

IN-LIEU FEE ENABLING INSTRUMENT

MOUNTAINS RESTORATION TRUST

IN-LIEU FEE PROGRAM

This In-Lieu Fee Enabling Instrument (“Instrument”), dated this ___ day of _____, 2013 (“Execution Date”), is made by and between Mountains Restoration Trust (“Program Sponsor”), the Los Angeles District of the U.S. Army Corps of Engineers (“USACE”), Region IX of the U.S. Environmental Protection Agency (“USEPA”), and the California Department of Fish and Wildlife (CDFW). The USACE, USEPA, and CDFW 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 continued use, operation and maintenance of the Mountains Restoration Trust In-Lieu Fee Program (the “Program”).

RECITALS

- A. The USACE signed a Memorandum of Agreement (MOA) with the Program Sponsor on September 28, 2004, thus establishing the Program.
- B. This Instrument is to continue the operation of the Program Sponsor’s Program in conformance with the requirements of 33 CFR Parts 325 and 332. This Instrument, except for actions covered under Section VI, supersedes the 2004 MOA between USACE and Program Sponsor that established an in-lieu-fee program between the parties.
- C. The Program Sponsor is responsible for continuing the operation of the Program.
- D. Since its inception, the Program Sponsor has sold Credits for the restoration, enhancement and preservation of 10.25 acres of wetlands. Currently, the Program has resulted in 9.52 acres of completed wetland restoration, enhancement or preservation with 0.73 acres of restoration in progress. The Program Sponsor has received a total of \$1,550,330, of which \$180,874 has not yet been expended. Remaining funds are allocated to in-lieu-fee projects that are in progress. This Instrument serves to continue the ILF program responsibility for these former commitments, as well as to allow for future use of the ILF program through the addition and/or expansion of ILF Project sites.
- E. USACE and USEPA have jurisdiction over Waters of the U.S. pursuant to the Clean Water Act, 33 U.S.C § 1251 *et seq.* Waters of the U.S. include jurisdictional wetlands.
- F. CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biological sustainable populations of these species pursuant to California Fish and Game Code § 1802.

- G. The IRT is the interagency group which oversees the establishment, use, operation, and maintenance of the Program.
- H. 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.
- I. 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. Part 332; (3) provide ILF Projects that meet current and expected demand for Credits; and (4) achieve ecological success on a watershed-basis by siting ILF Projects using the best available decision support tools, and by integrating ILF Projects with ongoing conservation activities being undertaken within the region.
- J. The mitigation plan, as referenced in 33 CFR 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 Clean Water Act and section 401 of the Clean Water Act water quality certifications or (2) completed enforcement actions under the auspices of section 404 and 401 of the Clean Water Act.

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 Development 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 one of the (3) phases of a “Mitigation Plan”, and 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 Effective Date until all the Performance Standards in the Development Plan have been met.
17. "Interim Management Plan" is one of the (3) phases of a "Mitigation Plan", and is 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.
20. "Long-term Management Plan" is one of the (3) phases of a "Mitigation Plan", and is 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. "Mitigation Plan" as referenced in 33 CFR 332.4 includes the requirements in paragraphs c2-c14 of that section which are met in Exhibits D-F of this instrument (Development Plan, Interim Management Plan, Long Term Management Plan)."
21. "Performance Standards" means the minimum standards set forth in the Development Plan to define the successful development of Waters of the U.S.
22. "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.
23. "Preservation" means the protection of existing ecologically important wildlife, habitat or other ecosystem resources in perpetuity.

24. “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 permits.
25. “Program Effective Date” is the date determined pursuant to Section IV.D., when the Program is considered established and Transfer of Advance Credits may begin.
26. “Property Assessment” means the written ILF Project site evaluation signed by the Program Sponsor, using the form attached in **Exhibit I**.
27. “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.
28. “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.
29. “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.
30. “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.
31. “RIBITS” means the Regulatory In-Lieu Fee and Bank Information Tracking System.
32. “Services” mean the benefits that human populations receive from Functions that occur in ecosystems.
33. “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.
34. “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.

35. “Transfer” means the use, sale, or conveyance of Credits by the Program Sponsor.

36. “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.

37. “Waters of the U.S.” mean waterbodies, including wetlands, over which there is federal jurisdiction under section 404 of the Clean Water Act.

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 Form

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 Department of the Army permits and associated Clean Water Act section 401 water quality certifications or as a result of completed enforcement actions under the auspices of section 404 and 401 of the Clean Water Act. 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**.

B. Service Area

The Service Area for the Program is defined as an area inside the Los Angeles, Santa Monica Bay and Calleguas Creek watersheds shown on **Exhibit B**. 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 presented by September 30th for approval by the USACE. Reports will include detailed summaries of Program Account deposits and disbursements for each ILF Project made over the previous state fiscal year (July 1 – June 30) (Section VIII). 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 Effective Date

The Program Effective 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 Effective 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 VIII).

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 Clean Water Act . 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 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.

2. Interim Management and Monitoring

Program Sponsor shall be responsible for preparing Interim Management Plans in accordance with **Exhibit E**. 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**. 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 VIII.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 IX.A, the IRT may require the

Program Sponsor to develop and implement a Remedial Action plan to correct such condition, as described below. The annual report required under Section VIII.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 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. 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.

Section VI: PRE-EXISTING ILF PROJECTS

- A. ILF Projects (1) previously approved for design under the 2004 MOA and (2) fully funded (construction and post-construction, including long-term management) prior to the Program Effective Date shall be completed in accordance with the terms of the 2004 MOA. If any of the ILF Projects approved under the 2004 MOA are discontinued, abandoned, or completed and closed, any remaining monies shall become unobligated, placed in the Program Account, and managed in accordance with this Instrument.
- B. ILF Projects previously approved for design under the 2004 MOA but not fully funded as defined by Section VI. A shall be completed in accordance with the terms of this Instrument. For ILF Projects subject to this Section VI. B, any funds received prior to the Program Effective Date will be transferred to the Program Account within 10 days of the Program Effective Date.
- C. Funds received under the 2004 MOA that remain unobligated as of the Program Effective Date, will be transferred to the Program Account within 10 days of the Program Effective Date and managed in accordance with this Instrument.

Section VII: CREDIT ACCOUNTING

A. Advance Credits

Upon the Program Effective Date, Program Sponsor is permitted to Transfer 20 Advance Credits. The number of Advance Credits that are approved for Transfer will be developed in coordination with the USACE and IRT and is based on (1) the percentage of 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. There shall be 7 Advance Credits for each of the HUC-8 watersheds of Calleguas Creek and Santa Monica Bay, and 6 Advance Credits for the HUC-8 watershed of the Los Angeles River. No more than 25%, or 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.

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.

Program Sponsor shall complete land acquisition and initial physical and biological improvements by the third full growing season after the Transfer of Advance Credits. If Program Sponsor fails to meet these deadlines, the USACE must either make a determination 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.

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 or the functional assessment method as defined in the current USACE standard operating procedures. 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 released 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 released 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 released 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 released incrementally upon achievement of short term (i.e., Years 2-4) Performance Standards.
 - d. The remaining generated Credits may be released upon achievement of long-term (i.e., Year 5) Performance Standards.
2. Preservation and Buffer Credits. In general, because Preservation and Buffers do not involve construction of improvements or 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.

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. 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 Clean Water Act 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.
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 Department of the Army 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 Department of the Army 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 VIII.
8. Subject to the limitations on any duty of the Program Sponsor to remediate outlined in Section IX.A, if a ILF Project site is damaged after the Program Effective 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 VIII: 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 September 30th of each year following the Program Effective Date. Each annual report shall cover the period from July 1 of the preceding year (or if earlier, the Program Effective Date for the first annual report) through June 30th of the current year (the “Reporting Period”). The annual report shall address the following:

1. 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.
- d. A description of the management and maintenance activities proposed for the next year.
- e. A description of the overall condition of each ILF Project site, including color photos documenting the status of the ILF Project site and a map documenting the location of the photo points.

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).

4. Program Account

The annual accounting report in accordance with Section IV.C.3.

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 Transfer Ledger, in hard copy and in editable electronic format in the form provided at **Exhibit J**.

SECTION IX: 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 IX 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 IX.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 IX.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 IX J.

