Exhibit B Service Area Maps

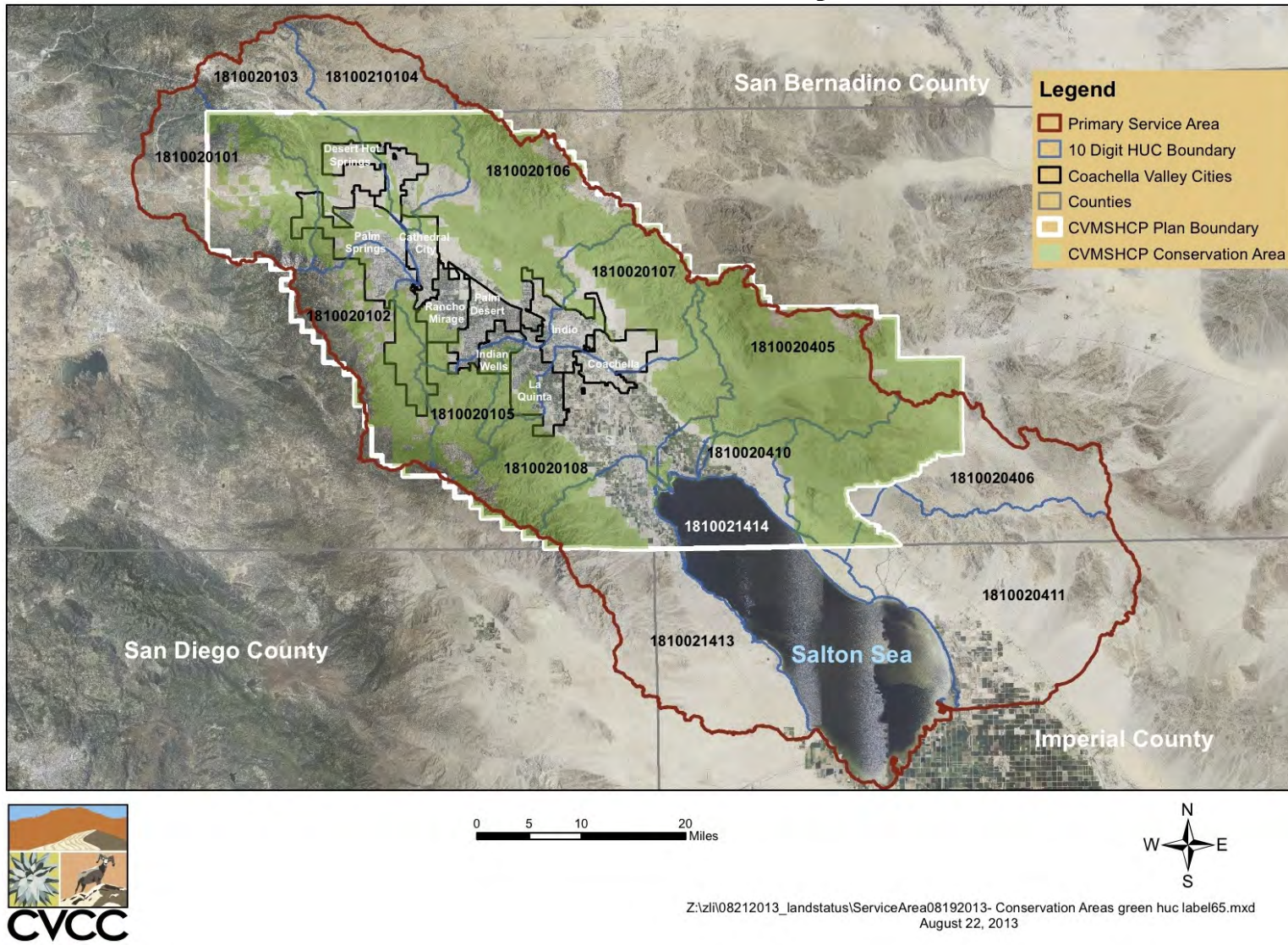


Figure B-1. Primary service area for Coachella Valley In-Lieu Fee Program

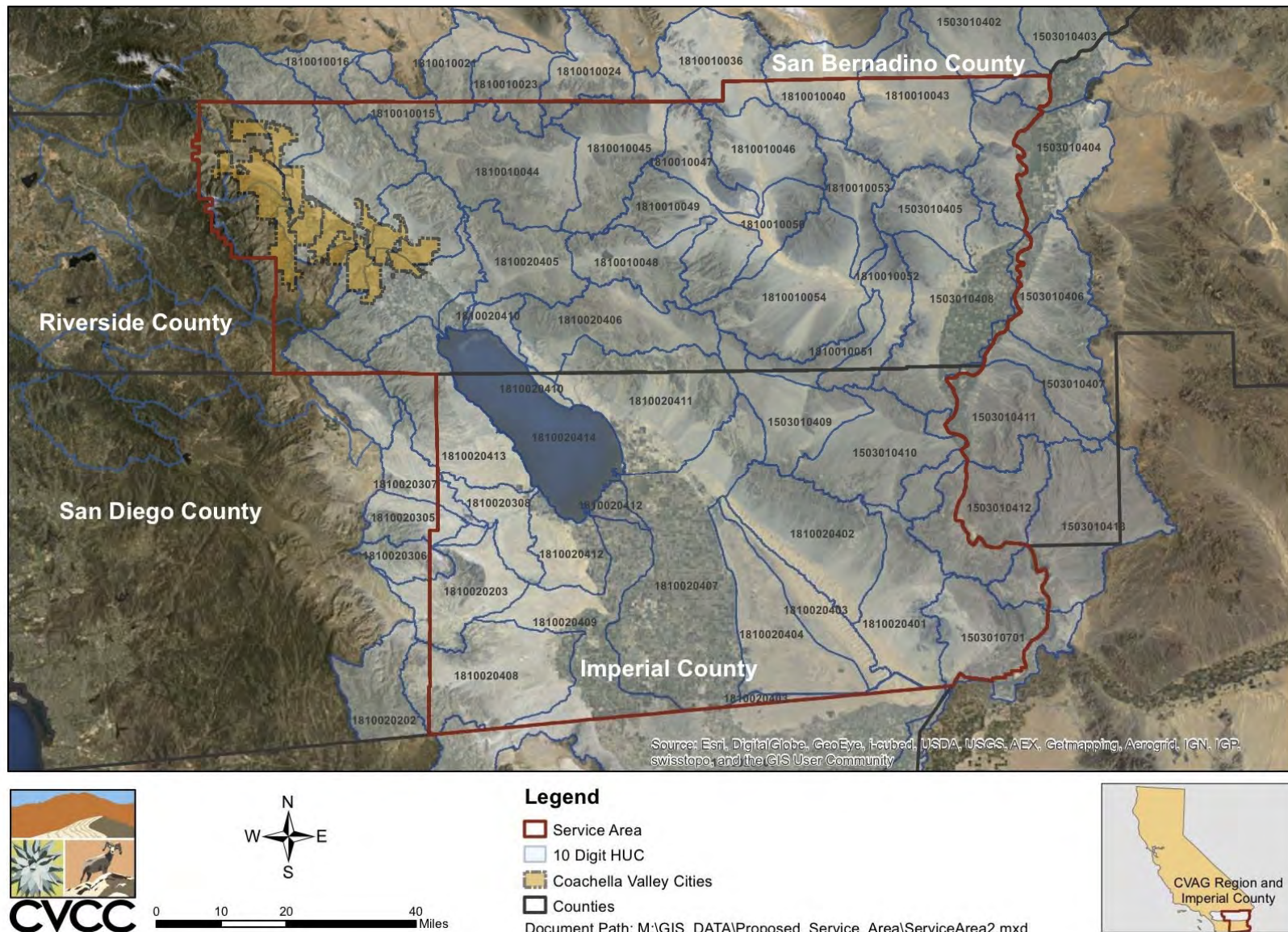


Figure B-2. Secondary service area for Coachella Valley In-Lieu Fee Program

Exhibit C

Instrument Modification Procedure

As ILF Projects are identified, Program Sponsor (CVCC) will submit a written request to the USACE to modify the Instrument according to the process outlined in this Exhibit (33 C.F.R. 332.8(j)). Other forms of Instrument modifications, including expansion of approved ILF Projects, will also follow the process outlined herein. Note that some modifications may take advantage of a streamlined review process, outlined below.