Program Sponsor:

Name of Organization: Mountains Restoration Trust
Address: 3815 Old Topanga Canyon Road
Attn: Name: Debra Sharpton, Executive Director
Telephone: (818) 591-1701
Fax: (818) 591-1709

Name of Counsel
Address
Attn: Name
Telephone:
Fax:

IRT Members:

U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Blvd.
Los Angeles, CA 90017
Attn: Chief, Regulatory Division
Telephone: (213) 452-3406
Fax: (213) 452-4196

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

California Department of Fish and Wildlife
Attn: Dan Blankenship
P.O. Box 221480
Newhall, CA 91322-1480
Telephone/Fax: (661) 259-3750
Telephone: (213) 576-6600
Fax: (213) 576-6640

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 Clean Water Act, 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 X: 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
Mountains Restoration Trust


Name: Debra Sharpton
Title Executive Director

9-16-13
Date

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

David J. Castanon

David J. Castanon
Chief, Regulatory Division
Los Angeles District

9-17-13
Date

U.S. Environmental Protection Agency, Region IX

John B. Bunt

FOR Director, Water Division

9/16/13
Date

Exhibit A: Prioritization and Compensation Planning Framework

1. Geographic Service Area

The USACE and EPA expressly prefer "in -watershed" mitigation, i.e., mitigation provided in the same watershed as permittee impacts, pursuant to 33 CFR 332 and ACOE South Pacific Division (SPD) Regulatory Program Mitigation Ratio Setting Checklist, January 23, 2012. Where feasible, the sponsor will attempt to provide mitigation within the same 10-digit HUC as permittee impacts. Mitigation proposed by the sponsor occurring outside of the same 8-digit HUC as permittee impacts will be reviewed and approved on a case-by-case basis by the IRT, and shall be consistent with 33 CFR 332 and the Los Angeles District (SPL) Mitigation and Monitoring Guidelines (April 2004) and any subsequent revisions, guidelines, or regulations.

The proposed Service Area (the "Service Area") is composed of three major hydrological units: the Santa Monica Bay Watershed, a portion of the Upper Los Angeles River Watershed, and the Calleguas Watershed.

Service Area Watersheds with Sub-Basin names and 8-Digit Hydrologic Unit Numbers can be found in Exhibit A (pg. 7), Service Area over Watersheds, Sub-Watersheds and Major Waterways can be found in Exhibit I (pg. 63), and Service Area over Transportation Network can be found in Exhibit J (pg. 64).

Santa Monica Bay Watershed:

The Santa Monica Bay Watershed, Hydrologic Unit 18070104, covers approximately 414 square miles. The Service Area encompasses the entire Santa Monica Bay Watershed.

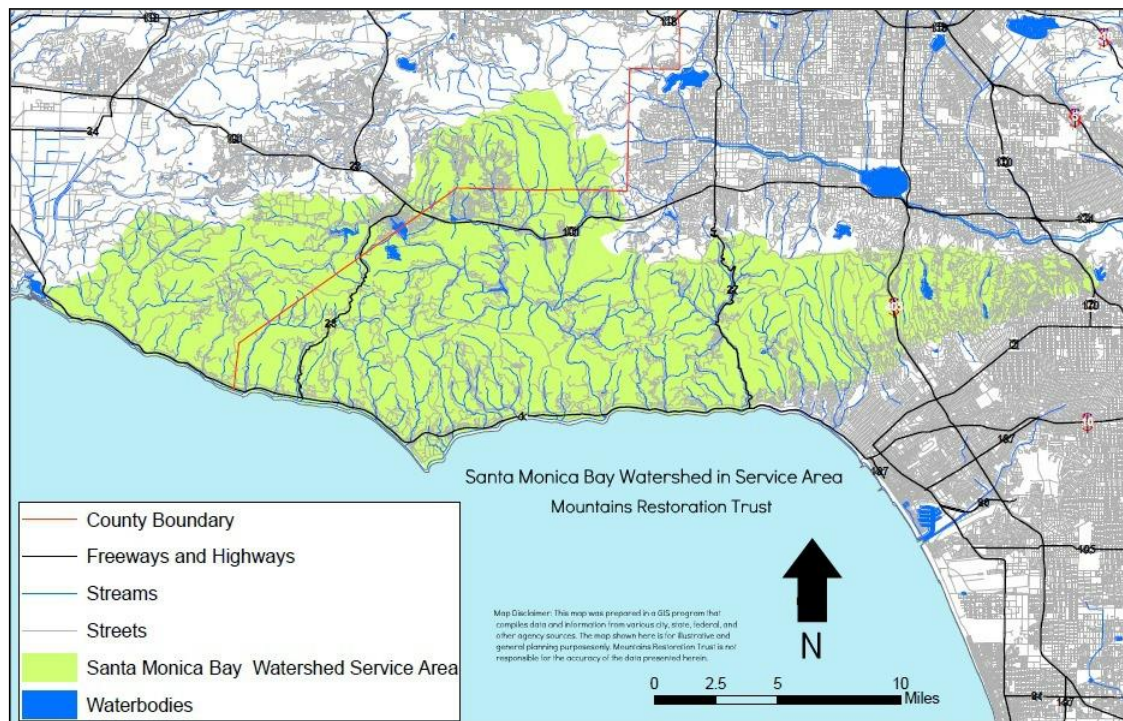
There are twenty-eight drainage basins within the Santa Monica Bay Watershed with numerous small coastal subwatersheds in the Santa Monica Mountains. All of these drainage systems (sub-watersheds) have very different dominant land uses. The two largest sub-watersheds, Malibu Creek and Ballona Creek, land uses can be found in *Threats to Aquatic Resources* section below. Malibu Creek is the largest unchannelized creek in the Bay's watershed, as many of the other creeks and streams on the eastern side of the Santa Monica Mountains have been confined to channelization. Ballona Creek is the largest sub-watershed draining to the Santa Monica Bay and most of it was channelized in the 1930's for flood purposes, and because of this, very little riparian habitat remains in this area.

Common habitat types in the Santa Monica Bay Watershed are submerged aquatic vegetation (kelp), open water geologic formations (canyons), reefs (artificial), lagoon/shallow open water, rocky intertidal/subtidal, beach/dune (vegetated and bare), sand/mud/salt flats, tidal pools, salt/brackish marsh, freshwater marsh (tidal and

non-tidal), fresh water lakes/ponds, grass/open, field, scrub/shrub, wetland and riparian/riverine corridors.

Due to encroaching urbanization in the Santa Monica Bay Watershed, remaining wetlands and other riparian habitat are greatly threatened by new development. Urbanization has impacted many of the waterways by filling, altering flows and decreasing water quality (reference water impairments in Table 1 of the 303d listing, pg. 65).

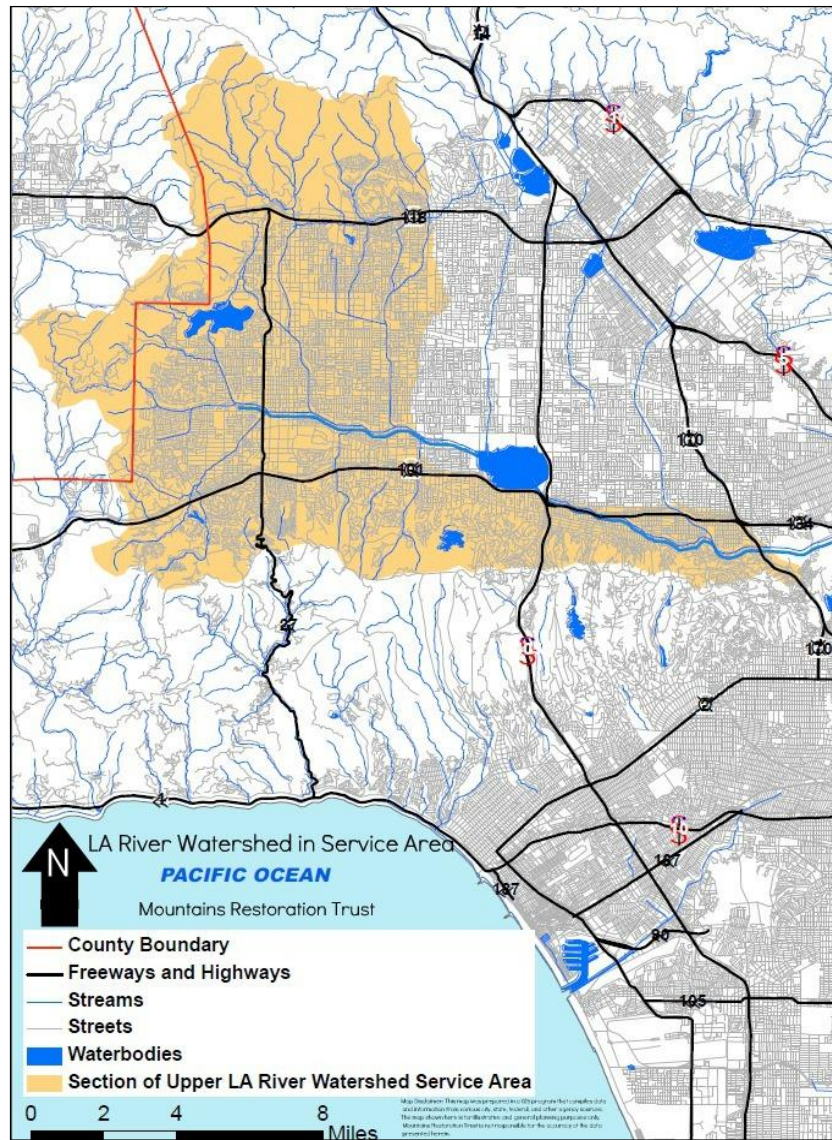
Exhibit B. Santa Monica Bay Watershed in Service Area.