Requests for Instrument modifications will be accompanied by the appropriate supporting documentation as determined by the USACE. The Parties therefore expect that requests for addition of an ILF Project will include the following information:

- The river basin and watershed (hydrologic unit code) of the site
- The goals and objectives of the site related to the watershed compensation planning framework
- Site conditions and location
- Proposed preliminary concept plan and/or feasibility study (if complete/available)
- How the project meets the project selection criteria outlined in Exhibit A.
- Estimate of proposed acreage/linear footage and type of mitigation
- Proposed protection and long-term management strategy
- Other information as needed

Program Sponsor may elect to ask for a preliminary review and consultation of a modification request. In this case, the USACE will provide copies of the draft request to the IRT and will provide comments back to Program Sponsor within 30 days. Within 30 days of receipt of Program Sponsor's formal request for an Instrument modification, the Corps will notify Program Sponsor whether the Instrument modification request is complete. Within 30 days of receipt of a complete modification request, the USACE will provide public notice of the request that summarizes the project documentation provided by Program Sponsor, and makes this information available to the public upon request. The comment period will be 30 days, unless otherwise determined and justified by the USACE. The USACE and IRT members may also provide comments to the Program Sponsor at this time. The USACE will provide copies of all comments to IRT members and Program Sponsor within 15 days of the close of the public comment period.

Program Sponsor will prepare a draft amendment and submit it to the USACE for a completeness review. At a minimum, all ILF Project site proposals must include all the elements of a mitigation plan, with all the components specified in 33 C.F.R. 332.4(c)(2-14), and the requirements for which will take the form of a Development Plan, Interim Management Plan and Long-term Management plan, as specified in (H) of the Recitals in the Instrument above.

The draft amendment will thus include the following information as required by 33 CFR Part 332.4 (c)):

- Information included in the initial modification request.

- Development Plan with a legend and scale
- Estimate of proposed acreage/linear footage and type of Compensatory Mitigation
- Description of existing functions and services and how they will be improved or enhanced through specific mitigation measures
- Project budget
- Determination of Credits and the Credit Release plan
- Interim and Long-term Management Plans
- Performance Standards
- Property Assessment
- Phase I Environmental Site Assessment of the ILF Project site
- Draft Site Protection Instrument
- Other information as needed

The USACE will notify Program Sponsor within 30 days of receipt of the amendment whether it is complete, or will request additional information. Once any additional information is received and the amendment is complete, the USACE will notify Program Sponsor. Program Sponsor will provide copies of the amendment for the Corps to distribute to the IRT for a 30 day comment period. This comment period begins 5 days after the copies of the amendment are distributed. Following the comment period, the USACE will discuss any comments with the appropriate agencies and Program Sponsor to seek to resolve any issues using a consensus based approach, to the extent practicable. Within 90 days of receipt of the complete amendment, the USACE must indicate to Program Sponsor whether the amendment is generally acceptable and what changes, if any, are needed. Program Sponsor will submit a final amendment to the USACE for approval, with supporting documentation that explains how the final amendment addresses the comments provided by the IRT. Program Sponsor will also provide copies directly to IRT members. Within 30 days of receipt of the final amendment, the USACE will notify the IRT members whether or not he intends to approve the amendment. If no IRT members object by initiating the dispute resolution process within 45 days of receipt of the final amendment, the USACE will notify Program Sponsor of his final decision, and if approved, arrange for signing by the appropriate parties.

Streamlined Review Process

The USACE may use a streamlined modification review process for changes reflecting Adaptive Management of the Program, Credit releases, changes in Credit releases and Credit Release schedules, and changes that the USACE determines are not significant. In this event, the USACE will notify the IRT members and Program Sponsor of this determination and provide them with copies of the proposed modification. IRT members and Program Sponsor have 30 days to notify the USACE if they have concerns with the proposed modification. If IRT members or Program Sponsor notify the Corps of such concerns, the USACE will attempt to resolve those concerns. The USACE will notify the IRT members and Program Sponsor of his intent regarding the proposed modification within 60 days of providing the notice to the IRT members. If no IRT member objects, by initiating the dispute resolution process (33 CFR 332.8) within 15 days of receipt of the notification, the USACE will notify the Program Sponsor of his final decision and, if approved, arrange for it to be signed by the appropriate parties.

Exhibit D

Development Plans

As individual ILF Projects are proposed and Development Plans approved by formal Instrument Modifications per Exhibit C, they will be incorporated into Exhibit D as subparts beginning with Exhibit D1 and continuing sequentially.

Exhibit E
Interim Management Plans

As individual ILF Projects are proposed and Interim Management Plans approved by formal Instrument Modifications per Exhibit C, they will be incorporated into Exhibit E as subparts beginning with Exhibit E1 and continuing sequentially.

Exhibit F
Long-term Management Plans

As individual ILF Projects are proposed and Long-term Management Plans approved by formal Instrument Modifications per Exhibit C, they will be incorporated into Exhibit F as subparts beginning with Exhibit F1 and continuing sequentially.

Exhibit G

Statement of Sale of Credit

CVCC letterhead

[date]

U.S. Army Corps of Engineers
Los Angeles District – Regulatory Division
915 Wilshire Blvd.
Los Angeles, CA 90017

Subject: Statement of Sale for [Number] Credits from the CVCC In-Lieu Fee Program to
[Permittee Name]

The Coachella Valley Conservation Commission has an agreement with the U.S. Army Corps of Engineers – Los Angeles District to operate an In-Lieu-Fee Program. This letter confirms the sale of [Number of Credits] credits of [Resource Type A], and [Number of Credits] credits of [Resource Type B]. These credits are being used as Compensatory Mitigation for [Number of Acres] acres of Impact to [Resource Type A], and [Number of Acres] acres of Impact to [Resource Type B] in the [Impact HUC] as authorized by DA permit [DA permit number]. By selling credits to the above permittee, CVCC is the party responsible for fulfilling the mitigation aspect of Special Condition(s) _____ of the Permit(s) listed above.

Signed

Exhibit H
Real Estate Instrument

(Attached is a template Conservation Easement. Long-term protection of an ILF Project pursuant to Section V.B.5 of this Instrument may also be secured through the recording of a restrictive covenant drafted substantially in the same form as the Conservation Easement attached and as approved for each ILF Project by the IRT pursuant to V.B.5.)

RECORDING REQUESTED BY:)
AND WHEN RECORDED MAIL TO:)
Coachella Valley Conservation Commission)
73-710 Fred Waring Drive, Suite 200)
Palm Desert, CA 92260)
Attn: Executive Director)
Exempt from Recording Fee (Gov. Code § 27383))

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this _____ day of _____, 20__ by [insert name], a _____ company, (“**Grantor**”), in favor of the Coachella Valley Conservation Commission, a governmental agency (“**Grantee**”) with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately ____ acres, located in the City of _____, County of _____, State of California, designated Assessor Parcel Number(s) _____(the “Property”). The Property is legally described on **Exhibit “H-1”** attached hereto and incorporated by this reference. Grantor intends to grant a conservation easement over a ____-acre portion of the Property (the “**Easement Area**”). The Easement Area is legally described and depicted in **Exhibit “H-2”** attached hereto and incorporated herein by this reference.

B. The Easement Area possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Easement Area will provide high quality natural, restored and/or enhanced habitat for [*specify listed and sensitive plant and/or animal species*] and contain [*list habitats; native and/or non-native*], [*include the following phrase only if there are jurisdictional wetlands*: and restored, created, enhanced and/or preserved jurisdictional waters of the United States]. Individually and collectively, these wildlife and habitat values comprise the “**Conservation Values**” of the Easement Area.

C. Grantee is authorized to hold conservation easements pursuant to Civil Code Section 815.3. Specifically, Grantee is an entity identified in Civil Code Section 815.3 and otherwise authorized to acquire and hold title to real property.

D. The United States Army Corps of Engineers (“**USACE**”) is the Federal agency charged with regulatory authority over discharges of dredged and fill material in waters of the United States pursuant to Section 404 of the Clean Water Act, and is a third party beneficiary of this Conservation Easement.

E. This Conservation Easement is granted pursuant to the In-Lieu Fee Enabling Instrument (the “**ILFEI**”) by and between Grantee, the Los Angeles District of USACE, and Region IX of the United States Environmental Protection Agency (“**USEPA**”), dated _____, and the Development Plan (the “**Development Plan**”), and the Interim Management Plan and Long-Term Management Plan (as applicable, the “**Management Plan**”) created under the ILFEI. USACE and USEPA are together referred to in this Conservation Easement as the “**Signatory Agencies**.” The ILFEI, the Development Plan and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein.

F. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

In consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the United States and State of California, including Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Easement Area of the nature and character and to the extent hereinafter set forth (“**Conservation Easement**”). This Conservation Easement shall run with the land and be binding on Grantor’s heirs, successors, administrators, assigns, lessees, and other occupiers or users of the Easement Area or any portion of it.

1. Purposes.

(a) The purposes of this Conservation Easement are to ensure that the Easement Area will be retained in perpetuity in its natural, restored, or enhanced condition as contemplated by the ILFEI, the Development Plan, and the Management Plan, and to prevent any use of the Easement Area that will impair or interfere with the Conservation Values of the Easement Area. Grantor intends that this Conservation Easement will confine the use of the Easement Area to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the ILFEI, the Development Plan and the Management Plan.

(b) The term “**Natural Condition**,” as referenced in the preceding paragraph and other portions of this Conservation Easement, shall mean the condition of the Easement Area, as it exists at the time this Conservation Easement is executed, as well as future enhancements or changes to the Easement Area that occur directly as a result of the following activities:

- (1) Compensatory mitigation activities, including implementation,

maintenance and monitoring as described in the Development Plan and Management Plan; or

(2) Activities described in Sections 4 through 6 herein.

(c) Grantor represents and warrants that there are no structures or improvements existing on the Easement Area at the time this grant is executed. Grantor further represents and warrants that there are no other previously granted easements existing on the Easement Area that interfere or conflict with the Purposes of this Conservation Easement as evidenced by the Title Report attached at **Exhibit “H-3.”** The present Natural Condition is evidenced in part by the depiction of the Easement Area attached on **Exhibit “H-4,”** showing all relevant and plottable property lines, easements, dedications, improvements, boundaries and major, distinct natural features such as waters of the United States. Grantor has delivered further evidence of the present Natural Condition to Grantee and USACE consisting of (1) a color aerial photograph of the Easement Area at an appropriate scale taken as close in time as possible to the date this Conservation Easement is executed; (2) an overlay of the Easement Area boundaries on such aerial photograph; and (3) on-site color photographs showing all man-made improvements or structures (if any) and the major, distinct natural features of the Easement Area.

(d) If a controversy arises with respect to the present Natural Condition of the Property, Grantor, Grantee or USACE or any designees or agents of Grantor, Grantee, and USACE shall not be foreclosed from utilizing any and all other relevant documents, surveys, photographs or other evidence or information to assist in the resolution of the controversy.

(e) The term “**Biological Monitor**” shall mean an independent third-party consultant or an employee of the Grantee with knowledge of aquatic resources in the Coachella Valley and Eastern Riverside and Imperial counties more generally and expertise in the field of biology or related field.

2. Grantee’s Rights. To accomplish the Purpose of this Conservation Easement, Grantor, its successor and assign hereby grants and conveys the following rights to Grantee. These rights are also granted to USACE or its designees as third party beneficiaries of this Conservation Easement:

(a) To preserve and protect the Conservation Values of the Easement Area;
and

(b) To enter upon the Property and Easement Area at reasonable times in order to monitor compliance with and to otherwise enforce the terms of this Conservation Easement, the ILFEI, the Development Plan and the Management Plan, to implement at Grantee’s sole discretion Development Plan and Management Plan activities that have not been implemented, and for scientific research and interpretive purposes by Grantee or its designees, provided that Grantee shall not unreasonably interfere with Grantor’s authorized use and quiet enjoyment of the Easement Area; and

(c) To prevent any activity on or use of the Easement Area that is inconsistent with the Purposes of this Conservation Easement and to require the restoration of such areas or

features of the Easement Area that may be damaged by any act, failure to act, or any use that is inconsistent with the Purposes of this Conservation Easement; and

(d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Conservation Values of the Easement Area shall remain a part of and be put to beneficial use upon the Easement Area, consistent with the Purposes of this Conservation Easement.

(e) All present and future development rights allocated, implied, reserved or inherent in the Easement Area; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Easement Area, nor any other property adjacent or otherwise; and

(f) The right to enforce by any means, including, without limitation, injunctive relief, the terms and conditions of this Conservation Easement; and

(g) The right to enhance native plant communities, including the removal non-native species, the right to plant trees and shrubs of the same type as currently existing on the Easement Area, or other appropriate native species. Habitat enhancement activities shall not conflict with the preservation of the Natural Condition of the Easement Area or the Purposes of this Conservation Easement and shall be performed in compliance with all applicable laws, regulations, and permitting requirements.

3. Prohibited Uses. Any activity on or use of the Easement Area that is inconsistent with the Purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantee, and their respective agents, and third parties are expressly prohibited:

(a) Introduction of nuisance water, such as any drainage or overflow, including but not limited to water from pools, aquariums, waterbeds and fountains, and unseasonable and supplemental watering, except nuisance water associated with irrigation outside the Easement Area by adjacent homeowners or others and the natural drainage of rainfall and water related to Grantee's habitat enhancement activities as set forth in the Development Plan;

(b) Use of herbicides, pesticides, biocides, fertilizers, or other agricultural chemicals or weed abatement activities, except weed abatement activities necessary to control or remove invasive, exotic plant species except as set forth in the Development Plan or Management Plan;

(c) Use of off-road vehicles and use of any other motorized vehicles except in the execution of management duties;

(d) Grazing or other agricultural activity of any kind;

(e) Recreational activities including, but not limited to, horseback riding,

biking, hunting or fishing;