Los Angeles River Watershed:

The Los Angeles River Watershed, Hydrologic Unit 18070105, covers approximately 824 square miles, and one of the most diverse in terms of land use patterns. Around 324 square miles of the watershed are covered by forest or open space land, including the areas near the headwaters which originate in the Santa Monica, Santa Susana, and San Gabriel Mountains.

Exhibit C. Los Angeles River Watershed in Service Area.



The Service Area includes the western portion of the Upper Los Angeles River Area (ULARA) and encompasses approximately 250 square miles. The major subwatersheds are Bell, Dry Canyon, McCoy, and Upper Los Angeles.

Common habitat types found in the ULARA highly urbanized watershed are chaparral, coastal sage scrub, coast live oak, walnut, and riparian woodlands and valley oak savanna.

The Service Area encompasses approximately 80 square miles of hills and mountains and 170 square miles of valley floor. The San Fernando Groundwater Basin has a capacity of 3.2 million acre-feet of water and currently serves 600,000 City of Los Angeles residents with drinking water.

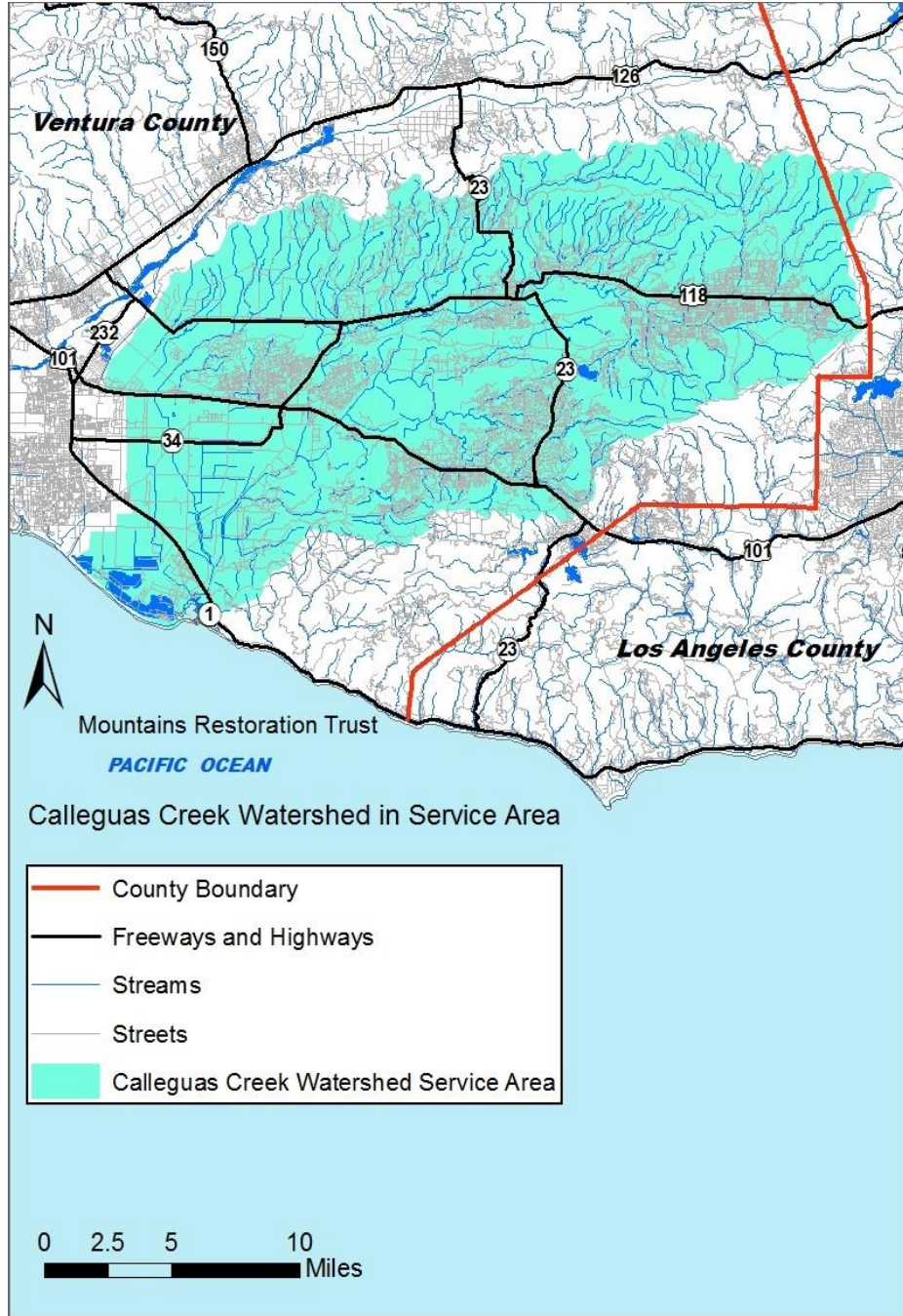
Calleguas Creek Watershed:

The Calleguas Creek Watershed, Hydrologic unit 18070103, covers approximately 343 square miles. It lies in a heavily populated and urbanized portion of Eastern Ventura County. Due to the heavy impact of development, this makes it one of the more degraded of the major watersheds in Ventura County. The watershed's northern boundary is formed by the Santa Susana Mountains, South Mountain, and Oak Ridge; the Simi Hills and Santa Monica Mountains form the southern boundary.

The watershed includes the cities of Simi Valley, Moorpark, Thousand Oaks and Camarillo, as well as unincorporated areas of Ventura County. The southeasterly portion of the watershed, the Arroyo Conejo sub-watershed, covers the northwesterly end of the Santa Monica Mountains.

Common watershed habitat types are mainly coastal sage scrub, annual grasslands with inclusions of oak savanna, riparian, saltwater marsh and marine ecosystems. The Calleguas Watershed is a vital part of the Pacific Flyway and the Mugu Lagoon is one of the most valuable coastal wetland systems in California to fish and wildlife (Calleguas Creek Watershed Erosion and Sediment Control Plan for Mugu Lagoon (USDA 1995).

Exhibit D. Calleguas Creek Watershed in Service Area.



2.Threats to Aquatic Resources in Service Areas Including How the In-Lieu Fee Program Will Help Offset Impacts Resulting From Those Threats

Channelization of many of the rivers and streams in the MRT service area began in response to flooding that occurred in 1913 and 1939. Further channelization resulted over time in response to development and more recent flood control measures. While the channels serve to protect adjacent properties from flooding by funneling water quickly downstream, the value of the aquatic resources provided by a natural river system is now being better understood. The present goal is to reintroduce natural stream function for the overall improvement of ecosystem health.

A. Discussion of Conditions:

The heavily urbanized presence in southern California and general population growth of the metropolis has inflicted environmental impairments to local water resources and the regional ecosystem as a whole. MRT, as a landholder within the southern California region, understands that it takes a proactive watershed approach in planning for mitigation projects to protect resources. MRT has experience and comprehension in the application of a watershed approach to planning, and awareness of development pressure in undeveloped areas.