- (f) Residential, commercial, retail, institutional, or industrial uses;
- (g) Any legal or de facto division, subdivision or partitioning of the Easement Area;
- (h) Construction, reconstruction or placement of any building, road, wireless communication cell towers, billboard, sign, or any other structure or improvement of any kind except those signs specifically allowed under Section 5(e) or as specifically provided for in the Development Plan or Management Plan;
- (i) Dumping soil, trash, ashes, refuse, waste, bio-solids, garbage or any other material;
- (j) Planting, gardening, or introduction or dispersal of non-native plant or animal species;
- (k) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Easement Area;
- (l) Altering the surface or general topography of the Easement Area, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Easement Area with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Development Plan or Management Plan;
- (m) Removing, destroying, or cutting of trees, shrubs or other vegetation, except for (1) emergency fire breaks as required by fire safety officials, (2) prevention or treatment of disease, (3) control of invasive species which threaten the integrity of the habitat, (4) completing the Development Plan and Management Plan, or (5) activities described in Section 2;
- (n) Manipulating, impounding or altering any natural watercourse, body of water or water circulation on the Easement Area, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters except for as specifically provided for in the Development Plan or Management Plan;
- (o) Creating, enhancing, and maintaining fuel modification zones (defined as a strip of mowed land or the planting of vegetation possessing low combustibility for purposes of fire suppression) or other activities that could constitute fuel modification zones;
- (p) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Easement Area; changing the place or purpose of use of the water rights;

abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, round water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area, including but not limited to: (1) riparian water rights; (2) appropriative water rights; (3) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Easement Area; and (4) any water from wells that are in existence or may be constructed in the future on the Easement Area;

(q) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Easement Area, or the use or activity in question; and

(r) No use shall be made of the Easement Area, and no activity thereon shall be permitted, that is or is likely to become inconsistent with the Purposes of this Conservation Easement. Grantor and Grantee acknowledge that, in view of the perpetual nature of this Conservation Easement, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purposes of this Conservation Easement. Grantee, therefore, in its sole discretion, may determine whether (1) proposed uses or proposed improvements not contemplated by or addressed in this Conservation Easement or (2) alterations in existing uses or structures, are consistent with the Purposes of this Conservation Easement.

4. Grantor's Duties. To accomplish the Purposes of this Conservation Easement as described in Section 1, Grantor, its successors and assigns shall:

(a) Undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Easement Area. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 2 of this Conservation Easement;

(b) Cooperate with Grantee in the protection of the Conservation Values;

(c) Repair and restore damage to the Easement Area directly or indirectly caused by Grantor, Grantor's guests, representatives, employees or agents, and third parties within Grantor's control; provided, however, Grantor, its successors or assigns shall not engage in any repair or restoration work on the Easement Area without first consulting with the Grantee and USACE; and

(d) Obtain any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

5. Grantee's Duties. To accomplish the Purposes of this Conservation Easement as described in Section 1, Grantee, its successors and assigns shall:

(a) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Easement Area; and

(b) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis; and

(c) Undertake construction, maintenance and monitoring of mitigated areas pursuant to the Development Plan and Interim Management Plan until issuance of final approval from the USACE confirming that Grantee has successfully completed construction, maintenance and monitoring of mitigated areas pursuant to said Plans (“**Final Approval**”). This duty is non-transferable;

(d) Upon receipt of Final Approval, perform long-term management of the Easement Area pursuant to the Long-term Management Plan;

(d) Within 120 days of recordation of this Conservation Easement, install signs and other notification features saying “Natural Area Open Space,” “Protected Natural Area,” or similar descriptions. Prior to erection of such signage, the Grantee shall submit plans showing the location and language of such signs to the USACE for review and approval;

(e) Repair and restore damage to the Easement Area directly or indirectly caused by Grantee, Grantee’s guests, representatives, employees or agents, and third parties within Grantee’s control provided, however, Grantee, its successors or assigns shall not engage in any repair or restoration work on the Easement Area without first consulting with USACE.

6. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Easement Area, including the right to engage in or to permit or invite others to engage in all uses of the Easement Area that are not prohibited or limited by, and are consistent with, the Purposes of this Conservation Easement.

7. Enforcement.

(a) Right to Enforce. Grantor, its successors and assigns, grant to the USACE, the U.S. Department of Justice, and the State Attorney General a discretionary right to enforce this Conservation Easement in a judicial or administrative action against any person(s) or other entity(ies) violating or attempting to violate this Conservation Easement; provided, however, that no violation of this Conservation Easement shall result in a forfeiture or reversion of title. The USACE, U.S. Department of Justice, and the State Attorney General shall have the same rights, remedies and limitations as Grantee under this Section 7. The rights under this Section are in addition to, and do not limit rights conferred in Section 2 above. The term “Party” means Grantor or Grantee, as the case may be. Grantor, Grantee, and any third party beneficiaries, when implementing any remedies under this easement, shall provide timely written notice to each other of any actions taken under this section, including, but not limited to copies of all notices of violation and related correspondence.

(b) Notice of Violation. In the event that either Party or its employees, agents, contractors or invitees is in violation of the terms of this Conservation Easement or that a violation is threatened, the non-violating Party and/or third party beneficiaries may demand the cure of such violation. In such a case, the non-violating Party and/or third party beneficiaries shall issue a written notice to the violating Party (hereinafter “**Notice of Violation**”) informing the violating Party of the actual or threatened violations and demanding cure of such violations. The Notice of Violation shall be sent to the other Party and third party beneficiaries listed under Section 15 of this Conservation Easement.

(c) Time to Cure. The violating Party shall cure the noticed violation within thirty (30) days of receipt of said written Notice of Violation. If said cure reasonably requires more than thirty (30) days, the violating Party shall, within the thirty (30) day period, submit to the non-violating Party and/or third party beneficiaries, as the case may be, for review and approval a plan and time schedule to diligently complete a cure. The violating Party shall complete such cure in accordance with the approved plan. If the violating Party disputes the notice of violation, it shall issue a written notice of such dispute (hereinafter “**Notice of Dispute**”) to the appropriate Party and/or third party beneficiary within thirty (30) days of receipt of written Notice of Violation.

(d) Failure to Cure. If the violating Party fails to cure the violation within the time period(s) described in Section 7(c), above, or Section 7(e)(2), below, the non-violating Party and/or third party beneficiaries may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by the violating Party with the terms of this Conservation Easement. In such action, the non-violating Party and/or third party beneficiaries may:

(1) Recover any damages to which they may be entitled for violation by the violating Party of the terms of this Conservation Easement or for any injury to the Conservation Values of the Easement Area. The non-violating Party shall first apply any damages recovered to the cost of undertaking any corrective action on the Easement Area. Prior to implementation of any remedial or restorative actions pursuant to this paragraph, USACE shall be consulted.

(2) Enjoin the violation by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

(3) Obtain other equitable relief, including, but not limited to, the restoration of the Easement Area to the condition in which it existed prior to any such violation or injury.

(e) Notice of Dispute.

(1) If the violating Party provides the non-violating Party and/or third party beneficiaries with a Notice of Dispute, as provided herein, the non-violating Party and/or third party beneficiaries shall meet and confer with the violating Party at a mutually agreeable place and time, not to exceed thirty (30) days from the date that the non-violating Party and/or third party beneficiaries receive the Notice of Dispute. The non-violating Party and/or third

party beneficiaries shall consider all relevant information concerning the disputed violation provided by the violating Party and shall determine whether a violation has in fact occurred and, if so, whether the Notice of Violation and demand for cure issued by the non-violating Party and/or third party beneficiaries is appropriate in light of the violation.

(2) If, after reviewing the violating Party's Notice of Dispute, conferring with the violating Party, and considering all relevant information related to the violation, the non-violating Party and/or third party beneficiaries determine that a violation has occurred, the non-violating Party and/or third party beneficiaries shall give the violating Party notice of such determination in writing. Upon receipt of such determination, the violating Party shall have fifteen (15) days to cure the violation. If said cure reasonably requires more than fifteen (15) days, the violating Party shall, within the fifteen (15) day period, submit to the non-violating Party and/or third party beneficiaries for review and approval a plan and time schedule to diligently complete a cure. The violating Party shall complete such cure in accordance with the approved plan.

(f) Conflicting Notices of Violation.