The Santa Monica Bay and Los Angeles River Watersheds have experienced extreme impacts from urban sprawl. Blanketing the valley floor with impervious surfaces, only the hill and mountain areas remain with any significant amount of resource lands. The Calleguas Watershed is quickly urbanizing, however the recent recession has slowed its transformation from agricultural and open space to urban/suburban. Impacts from developmental infrastructure, flood control pressures, invasive species, and the loss and degradation of riparian and wetland habitat are all high priority concerns that MRT focuses on in conservation and restoration efforts.

Relevant Information gathered from the Los Angeles Water Quality Control Board Watershed Management Initiative Chapter offered detailed data and watershed management material that applies to the Service Area and watershed approach management practices for water resource protections. Also, information from Heal the Bay's "End of the Summer Beach Report" from 2009 offers water quality information that covers water bodies within MRT's Service Area. Heal the Bay bases water quality on their grading system. The reporting system distributes grades for beaches based upon the risk of illness associated with exposure to waters. It is not a measurement of the amount of toxins or trash found at the beaches.

MRT has been able to fill some of the existing data on the Upper Los Angeles River Area water quality, stream assessments, geology, hydrology, vegetation, and groundwater recharge is noted in MRT's *Headwaters to Groundwater: Upper Los Angeles River Area Assessment Project*. This project took place from January 2005 to February 2008, and was funded by a grant from the State Water Resources Control Board. The data within it will assist in the application to threats of aquatic resources by analysis of water quality, health of streams and the contribution of pollutants to

groundwater and the Los Angeles River. The assessment project will assist in identifying suitable areas for recharge of native waters (as potential groundwater recharge zones) before becoming urban runoff with its associated pollutant loads.

B. Santa Monica Bay Watershed:

The Santa Monica Bay Watershed is very diverse in its geological and hydrological characteristics, habitat features, and human activities. Its borders reach from the crest of the Santa Monica Mountains on the north and from Ventura-Los Angeles County line to downtown Los Angeles. Approximately 48% of the watershed is characterized as developed. Most of the undeveloped area within the Santa Monica Bay Watershed is located in the Santa Monica Mountains National Recreation Area.

The results of the Compensation Planning Framework analysis contained herein will help inform MRT and the Corps of areas of future interest within the Santa Monica Bay Watershed.

Small coastal streams from the Santa Monica Mountains draining into the bay were sampled by Surface Water Ambient Monitoring Program (SWAMP) in 2003-2004. Results found that a number of drainages and many sites exhibited single sample exceedances of bacteria indicators and nutrient problems. Ranges of water toxicity were tested from the Index of Biological Integrity, and the scores for benthic invertebrate health were from good to very poor in various locations at a few sites. The grading system through Heal the Bay's Annual Beach "Report Card" follows the coastal streams and beaches in MRT's Service Area. From south of Tuna Canyon to Point Mugu, sites like Topanga State Beach at the creek mouth, Surfrider Beach and Escondido Creek all received the lowest scores/"grades", (F) that Heal the Bay offered. All of Heal the Bay's grades/results coincide with the Beneficial Uses and Water Impairment results (303d listing) found in Table 1 on pg. 65.

Urbanization has led to significant impacts on riparian and wetland resources of the watershed, mainly through filling, addition of pollutants (list of water impairments can be found in Table 1), and alteration of flows. An estimated 95% of historic wetlands within the Santa Monica Bay Watershed have been destroyed, and the remaining wetlands extensively degraded (Santa Monica Bay Watershed Management Initiative (WMI) Los Angeles Regional Water Quality Control Board).

In comparison with the 2004 SWAMP monitoring results, Heal the Bay's Santa Monica Bay results were significantly better in the summer of 2008, exhibiting water quality of 91% (A's and B's). In 2009, Santa Monica Bay beaches scored an 86%. Locations that received poor to failing grades in 2010 were Castlerock and Santa Ynez storm drains at Castle Rock Beach (both F grades). Ventura County had the number of monitoring points cut from 54 to 40 this year due to budget cuts, but the overall water quality at beaches throughout Ventura County was excellent this year

and there were no new spills in Ventura County that were reported to Heal the Bay. There are causes for concern in the accuracy and consistency of sampling and comparisons in results of monitoring sites from county to county (and beach to beach). Locations of the monitoring sites can vary from point zero up to 83 yards away from the storm drain.

There are efforts to unite stakeholders in coming up with a standardized monitoring system that can be applied statewide to allow for more accuracy in results and conclusions from location to location.

Invasive plants and animals greatly decrease the biological diversity of native ecosystems and can out-compete or displace native species. They can also reduce habitat and water quality/availability for the native species.

Invasive plants found within the Santa Monica Bay watershed reach up to around 400 different species. MRT has composed a list of most problematic non-natives riparian and wetland species in the Service Area. Trees are: tree of heaven (*Ailanthus altissima*), Mexican fan palm (*Washingtonia robusta*), blue gum (*Eucalyptus globulus*), and myoporum (*Myoporum laetum*). Shrubs are: castor-bean (*Ricinus communis*), Spanish broom (*Spartium junceum*), tree tobacco (*Nicotiana glauca*), giant reed (*Arundo donax*), and pampas grass (*Cortaderia jubata*). Herbaceous species include: fennel (*Foeniculum vulgare*), periwinkle (*Vinca major*), peppergrass (*Lepidium latifolium*), Russian thistle (*Salsola tragus*), terracina spurge (*Euphorbia terracina*), curly dock (*Rumex crispus*), poison hemlock (*Conium maculatum*), fountain grass (*Pennisetum setaceum*), smilo grass (*Piptatherum miliaceum*), African asparagus (*Asparagus asparagoides*), and garland chrysanthemum (*Chrysanthemum coronarium*).

Invasive animals in the Service Area include bullfrog (*Rana catesbeiana*), mosquito fish (*Gambusia affinis*), largemouth bass (*Micropterus salmoides*), Louisiana red swamp crayfish (*Procambarus clarkii*), and New Zealand mudsnail (*Potamopyrgus antipodarum*).

Potential projects for this watershed include mitigation for the impacts to Sullivan Canyon by the Gas Company. The mitigation involves in-stream structure removal from the Cold Creek Preserve and non-native invasive vegetation removal, and preservation. La Sierra Preserve, a MRT project in the Malibu Creek Watershed is another mitigation site for wetland riparian, preservation, restoration, and enhancement. Additional mitigation opportunities are available in both preserves.

Medea Creek has been identified by MRT and the Resource Conservation District for re-establishment of wetland and riparian habitat. Additional potential projects for Las Virgenes Creek are identified in the City of Calabasas Creeks Master Plan.

Sub-Watersheds of the Santa Monica Bay Watershed:

i. Malibu Creek Watershed

The Malibu Creek Watershed is approximately 110 square miles. Approximations of dominant land uses of the Malibu Creek Watershed are as follows: open space 82-94%, agriculture, recreation, urban land use of both high and low density; residential, commercial and industrial are cumulatively around 15%. The EPA estimates 1% of the Malibu Creek sub-watershed is residential and commercial/industrial makes up 3% of the total land use (http://www.epa.gov/waters/tmdl/docs/MalibuCrk_TMDL%20staff%20report.pdf)

The most recent Water Quality Assessment Report finds that water quality in some streams within the Malibu Creek Watershed is impaired by nutrients and their effects, coliform and their effects, trash, and, in some instances, metals. While natural sources contribute to observed levels, nonpoint source pollution from human activities is implicated including ill-placed or malfunctioning septic systems and runoff from horse corrals.

Riparian habitats and native plant and animal species throughout the watershed have been adversely impacted by infestation of non-native species. Major invasive plant species of concern include giant reed (*Arundo donax*), castor bean (*Ricinus communis*), pampas grass (*Cortaderia jubata*), fennel, (*Foeniculum vulgare*), tree tobacco (*Nicotiana glauca*), and tree of heaven (*Ailanthus altissima*). Major invasive animal species of concern include New Zealand mudsnail (*Potamopyrgus antipodarum*), bullfrog (*Rana catesbeiana*) and crayfish (*Procambarus clarkii*).

Several man-made structures such as a dam, an Arizona crossing, and culverts exist along the creek and its tributaries and are barriers to steelhead trout migration. The largest such barrier on the creek is Rindge Dam. Some segments of the tributaries have also been channelized in the more developed upper watershed. These areas present restoration opportunities for a range of functions, and will be a focus of future MRT efforts.

ii. Ballona Creek Watershed

The Ballona Creek Watershed is approximately 130 square miles. Approximations of dominant land uses for the Ballona Creek Watershed are as follows: Open space 17%, Industrial 4%, Commercial 8%, and Residential 64%.