(1) If any Party receives a Notice of Violation that is in material conflict with one or more prior written Notices of Violation that have not yet been cured by the Party (hereinafter "**Active Notice(s) of Violation**") such that the conflict makes it impossible for the Party to carry out the cure consistent with all prior Active Notices of Violation, the Party shall give written notice (hereinafter "**Notice of Conflict**") to the non-violating Party and/or third party beneficiaries issuing the later, conflicting Notice(s) of Violation. The Party shall issue said Notice of Conflict to the appropriate non-violating Party and/or third party beneficiaries within fifteen (15) days of the receipt of each such conflicting Notice of Violation. A valid Notice of Conflict shall describe the conflict with specificity, including a description of how the conflict makes compliance with all Active Notices of Violation impossible.

(2) Upon issuing a valid Notice of Conflict to the appropriate non-violating Party and/or third party beneficiaries, as described above, the violating Party shall not be required to carry out the cure described in the conflicting Notice or Notices of Violation until such time as the non-violating Party responsible for said conflicting Notice(s) of Violation issue(s) a revised Notice of Violation that is consistent with prior Active Notices of Violation. Upon receipt of a revised, consistent Notice of Violation, the violating Party shall carry out the cure recommended in such notice within the time period(s) described in Section 7(c) above. Notwithstanding Section 7(g), failure to cure within said time period(s) shall entitle the non-violating Party to the remedies described in Section 7(d) and Section 7(h).

(3) The failure of the violating Party to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall result in a waiver of the violating Party's ability to claim a conflict.

(g) Immediate Action. In the event that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, the Party and/or third party beneficiary seeking enforcement pursuant to Section 7(b) above may immediately pursue all available remedies, including injunctive relief, available pursuant to both

this Conservation Easement and state and federal law after giving the violating Party at least twenty four (24) hours' written notice before pursuing such remedies. So long as such twenty-four (24) hours' notice is given, the non-violating Party may immediately pursue all available remedies without waiting for the expiration of the time periods provided for cure or Notice of Dispute as described in Section 7(c). The written notice pursuant to this paragraph may be transmitted to the violating Party by facsimile and shall be copied to the other Party and/or third party beneficiaries listed in Section 15 of this Conservation Easement. The rights of the non-violating Party and/or third party beneficiaries under this paragraph apply equally to actual or threatened violations of the terms of this Conservation Easement. The violating Party agrees that the remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the non-violating Party and third party beneficiaries shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which they may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this Section 7(g) shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code Section 815, *et seq.*, inclusive.

(h) Costs of Enforcement. All costs incurred by a Party, where that Party is the prevailing party, in enforcing the terms of this Conservation Easement against the other Party, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by the non-prevailing Party.

(i) Enforcement Discretion. Enforcement of the terms of this Conservation Easement by a Party and/or third party beneficiary shall be at the discretion of the Party and/or third party beneficiary, and any forbearance by such Party and/or third party beneficiary to exercise its rights under this Conservation Easement in the event of any breach of any term of the Conservation Easement by a Party or any subsequent transferee shall not be deemed or construed to be a waiver by the non-violating Party and third party beneficiary of such terms or of any subsequent breach of the same or any other term of this Conservation Easement or of any of the rights of the non-violating Party and third party beneficiary under this Conservation Easement. No delay or omission by the non-violating Party and/or third party beneficiaries in the exercise of any right or remedy upon any breach by the violating Party shall impair such right or remedy or be construed as a waiver. Further, nothing in this Conservation Easement creates a non-discretionary duty upon the non-violating Party and/or third party beneficiaries to enforce its provisions, nor shall deviation from these terms and procedures, or failure to enforce its provisions give rise to a private right of action against the non-violating Party and/or third party beneficiaries by any third parties.

(j) Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Easement Area resulting from:

(1) Any natural cause beyond Grantor's control, including without limitation, fire not caused by Grantor, flood, storm, and earth movement;

(2) Any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes;

(3) Acts by Grantee, USACE, or their employees, directors, officers, agents, contractors, or representatives; or

(4) Acts of third parties (including any governmental agencies) that are beyond Grantor's control.

Notwithstanding the foregoing, Grantor must obtain any applicable governmental permits and approvals for any emergency activity or use permitted by this Conservation Easement, and undertake any activity or use in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

(k) Acts Beyond Grantee's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantor to bring any action against Grantee for any injury to or change in the Easement Area resulting from:

(1) Any natural cause beyond Grantee's control, including without limitation, fire not caused by Grantee, flood, storm, and earth movement;

(2) Any prudent action taken by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes;

(3) Acts by Grantor, USACE or their employees, directors, officers, agents, contractors, or representatives; or

(4) Acts of third parties (including any governmental agencies) that are beyond Grantee's control.

Notwithstanding the foregoing, Grantee must obtain any applicable governmental permits and approvals for any emergency activity or use permitted by this Conservation Easement, and undertake any activity or use in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

8. Access. This Conservation Easement does not convey a general right of access to the public.

9. Costs and Liabilities.

(a) Grantor, its successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance (except Long-Term Maintenance by Grantee) of the Easement Area. Grantor agrees Grantee and USACE shall not have any duty or responsibility for the operation, upkeep, or maintenance (except Long-Term Maintenance by Grantee) of the Easement Area, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor, its successor or assign remains solely responsible for

obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "**Grantee Indemnified Party**" and collectively, "**Grantee's Indemnified Parties**") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "**Claim**" and, collectively, "**Claims**"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations or rights specified in Sections 4, 6, 9(a), 10, and 19(l); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party or reimburse Grantee for all charges incurred in defending the action or proceeding.

(2) Grantor shall hold harmless, protect and indemnify USACE and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "**Third-Party Beneficiary Indemnified Party**" and collectively, "**Third-Party Beneficiary Indemnified Parties**") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, regardless of cause and (ii) the obligations or rights specified in Sections 4, 5, 6, 9(a), 10, and 19(l), except that any indemnification under this Section 9(b) shall be inapplicable to Third-Party Beneficiary Indemnified Parties with respect to any Claim due to the negligence or intentional acts only of USACE or any of its employees.

10. Taxes, No Liens. Grantor, its successors and assigns shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Easement Area by competent authority, including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee and USACE with satisfactory evidence of payment upon request. Grantor, its successors and assigns shall keep Grantee's interest in the Easement Area free from any liens.

11. Condemnation. The Purposes of the Conservation Easement is presumed to be the best and most necessary public use as defined in Civil Procedure Code Section 1240.680 notwithstanding of Civil Procedure Code Sections 1240.690 and 1240.700. Nevertheless, if the

Easement Area is taken, in whole or in part, by exercise of the power of eminent domain, Grantor and Grantee shall be entitled to compensation in accordance with applicable law.

12. Transfers of Conservation Easement or Easement Area.

(a) Conservation Easement. This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Easement Area is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 13.

(b) Easement Area. Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Easement Area, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the ILFEI, the Development Plan, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 13.

13. Merger. The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Easement Area become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Easement Area.

14. Additional Interests. Grantor shall not grant any additional easements, rights of way or other interests in the Easement Area (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a “**Transfer**”) any mineral, air, or water right or any water associated with the Easement Area, without first obtaining the written consent of Grantee and the Signatory

Agencies. Such consent may be withheld if Grantee or the Signatory Agencies determine(s) that the proposed interest or Transfer is inconsistent with the Purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Easement Area. This Section 14 shall not limit the provisions of Section 2(d) or 3(p), nor prohibit transfer of a fee or leasehold interest in the Easement Area that is subject to this Conservation Easement and complies with Section 12. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

15. Notices. Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: [INSERT NAME AND ADDRESS]

To Grantee: Coachella Valley Conservation Commission
Attn: Executive Director
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260
Telephone: (760) 346-1127
Fax: (760) 340-5949

With a copy to: District Counsel
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Boulevard, Room 1535
Los Angeles, CA 90017-3401

U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division

U.S. Fish and Wildlife Service
Palm Springs Field Office
777 E. Tahquitz Canyon Way, Suite 208
Palm Springs, CA 92262
Attn: Felicia Sirchia
Telephone: (760) 322-2070
Fax: (760) 322-4648

California Regional Water Quality Control Board
Region 7

Attn: John Carmona
73-720 Fred Waring Drive
Palm Desert, CA 92260
Telephone: (760) 340-4521
Fax: (760) 341-6820

California Department of Fish and Wildlife
Region 6
Attn: Kim Nicol
78078 Country Club Drive, Suite 109
Bermuda Dunes, CA 92203
(760) 200-9358
Fax: (760) 200-9358

or to such other address a party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Signatory Agencies. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

The parties agree to accept facsimile signed documents and agree to rely upon such documents as if they bore original signatures. Each party agrees to provide to the other parties, within seventy-two (72) hours after transmission of such a facsimile, the original documents that bear the original signatures.