Ballona Creek is completely channelized except for the estuarine portion which has a soft bottom. While at one time it drained into a large wetlands complex, it now has no direct connection to the few wetlands remaining in the area, although tide gates exist in the channel which connects to Ballona Wetlands. However, Ballona Creek may more often adversely affect the nearby wetlands due to wave

action moving trash, suspended material and dissolved contaminants originating from the ocean to the nearby Ballona Wetlands and the Ballona Lagoon. Several times, dredging operations have been conducted in order to keep the mouth of Ballona Creek open, although this is not a routine procedure.

Both dry weather and storm runoff from the main channel and two major tributaries were found to be toxic to marine organisms. Toxicity was also found during storms in the ocean near the mouth of Ballona Creek. Preliminary investigations shows the sources of toxicity varied, and were associated with metals on one occasion and with organic chemicals on another occasion. Bacterial indicator levels measured at stations near the mouth of Ballona Creek frequently exceeded the level of concern for toxicity and bacteria (Santa Monica Bay Watershed Management Initiative (WMI) Los Angeles Regional Water Quality Control Board). Tributaries of the creek throughout the watershed have also been substantially channelized and/or converted to underground channels. It is estimated that 96% of historical natural streams and associated riparian habitats in the watershed have been lost to channelization and urbanization (Santa Monica Bay Watershed Management Initiative (WMI) Los Angeles Regional Water Quality Control Board). MRT will work with watershed groups in the Ballona Watershed to identify potential re-establishment, enhancement and water quality improvement projects.

iii. Other Coastal Watersheds:

The other coastal subwatersheds/waterbodies of Santa Monica Bay Watershed are Arroyo Sequit, Nicholas Canyon, Los Aliso Canyon, Encinal Canyon, Trancas Canyon, Zuma Canyon, Ramirez Canyon, Escondido Canyon, Latigo Canyon, Solstice Canyon, Corral Canyon, Carbon Canyon, Los Flores Canyon, Piedra Corda Canyon, Pena Canyon, and Tuna Canyon.

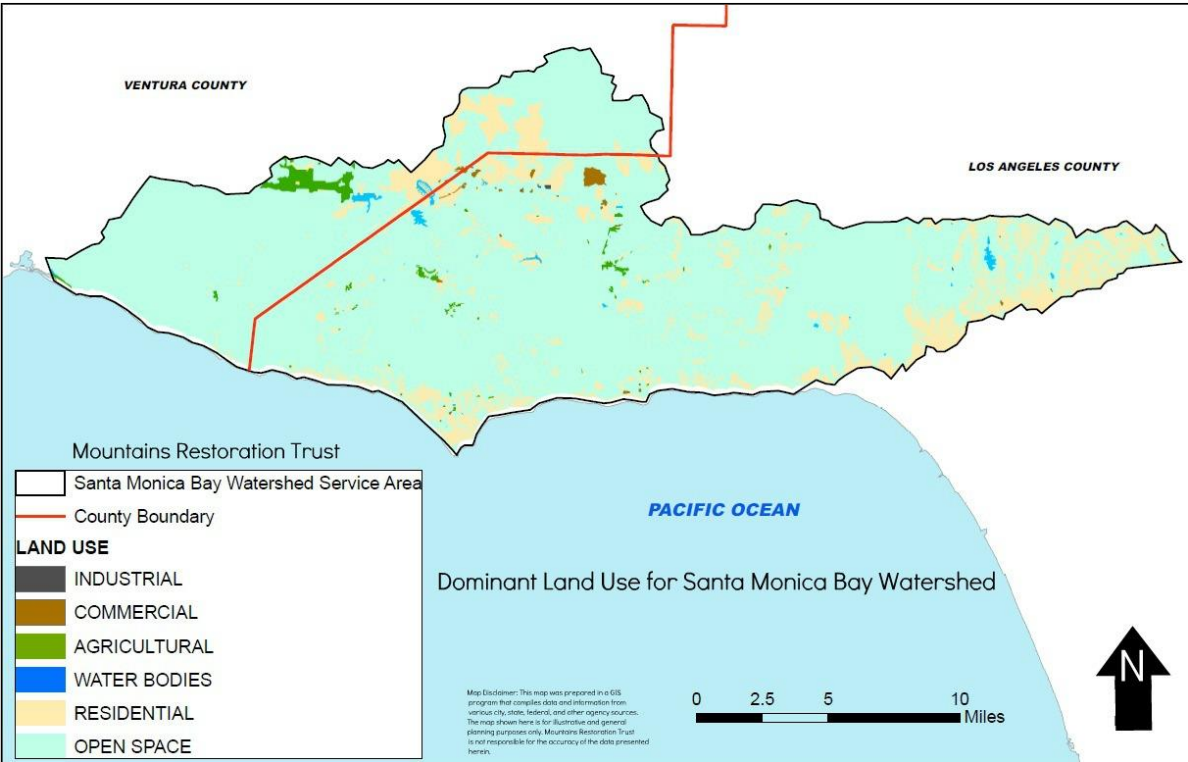
Groundwater depths are relatively shallow, ranging from 5 feet below ground in beach areas and 10 feet below ground in the coastal plains and coastal stream canyons. Due to the presence of residences in the coastal watersheds and the utilization of onsite wastewater treatment systems (septic systems), seepage impacts to groundwater are of concern. Protecting and restoring beneficial uses within these waters will aid in protection and improvement of water quality of surface waters.

Designated Beneficial Uses in the Santa Monica Mountain Watersheds are; Water Contact Recreation for body contact (REC1), Non-contact Recreation for non-body contact (REC2), Warm Freshwater habitats (WARM), Cold Freshwater habitat (COLD), Wildlife Habitat (WILD), Federal and/or State listed Rare, Threatened and/or Endangered Species habitat (RARE), Wetland Habitat and/or wetland function (WET), Municipal-and Domestic Supply-water resource

(MUN), Migration of Aquatic Organisms-corridor for aquatic species (MIGR), Spawning, Reproduction, and/or Early Development-habitat for aquatic species (SPN), Ground Water Recharge for natural or artificial recharge of ground water (GWR), Navigation Uses of water for shipping, travel or other transportation (NAV), and Estuarine Habitat uses of water that support estuarine ecosystems-preservation and enhancement (EST).

Details of Beneficial Uses and Water Impairments (303d) for each water body of the Service Area can be found Under Table 1, pg. 65.

Exhibit E. Dominant Land Use for the Santa Monica Bay Watershed.