16. Amendment. This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the USACE, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the Purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Easement Area is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the Signatory Agencies.

17. Recordation. Grantor shall promptly record this instrument in the official records of [RIVERSIDE OR IMPERIAL] County, California and immediately notify the Grantee and USACE through the mailing of a conformed copy of the recorded easement. Grantee may re-record this Conservation Easement at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

18. Estoppel Certificate. Upon request, Grantee shall within fifteen (15) days execute and deliver to Grantor, its successors and assigns any document, including an estoppel certificate, which certifies compliance with any obligation of Grantor, its successors and assigns contained in this Conservation Easement and otherwise evidences the status of this Conservation Easement as may be requested by Grantor, its successors and assigns.

19. General Provisions.

(a) Controlling Law. The laws of the United States and the State of California, disregarding the conflicts of law principles of such state, shall govern the interpretation and performance of this Conservation Easement.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of and to effect the Purposes of this Conservation Easement and the policy and purpose set forth in California Civil Code Section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Change of Conditions. If one or more of the Purposes of this Conservation Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Conservation Easement as long as any other purpose of the Conservation Easement may be accomplished. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. Grantor and Grantee agree that global warming and climate change-caused effects shall not be a basis for termination of this Conservation Easement.

(d) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

(e) Entire Agreement. This document (including its exhibits and ILFEI, the Development Plan, and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties and the Signatory Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 15.

(f) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(g) Successors and Assigns. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Easement Area. The covenants hereunder benefiting Grantee shall also benefit the USACE as a third party beneficiary.

(h) Termination of Rights and Obligations. Except as otherwise expressly set forth in this Conservation Easement and provided the transfer was consistent with the terms of this Conservation Easement, a party's rights and obligations under this Conservation Easement shall terminate upon transfer of the party's interest in the Conservation Easement or Property

(respectively), except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(i) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(j) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(k) Exhibits. All Exhibits referred to in this Conservation Easement are attached and incorporated herein by reference.

(l) No Hazardous Materials Liability.

(1) Grantor represents and warrants that there has been no release or threatened release of Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Easement Area, or transported to or from or affecting the Easement Area.

(2) Without limiting the obligations of Grantor under Section 9(b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee Indemnified Parties (defined in Section 9(b)(1)) from and against any and all Claims (defined in Section 9(b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Easement Area at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any property; and (ii) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party or reimburse Grantee for all charges incurred in defending the action or proceeding.

(2) Without limiting the obligations of Grantor under Section 9(b)(2) herein, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third Party Beneficiary Indemnified Parties (defined in Section 9(b)(2)) against any and all Claims (defined in Section 9(b)(1)) arising from or connected with any Hazardous Materials present, alleged to be present, or otherwise associated with the Easement Area at any time, except that this release and indemnification shall be inapplicable to the Third Party Beneficiary Indemnified Parties with respect to any Hazardous Materials placed, disposed or released by third party beneficiaries, their employees or agents. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any property;

and (ii) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below).

(3) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives Grantee and USACE any of the following:

(i) The obligations or liabilities of an “owner” or “operator,” as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.; hereinafter, “**CERCLA**”); or

(ii) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or

(iii) The obligations of a responsible person under any applicable Environmental Laws; or

(iv) The right to investigate and remediate any Hazardous Materials associated with the Property; or

(v) Any control over Grantor’s ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Easement Area.

The term “**Hazardous Materials**” includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA; Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 et seq.); the Hazardous Substance Account Act (California Health & Safety Code Section 25300 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state or local laws, ordinances, rules, regulations or orders now in effect or enacted after the date of this Conservation Easement.

The term “**Environmental Laws**” includes, without limitation, any federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and USACE that Grantor’s activities upon and use of the Easement Area will comply with all Environmental Laws.

(m) Extinguishment. If circumstances arise in the future that render the preservation of Conservation Values, [*include this phrase only if there are jurisdictional wetlands*: including wetland functions and services,] or other Purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(n) Warranty. Grantor represents and warrants that Grantor is the sole owner of the Easement Area. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Grantee and USACE pursuant to the Property Assessment signed by Grantor and attached as an exhibit to the ILFEI, [*choose applicable statement*: there are no outstanding mortgages, liens, encumbrances or other interests in the Bank Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement or the holder of any outstanding mortgage, lien, encumbrance or other interest in the Easement Area (including, without limitation, mineral interest) which conflicts or is inconsistent with this Conservation Easement has expressly subordinated such interest to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the USACE].

(p) Third-Party Beneficiary. Grantor and Grantee acknowledge that the USACE (the “**Third-Party Beneficiary**”) is a third party beneficiary of this Conservation Easement with the right of access to the Easement Area and the right to enforce all of the obligations of Grantor and Grantee under this Conservation Easement.

(q) Funding. Funding for the perpetual management, maintenance and monitoring of the Easement Area is specified in and governed by the ILFEI and the Management Plan.

IN WITNESS WHEREOF Grantor and Grantee have executed this Conservation Easement the day and year first above written and have agreed to be bound by the terms and provisions hereof.

GRANTOR:
[insert name]

By:

By: _____
Name: _____
Title: _____

[attach notary acknowledgment]

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Conservation Easement by _____, a _____ company, dated _____, 20____, to the Coachella Valley Conservation Commission, is accepted by the undersigned officers on behalf of Grantee.

GRANTEE:

By: _____
Name: _____
Title: _____
Date: _____

Attest:

By: _____
Name: _____
Title: _____
Date: _____

Exhibit H-1

Legal Description of Property

[See attached]

Exhibit H-2

Legal Description and Depiction of Easement Area

[See Attached]

Exhibit H-3

Title Report

[See Attached]

Exhibit H-4

Map of the major, distinct natural features on the Easement Area

[See Attached]

Exhibit H-5

Annual Inspection Report Form

[See Attached]

Annual Review of the Easement Area

(All actions shall be undertaken at the discretion of the CVCC, as deemed necessary, a minimum of one time per year.)