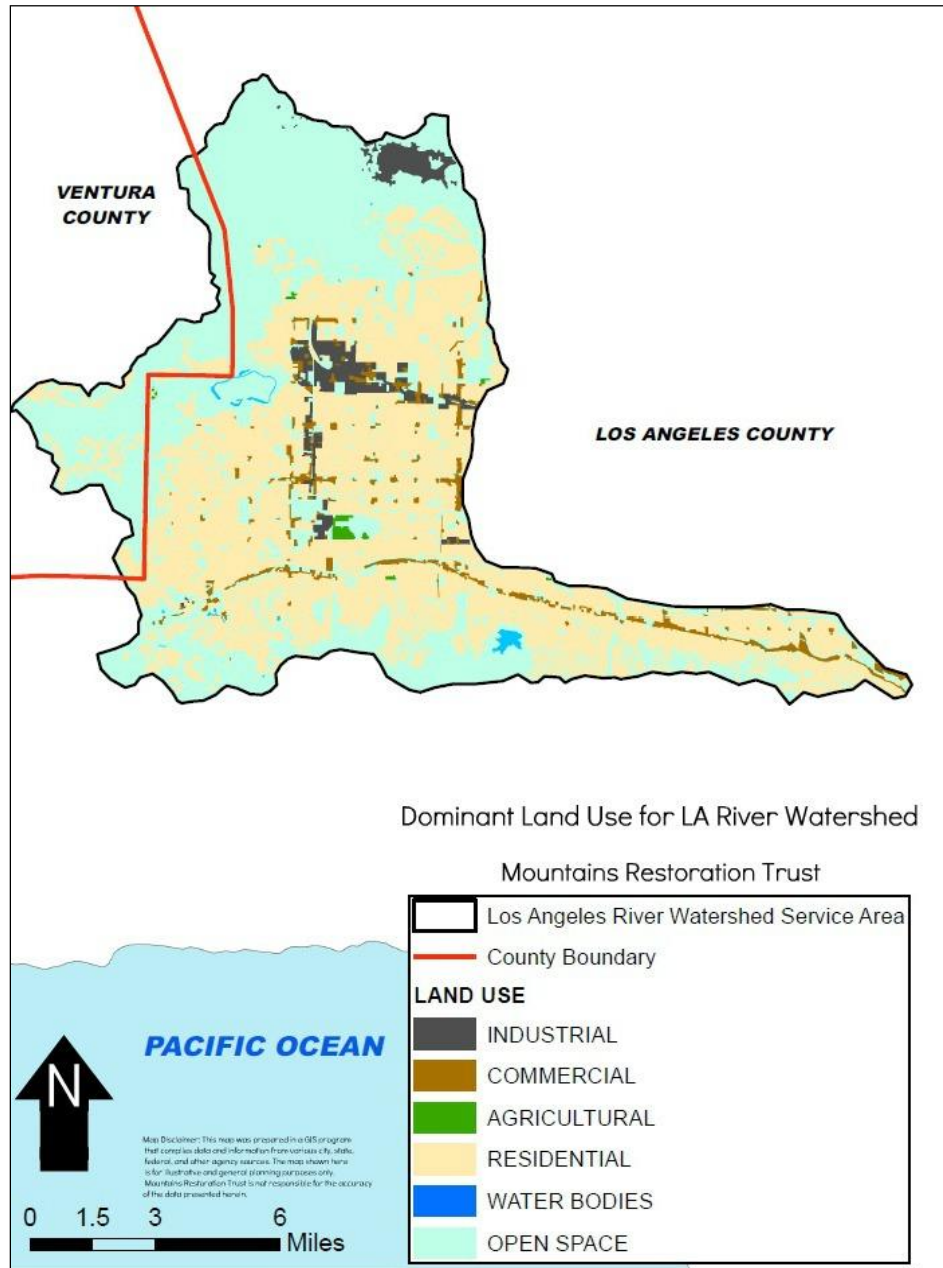


C. Los Angeles River Watershed:

The Los Angeles River Watershed covers approximately 824 square miles, and around 324 square miles of the watershed are covered by forest or open space land, including the areas near the headwaters which originate in the Santa Monica, Santa Susana, and San Gabriel Mountains. The remainder of the watershed is highly developed, consisting of residential 36%, commercial 8%, industrial 10%, and open space at 44%.

In the May 2009 Annual Report Upper Los Angeles River Area Watermaster states the long-term decline in water storage is a serious long-term challenge in ULARA. The Watermaster has secured a 10-year agreement with the cities of Los Angeles, Glendale and Burbank to reverse the long-term decline in stored groundwater, and the City and County of Los Angeles have committed to increasing recharge of stormwater runoff. Completed in 2008, MRT, in conjunction with University of California Los Angeles and University of Southern California, recently contributed to the research to improve the groundwater storage in the MRT Service Area.

Exhibit F. Dominant Land Use for Los Angeles River Watershed.



Water quality problems and issues are predominately from pollutants originating from dense clusters of residential, industrial, and other urban activities that have impaired water quality in the middle and lower watershed. Pollutant sources include both non-point sources (e.g., urban runoff and stormwater runoff), as well as point sources (e.g., wastewater effluent). Excessive nutrients (and their effects) and coliform bacteria are widespread problems in the watershed as well as excessive metals.

Threats to the quality and quantity of local groundwater sources of drinking water were the main concern in the project titled “*Headwaters to Groundwater: Upper Los Angeles River Area Assessment Project*” conducted between January 2005 to February 2008 by the MRT in conjunction with University of California Los Angeles and University of Southern California. These threats include dropping water levels, impacts of pollutants upon water quality, replacement of recharge areas by urban development, and importation of Bay-Delta water to mitigate these failings. Section III of the project report is a Recharge Suitability Analysis (RSA), which provides a Direct Infiltration Analysis and Flow Accumulation Analysis.. For this study, applicable pre-existing and collected data was compiled for threats to aquatic resources including population and demographic trends, political boundaries (e.g., zoning) (jurisdictional), infrastructure, and transportation. In addition, information on the following environmental parameters was compiled, and included field verification of sample sites: hydrogeologic information (understanding of surface and subsurface geologic settings), vegetation datasets, hydrogeology (drinking water quality), wetland mapping, and water quality/chemistry analysis. Data was then digitized in a GIS database (geodatabase that stored geographic and spatial data for existing watershed efforts), utilizing the strict guidelines of the National Wetland Inventory (NWI) protocols, Natural Channel Design Stream Survey Protocols, Surface Water Ambient Monitoring Program (SWAMP) protocols, and the Rapid Bioassessment Protocols (RBPs). Results from this study rendered that the most suitable areas for recharge are the combined catchments which possess the highest potential for direct infiltration, runoff, and flow accumulation, and the lowest stream gradients with flat or nearly flat adjacent land area.

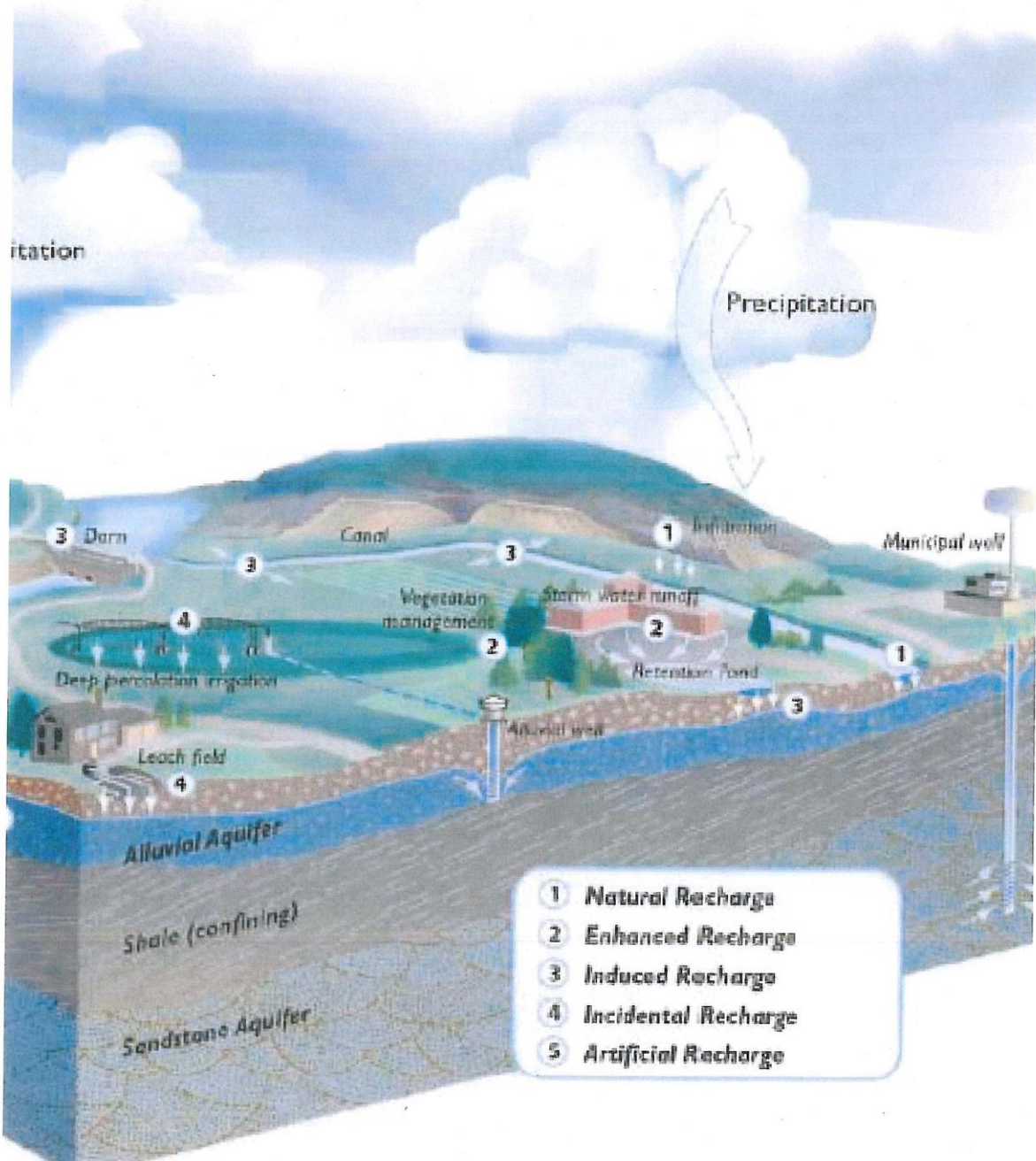
The Los Angeles River and its tributaries have significant impacts from urbanization characterized by concrete channeling, or underground piping, for flood control purposes. There are several opportunities to remove concrete and re-establish vegetation on the smaller tributaries in the upper watershed area. Some potential projects are located along Aliso and Browns Creeks (“An Implementation Blueprint for Enhancing Groundwater Recharge in the San Fernando Basin” 2008, USC GIS Research Laboratory for MRT). Other possible sites are located along Dry Canyon and McCoy Creeks.

MRT has composed a list of the most problematic non-natives riparian and wetland species in the Los Angeles River Watershed Service Area: Trees include tree of heaven (*Ailanthus altissima*), Mexican fan palm (*Washingtonia robusta*), blue gum (*Eucalyptus globulus*), and myoporum (*Myoporum laetum*). Shrubs include castorbean (*Ricinus communis*), Spanish broom (*Spartium junceum*), tree tobacco (*Nicotiana glauca*), arundo (*Arundo donax*), and pampas grass (*Cortaderia jubata*). Herbaceous species include fennel (*Foeniculum vulgare*), periwinkle (*Vinca major*), peppergrass (*Lepidium latifolium*), Russian thistle (*Salsola tragus*), terracina spurge (*Euphorbia terracina*), curly dock (*Rumex crispus*), poison hemlock (*Conium maculatum*) fountain grass (*Pennisetum setaceum*), smilo grass (*Piptatherum miliaceum*), African asparagus (*Asparagus asparagoides*), and garland

chrysanthemum (*Chrysanthemum coronarium*). Invasive animals in the Los Angeles River Watershed Service Area include bullfrog (*Rana catesbeiana*), [mosquito fish](#) (*Gambusia affinis*), [largemouth bass](#) (*Micropterus salmoides*), Louisiana red swamp crayfish (*Procambarus clarkii*)

Re-establishment and enhancement projects exist along Dry Canyon and McCoy Creeks, City of Calabasas. MRT's Headwaters Corner project includes the Dry Canyon Creek Phase 2 plan of unearthing a buried meander of approximately 900 feet (Dry Canyon Creek Phase 2 Restoration Plan, 2008, Enriquez for MRT). Fee or easement title needs to be secured as part of the Dry Canyon Creek project. The Calabasas Country Club, Bank of America headquarters building and the Calabasas Inn impact approximately 4 miles of McCoy Creek with a wide spectrum of impacts ranging from severe modifications of relocation and underground piping, to vegetation alterations. Preliminary analysis indicates good potential projects ranging from re-establishment to enhancement of wetland and riparian habitats with a conservation easement granted for long-term protection (2010 MRT, City of Calabasas, Dinovitz and Johns).

Exhibit G. An example of the Groundwater Recharge Methods.



Watershed are; Water Contact Recreation for body contact (REC1), Non-contact Recreation for non-body contact (REC2), Warm Freshwater fishery habitats (WARM), Wildlife Habitat (WILD), Municipal-and Domestic Supply-water resource (MUN), and Ground Water Recharge for natural or artificial recharge of ground water (GWR).

Details of Beneficial Uses and Water Impairments (303d) for each water body of the Service Area can be found Under Table 2, pg. 70.

D. Calleguas Creek Watershed

The Calleguas Creek Watershed, Hydrologic unit 18070103, covers approximately 343 square miles. It lies in a heavily populated and urbanized portion of Eastern Ventura County. Due to the heavy impact of development, this makes it one of the more degraded of the major watersheds in Ventura County. The watershed's northern boundary is formed by the Santa Susana Mountains, South Mountain, and Oak Ridge; the Simi Hills and Santa Monica Mountains form the southern boundary.

Presently Calleguas Creek Watershed as a whole is 50% undeveloped land, 25% agriculture, and the remaining 25% is urban land use. The Arroyo Conejo sub-watershed consists of urban land surrounded by rolling to steep-sloped protected resource lands.

The economic consequences of wetland losses in Ventura County can also be of concern due to agriculture losses, public works costs, and reduced tourism. Flood, sedimentation, and erosion can all greatly impact high value crops, residential and commercial areas, and industrial facilities. It is becoming more difficult for flood control facilities to carry the increasing amount of runoff due to more impermeable surfaces that are laid out to accommodate new development.

Exhibit H. Dominant Land Use for Calleguas Creek Watershed



Through extensive urban development, farmland conversion, and the resulting redevelopment of orchards on steeper slopes, the altered hydrology of this area has led to acceleration in erosion and sedimentation rates. Projected sedimentation estimates indicate that 430 acres of lagoon salt marsh will be converted to upland habitat by the year 2030, making this area a prime candidate for MRT proposed

Service Area. (<http://www.calleguas.com/ccbrochure/habitat.html>) Revegetation of riparian and wetland areas will reduce stream erosion and downstream sedimentation.

Although land uses vary throughout the watershed, urban developments are generally restricted to the city limits of Simi Valley, Moorpark, Thousand Oaks, and Camarillo. Some residential development has occurred along the slopes of the watershed, most upland areas are still open space; however, golf courses are being located within some of the existing open areas. Agricultural activities, primarily cultivation of orchards and row crops, are spread out along valleys and on the Oxnard Plain.

Mugu Lagoon, located at the mouth of the watershed, is one of the few remaining significant saltwater wetland habitats in southern California. The Point Mugu Naval Air Base is located in the immediate area and the surrounding Oxnard Plain supports a large variety of agricultural crops. The lagoon borders on an Area of Special Biological Significance (designated by the California State Water Resources Control Board) and supports a great diversity of wildlife including several endangered birds and one endangered plant species (see listed below). Excluding the military base, the lagoon area is relatively undeveloped.

Supplies of ground water are critical to agricultural operations and industry (sand and gravel mining) in this watershed. Moreover, much of the population in the watershed relies upon this ground water for drinking.

Mugu Lagoon as well as the Calleguas Creek Estuary is also considered a toxic hot spot under the Bay Protection and Toxic Cleanup Program (BPTCP) due to reproductive impairment (the endangered clapper rail), exceedances of the state Office of Environmental and Health Hazard Assessment (OEHHA) advisory level for mercury in fish, and exceedances of the NAS guideline level for DDT in fish, sediment concentrations of DDT, PCB, chlordane, chlorpyrifos, sediment toxicity and degraded benthic infaunal community. More water impairments are listed in the 303d list in Table 3, pg. 71.

Streams and rivers are believed to be conduits in which physical and biological interactions occur up and down the stream or river. In this interconnection, restoration projects along streams can provide benefits that far exceed the immediate project area, especially through water quality/impairments issues for both ground and surface waters. Calleguas Creek Watershed is experience different pressures by developers in the upper and lower areas of the watershed. The upper watershed's developmental pressures are resulting in alterations in timing and amount of sedimentation into the stream network (at greater volume and greater rates). In the lower part of the watershed, the pressures of development are resulting in the disconnection of channels and floodplains. The stream network is now passing more sediment and water through without engaging floodplains. Successful restoration work and management within the Calleguas Creek Watershed will encompass source control through preservation

of the upper watershed. Instituting better flood control and environmental impact review in development projects is a priority as well as conservation and restoration.

A potential project could be the removal of the Waverly Channel from the north fork of the Conejo Creek, and the restoration and enhancement of creek bed area beneath and downstream of the removed channel. This project is a part of the Calleguas Creek Watershed Management Plan.

Invasive plants in the Service Area of Calleguas Creek Watershed include giant reed (*Arundo donax*), tamarisk (*Tamarix*), tree of heaven (*Ailanthus altissima*), nettleleaf goosefoot (*Chenopodium murale L.*), poison hemlock (*Conium maculatum L.*), and tree tobacco (*Nicotiana glauca*).

Invasive animals in the Service Area of Calleguas Creek Watershed include Louisiana red swamp crayfish (*Procambarus clarkii*), New Zealand mudsnail (*Potamopyrgus antipodarum*), mosquito fish (*Gambusia affinis*), bluegill (*Lepomis macrochirus*), brown bullhead (*Ameiurus nebulosus*), and green sunfish (*Lepomis cyanellus*).