PART I – EASEMENT MANAGEMENT ACTIVITIES (To be modified based on approved Management Plan)

Time period covering _____ to _____
dd/mm/yy dd/mm/yy

☐ 1. REMOVAL OF TRASH OR MAN MADE DEBRIS:

Date(s) Performed: _____

Corrective Action/Response Taken: _____

☐ 2. MAINTENANCE OF ANY INFORMATIVE SIGNAGE:

Date(s) Performed: _____

Corrective Action/Response Taken: _____

☐ 3. MAINTENANCE AND REPAIR OF EXISTING FENCING FOR THE EASEMENT AREA AS NEEDED:

Date(s) Performed: _____

Corrective Action/Response Taken: _____

☐ 4. INVASIVE WEED CONTROL (includes removal of parasitic (as it relates to the health of the host plant) and non-native or exotic plants or animal species):

Date(s) Performed: _____
Corrective Action/Response Taken: _____

☐

5. CHECK FOR USE OF EASEMENT AREA INCONSISTENT WITH THE TERMS OF THE
CONSERVATION EASEMENT (See Part II):

Date(s) Performed: _____
Corrective Action/Response Taken: _____

Additional
Notes: _____

PART II

PROHIBITED ACTIVITIES

	NOT OBSERVED	(Circle One) OBSERVED	
1. Supplemental Watering			N/A

(If observed, describe corrective action or response taken)

2. Use of herbicides, pesticides, biocides, fertilizers, or other agricultural chemicals, except as vector control or to control invasive plant species.	NOT OBSERVED	OBSERVED	N/A

(If observed, describe corrective action or response taken)

3. Fire Protection activities.	NOT OBSERVED	OBSERVED	N/A

(If observed, describe corrective action or response taken)

4. Off-Road Vehicle use.	NOT OBSERVED	OBSERVED	N/A

(If observed, describe corrective action or response taken)

5.	Grazing or agriculture.	NOT OBSERVED	OBSERVED	N/A
<hr/>				
<hr/>				
<hr/>				
(If observed, describe corrective action or response taken)				
6.	Horseback riding, bicycling, hunting or fishing.	NOT OBSERVED	OBSERVED	N/A
<hr/>				
<hr/>				
<hr/>				
(If observed, describe corrective action or response taken)				
7.	Construction or placement of any building, billboard or sign.	NOT OBSERVED	OBSERVED	N/A
<hr/>				
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(If observed, describe corrective action or response taken)				
8.	Dumping or accumulation of trash.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)				
9.	Planting of non-native plants.	NOT OBSERVED	OBSERVED	N/A
<hr/>				
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(If observed, describe corrective action or response taken)				
10.	Excavation or extraction of minerals/soil.	NOT OBSERVED	OBSERVED	N/A
<hr/>				
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11.	Recent alterations of topography/grading.	NOT OBSERVED	OBSERVED	N/A
<hr/> <hr/> <hr/> <hr/>				
(If observed, describe corrective action or response taken)				

		NOT		
12.	Recently removed or destroyed trees or shrubs.	OBSERVED	OBSERVED	N/A
(If observed, describe corrective action or response taken)				

		NOT		
13.	Activities detrimental to water quality.	OBSERVED	OBSERVED	N/A
				(If observed, describe corrective action or response taken)

Additional
Notes: _____

Exhibit I

Property Assessment Form

This Property Assessment (Property Assessment”) is made as of this ____ day of _____, 20____, by [insert property owner full legal name(s)] (“Property Owner”), for the benefit of the Coachella Valley Conservation Commission (“CVCC”) and the Los Angeles District of the U.S. Army Corps of Engineers Region IX of the U.S. Environmental Protection Agency, and the California Regional Water Quality Control Board, Region 7, which agencies are jointly referred to in this Property Assessment as the “Signatory Agencies.” Property Owner acknowledges that this Property Assessment and the statements in it may be conclusively relied upon by the Signatory Agencies in entering into a conservation easement or other appropriate real property conveyance document (“Conservation Easement”) for the Coachella Valley In-Lieu Fee Program.

This Property Assessment provides a summary and explanation of each recorded or unrecorded lien or encumbrance on, or interest in, the Property (as defined below), including, without limitation, each exception listed in the Preliminary Report issued by [insert title company name], [insert title report date], [insert title report number] (the “Preliminary Report”), covering the Property, as described in Attachments 1 and 2 attached hereto and incorporated by this reference. Specifically, this Property Assessment includes a narrative explaining each lien, encumbrance or other exception to title and the manner in which it may affect the Conservation Easement to be recorded against the Property pursuant to the Coachella Valley In-Lieu Fee Program.

Property Owner covenants, represents and warrants to each of the Signatory Agencies as follows:

1. Property Owner is the sole owner in fee simple of certain real property containing approximately _____ acres located in the City of _____ [insert city name], County of [insert county name], State of California, designated as Assessor’s Parcel Number(s) [insert parcel number(s)] (the “Property”), as legally described in the Preliminary Report. Property Owner has, and upon the recordation of the Conservation Easement Property Owner shall have, good, marketable and indefeasible fee simple title to the Property subject only to any exceptions approved in advance of recordation, in writing, by the Signatory Agencies.
1. The Property is available to be burdened by the Conservation Easement for the conservation purposes identified in the Conservation Easement, in accordance with the Coachella Valley In-Lieu Fee Program Instrument.
2. The Property includes legal access to and from [insert name of public street or road]. [If special access rights are required to reach the Property, those access rights must also be addressed in this Property Assessment.]
3. A true, accurate and complete listing and explanation of each recorded or unrecorded lien or encumbrance on, or possessory or non-possessory interest in, the Property is set forth in Attachment F-3 attached to and incorporated by reference in this Property Assessment. Except as disclosed in Attachment 3, there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, mineral

interests). Attachment 4, attached hereto and incorporated by reference in this Property Assessment, depicts all relevant and plottable property lines, easements, dedications, etc. on the Property.

4. Prior to recordation of the Conservation Easement, Property Owner shall certify to the Signatory Agencies in writing that this Property Assessment remains true, accurate and complete in all respects.
5. Property Owner has no knowledge or notice of any legal or other restrictions upon the use of the Property for conservation purposes, or affecting its Conservation Values, as described in the Conservation Easement, or any other matters that may adversely affect title to the Property or interfere with the establishment and implementation of an In-Lieu Fee Program thereon.
6. Property Owner has not granted any options, or committed or obligated to sell the Property or any portion thereof, except as disclosed in writing to and agreed upon in writing by the Signatory Agencies.
7. The following Appendix and attachments are incorporated by reference in this Property Assessment:
 - a. Attachment 1 – Preliminary Report;
 - b. Attachment 2 – Encumbrance Documents;
 - c. Attachment 3 – Summary and Explanation of Encumbrances;
 - d. Attachment 4 – Map(s).

[Note: Attachment 2 shall include copies from the Official Records of the county recorder's office of all recorded exceptions to title (e.g., leases or easements). Attachment 4 shall include a map(s), preferably in GIS Format, illustrating the area of the Property affected by each exception to title.]

PROPERTY OWNER

[Insert property owner full legal name(s)]

Date

Attachment 1
Preliminary Report

[Attached]

Attachment 2
Encumbrance Documents

[Attached]

Attachment 3
Sample Format for: Summary and Explanation of Encumbrances

MONETARY LIENS

Note: Any deeds of trust or other monetary lien(s) must be released or subordinated to the Conservation Easement by a recorded Subordination Agreement approved by the Signatory Agencies.

- Preliminary Report Exception or Exclusion #:
- Amount or Obligation secured:
- Term:
- Date:
- Trustor:
- Trustee:
- Beneficiary:
- Description:

_____ acres of Property subject to lien

_____ acres of Property *not* subject to lien

EASEMENTS AND RIGHTS OF WAY

- Preliminary Report Exception or Exclusion #:
- Date:
- Grantor:
- Grantee:
- Holder (if different from Grantee):
- Description:
- Analysis: [*whether and how this exception will affect the Conservation Easement or the Conservation Values of the Property*]

_____ acres of Property subject to easement

_____ acres of Property *not* subject to easement

LEASES

- Preliminary Report Exception or Exclusion #:
- Date:
- Landlord/Lessor:
- Tenant/Lessee:
- Premises:
- Term:
- Description:
- Analysis: [*whether and how this exception will affect the Conservation Easement or the Conservation Values of the Property*]

_____ acres of Property subject to lease

_____ acres of Property *not* subject to lease

COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS

- Preliminary Report Exception or Exclusion #:
- Dated:

- Grantor or Declarant:
- Grantee (if applicable):
- Description:
- Analysis: [*whether and how this exception will affect the Conservation Easement or the Conservation Values of the Property*]
 ____ acres of Property subject to exception/exclusion
 ____ acres of Property *not* subject to exception/exclusion

OTHER INTERESTS (INCLUDING MINERAL OR OTHER SEVERED INTERESTS)

- Holder
- Description: [*must address whether or not the interest includes any surface rights and, if applicable, a description of those rights*]
- Analysis: [*whether and how this exception will affect the Conservation Easement or the Conservation Values of the Property*]
 ____ acres of Property subject to interest
 ____ acres of Property *not* subject to interest

Attachment 4
Map(s)

Exhibit J
Credit Ledger Report Forms

*** Included values are purely hypothetical and for reference only***

CVCC Annual Credit Ledger Summary for 20____ (Part A)							
1	2	3	4	5	6	7	8
Mitigation Category	Advance Credits Balance Forward (from previous year)	Advance Credits Awarded by USACE This Year	Advance Credits sub-total (Col. 2 added to Col. 3)	Advance Credits Transferred This Year	Balance of Advance Credits Only (Col. 5 subtracted from Col. 4)	Credit Balance Forward (from previous year)	Credits anticipated at ILF Projects approved This Year
Restoration	10	40	50	20	30	0	40
Enhancement							
Establishment							
Preservation							
Buffer							
Total							

Explanatory Notes:

Column 1: USACE category of Compensatory Mitigation.

Column 2: Number of Advance Credits still available from previous years (*Column 15 from previous year*).

Column 3: Additional Advance Credits awarded to the Sponsor by USACE this year.

Column 4: Subtotal of Advance Credits made available this year.

Column 5: Number of Advance Credits transferred this year to satisfy USACE permittee requirements for Compensatory Mitigation.

Column 6: Balance of Advance Credits remaining after accounting for transfers

Column 7: Number of Credits (as apart from Advance Credits) from previous years. Likely zero, but a balance could be carried forward if more Credits were released from successful ILF Projects than there were Advance Credit obligations in the previous year (*Column 16 from previous year*).

Column 8: Estimated number of credits to be generated by ILF Projects approved this year (including Credits released AND Credits anticipated in years to come).

*** Included values are purely hypothetical and for reference only***

CVCC Annual Credit Ledger Summary for 20____ (Part A Continued)							
9	10	11	12	13	14	15	16
Mitigation Category	Credits Released This Year	Credits sub-total (Col. 7 added to Col. 10)	Credits Directly Transferred This Year (NOT released to fulfill advance credits)	Balance of Credits Only (Col. 12 subtracted from Col. 11)	Credits Fulfilling Advance Credit Obligations (likely same entry as Col. 13)	Ending Balance of Advance Credits (Col. 14 added to Col. 6)	Ending Balance of Credits (Col. 14 subtracted from Col. 13)
Restoration	10	10	0	10	10	40	0
Enhancement							
Establishment							
Preservation							
Buffer							
Total							

Explanatory Notes:

Column 9: USACE category of Compensatory Mitigation.

Column 10: Credits approved by USACE for release based on actual, “on the ground,” successful ILF Projects

Column 11: Subtotal of Credits (again, as apart from Advance Credits) made available this year

Column 12: Number of Credits Transferred to USACE permittees directly, but not used to fulfill Advance Credit obligations. Should be 0 unless all Advance Credit obligations had been met and released Credits were Transferred directly to USACE permittees.

Column 13: Balance of Credits remaining after any transfers—likely same as entry in column 11.

Column 14: Number of Credits used to fulfill Advance Credit obligations. Likely same number as entry in column 11, but could be less if Credits released in the year are greater than Advance Credit obligations.

Column 15: Ending balance of Advance Credits available after fulfillment by Credit releases are accounted for

Column 16: Ending Balance of Credits after Advance Credit fulfillment obligations have been met. Likely 0, but could be greater if Credits released from successful ILF Projects exceeds Advance Credit obligations.

*** Included values are purely hypothetical and for reference only***

CVCC Credit TRANSFER Detail Report 20____ (Part B)							
1	2	3	4	5	6	7	8
Date of Credit Transfer	USACE Permit No. for Permit Authorizing use of Program Credits	USACE Permit Date	10 Digit HUC of Impacts	10 Digit HUC of ILF Project	Acres of Impact to be Compensated For	Specific Location of Impacts (Lat. and Long. Est.)	Type of Habitat and/or Species Impacted
Sample	#123456789	1/1/1901	1810020410	1810020410	1.5	33.518524, -116.069002	Desert Dry Wash Woodland

(Continued next page)

Explanatory Notes:

1. Each Credit Transfer should be listed as a separate line.
2. Credit Transfers involving Credits from multiple ILF Projects should be entered on a separate line for each involved ILF Project.
3. Note that vertical sum of col. 12 should match total listed in col. 5 in Part A. Vertical sums of cols. 13 through 17 should also match totals by mitigation type as listed in col 5 in Part A, after number of direct Credit Transfers are accounted for. (Direct Credit Transfers are instances when released credits are Transferred directly to a USACE permittee because all Advance Credit obligations have been fulfilled, and the Sponsor is thus able to sell released Credits directly, without having to first fulfill Advance Credit obligations.)

*** Included values are purely hypothetical and for reference only***

CVCC Credit TRANSFER Detail Report 20____ (Part B Continued 1)							
9	10	11	12	13	14	15	16
CV MSHCP Conservation Area Impacted	Service Area of Impacts	Total Credits or Advance Credits Transferred (Sum of cols. 12 thru 16)	Total Advance Credits Transferred	Restoration Credits	Enhancement Credits	Establishment Credits	Preservation Credits
Coachella Valley Stormwater Channel and Delta	Primary	1.5	1.5	1	.5	0	0

(Continued below)

*** Included values are purely hypothetical and for reference only***

CVCC Credit TRANSFER Detail Report 20____ (Part B Continued 2)							
17	18	19	20	21	22	23	24
Buffer Credits	Specific Location of ILF Project (Lat. and Long. est.)	CV MSHCP Conservation Area of ILF Project	ILF Project Name	Agreed Sale Price for Transfer of Credits	Amount Received by CVCC for Transfer of Credits	Date Received	Notes
0	33.527318, -116.085019	Coachella Valley Stormwater Channel and Delta	Made-up Project No. 1	\$500,000	\$500,000	1/12/1901	

*** Included values are purely hypothetical and for reference only***

CVCC Credit RELEASE Detail Report 20____ (Part C)							
1	2	3	4	5	6	7	8
Date of Credit Release	ILFP Project Name	Specific Location of ILF Project (Lat. and Long. est.)	10 Digit HUC of ILF Project	CV MSHCP Conservation Area of ILF Project	Total Credits Anticipated at ILF Project site	Total Credits Released	Restoration Credits
Sample	Made-up Project No. 1	33.527318, -116.085019	1810020410	Coachella Valley Stormwater Channel and Delta	40	10	6

(Continued next page)

Explanatory Notes:

1. Each Credit Release should be listed as a separate line.
2. Credit Releases involving Credits from multiple ILF Projects should be entered on a separate line for each involved ILF Project.
3. Note that vertical sum of cols. 8 through 12 should match totals by mitigation type as listed in col. 10 in Part A.
4. Note that vertical sum of col. 13 should match total listed in col. 14 in Part A.
5. Note that vertical sum of col. 14 should match total listed in col. 16 in Part A.

*** Included values are purely hypothetical and for reference only***

CVCC Credit RELEASE Detail Report 20____ (Part C Continued 1)							
9	10	11	12	13	14	15	16
Enhancement Credits	Establishment Credits	Preservation Credits	Buffer Credits	Total Used to Fulfill Advance Credits	Balance Remaining of Released Credits		
3	1	0	0	10	0		