E. How the ILF Will Offset Impacts Resulting from these Threats

The predominant sources of short- and long-term adverse impacts to aquatic resources within the Service Area include residential/commercial/institutional development, infrastructure (roads, utilities), wastewater treatment facilities, flood control structures, and water diversion/extraction facilities. A portion of these activities were permitted under the Corps Regulatory program, and have contributed individually and/or cumulatively to the functional losses observed within the watersheds included in the Program Service Area. The Program will help offset the impacts through more informed and developed decision making of compensatory mitigation through the application of a watershed approach.

Specific needs of the watersheds within the Service Area will be identified and compensatory mitigation would be directed to these focus areas. Examples of these needs may include functions such as water quality, wildlife habitat, or groundwater recharge, and services such as flood control, water extraction/usage, and recreation. Suitable sites will be identified through the application of site selection criteria identified in Section 6 of this Compensatory Planning Framework and/or supplemental documentation. For example, consideration of nearby landscape attributes (e.g., encroaching development, adjacent open space) will assist in reducing the impacts on natural functions due to surrounding land uses by creating buffers in particular areas or protecting critical linkages between larger open space areas. With special consideration to existing and potential beneficial uses of the Service Area, appropriate water quality objectives can be established and programs and projects that maintain or enhance water quality and surrounding habitats can be

implemented to ensure the protection of these beneficial uses.

The Santa Ana Watershed Project Authority (SAWPA) Watershed Management Initiative explains the management goals of a watershed approach, which is adopted here. Under the Integrated Watershed Management Plan, “a prerequisite for a project is the sustained ability for the watershed to maintain the functions and processes that support the native ecology of the watershed. This does not imply that the goal is to return the watershed to an undisturbed condition. Instead it implies an integration of human needs and ecological condition that allows the watershed to sustain ecological integrity over time while providing for sustainable community needs. It is recognized that watersheds are dynamic and the precise makeup of plants, animals, and other characteristics will change over time. Watershed management seeks to balance changes in community needs with these evolving ecological conditions.” (SAWPA, IWMP, pg. 440)

Once these community needs and evolving ecological conditions are established for each watershed in the Service Area, MRT will conduct preliminary monitoring of prospective mitigation site areas that are deemed a priority pursuant to Section 6 in order to determine the current aquatic resource conditions, functional services and approximate acreages in need of restoration, enhancement or conception and then the determination of occupation by listed and sensitive species within site areas.

3. Analysis of Historic Aquatic Resource Loss in the Service Area

The service area covers three different watersheds that span a wide swath of land, ranging from coastal to mountain to inland valley. Many changes to the natural condition of these watersheds have occurred over time due to the intense growth and development of the Greater Los Angeles Area.

In response to major flooding disasters, the Los Angeles River was largely transformed from 1938 to 1960 from a free flowing river to a 51 mile concrete lined water course that passes through 13 cities. Many more miles of tributaries were diverted to underground pipes or channelized, as well. Such infrastructure has caused destruction of habitat for riparian and aquatic plants and animals. According to the Corps Regulatory Program’s permit and mitigation tracking system (ORM2), in the last 5 years, Corps Regulatory has authorized approximately 3 acres of permanent impacts (“losses of waters of the U.S.”), 812 acres of temporary impacts (e.g., maintenance projects), and 28 acres of sediment removal, and required approximately 14 acres of compensatory mitigation (e.g., restoration, enhancement) within the Los Angeles River watershed.

During the last hundred or more years of urbanization, the constricting of natural waterways within the Los Angeles River Watershed reflects the best practices of the time. The growing number of residents in the Los Angeles area required flood control

as well as a steady water supply. But such infrastructure resulted in losses of valuable natural processes. The impervious surfaces decreased natural percolation into underground aquifers, thus lowering valuable ground water supplies. The lack of percolation, along with the addition of urban runoff and treated wastewater effluent increased the surface flow in channelized water courses. The historically ephemeral streams, and the plant and animal species they supported, have disappeared in many areas, as the water flows nearly year-round in concrete channels.

Similarly, the Santa Monica Bay Watershed has been altered for flood protection purposes. The vast network of natural rivers and streams in it have been largely replaced by more than 5,000 miles of culverts, concrete channelization, and underground pipes, destroying an estimated 95% of the Santa Monica Bay's historical coastal wetlands. According to the Corps Regulatory Program's permit and mitigation tracking system (ORM2), in the last 5 years, Corps Regulatory has authorized approximately 62 acres of permanent impacts ("losses of waters of the U.S."), 96 acres of temporary impacts (e.g., maintenance projects), and 35 acres of sediment removal, and required approximately 77 acres of compensatory mitigation (e.g., restoration, enhancement) within the Santa Monica Bay watershed.

Construction in the 1920's of the 100 foot tall Rindge Dam, three miles upstream from the ocean on Malibu Creek, was another disturbance to the natural hydrological cycle in the Santa Monica Bay Watershed. Since the 1950's, the 600-acres behind the dam has been completely filled with sediment, rendering the dam useless for flood control. The dam is also serving as a barrier, blocking the steelhead trout from the upper portions of Malibu Creek.

Calleguas Creek Watershed was predominately an ephemeral stream system that only carried a significant amount of surface water during storm events during the winter and spring seasons. After the State Water Project began in 1963, the watershed changed to a system dominated by imported water and largely influenced by in-stream discharge of treated water, agriculture and urban runoff and pumped groundwater.

The natural water historically available within the watershed is less than one third of present day population demands and current usage. Imported water to the watershed is equal to approximately an additional 6.5 inches of rainfall. Yet, due to past treatment of the natural stream beds, over 90% of all the watershed's historic wetlands are now gone. Channelizing, straightening and leveeing have caused great harm to native aquatic and riparian plant and animal species within the watershed. According to the Corps Regulatory Program's permit and mitigation tracking system (ORM2), in the last 5 years, Corps Regulatory has authorized approximately 9 acres of permanent impacts ("losses of waters of the U.S."), 12 acres of temporary impacts (e.g., maintenance projects), and 17 acres of sediment removal, and required approximately 73 acres of compensatory mitigation (e.g., enhancement) within the Los Angeles River watershed.

In MRT's entire service area, the problem of invasive species is serious. Invasive plant species, such as giant reed, have appeared and now out compete native plants, thus causing a loss of habitat and food source for native animals. Invasive animal species, such as the *Procambarus clarkii* (Louisiana red swamp crayfish) have been introduced to the detriment of several native aquatic species and macro invertebrates.

The north and south forks of the Conejo Creek flow through much of the protected resource lands that encircle the city of Thousand Oaks. Although this area is undeveloped, the tributaries and creeks that travel through it carry water that has originated in nearby residential, commercial and industrial areas. Channelized and polluted water from upstream sources has replaced much of the historically pure, natural headwaters. Many of these sections of creek offer opportunities for restoration. If improvements are made downstream, it will offset man-made problems created upstream. Where creek segments pass through protected resource land, stream function can be improved through re-grading and planting, which will slow the water flow and in turn improve percolation and water filtration.

Though extensive urban development, farmland conversion, and the resulting redevelopment of orchards on steeper slopes, the altered hydrology of this area has led to acceleration in erosion and sedimentation rates. Projected sedimentation estimates indicate that 430 acres of lagoon salt marsh, or approximately 40 percent, will be converted to upland habitat by the year 2030. (Calleguas Creek Watershed Erosion and Sediment Control Plan for Mugu Lagoon (USDA 1995).

4. Analysis of Current Aquatic Resource Conditions in the Service Area Supported by an Appropriate Level of Field Documentation

Santa Monica Bay Watershed:

Many factors contribute to the overall reduced watershed functions and habitat quality of the Santa Monica Bay Watershed. Development has resulted in the addition of pollutants (list of water impairments can be found in Table 1), and alteration of flows by urban runoff and alteration for flood control measures such as dams, man-made barriers, as well as stream channelization. An estimated 95% of historic wetlands within the Santa Monica Bay Watershed have been destroyed, and the remaining wetlands extensively degraded (Santa Monica Bay Watershed Management Initiative (WMI) Los Angeles Regional Water Quality Control Board).

The creation of impervious surfaces is a major contributor to the watershed's decline and reduces the watershed's hydrologic function: a creek's ecosystem is impacted by as little as 2-3% watershed imperviousness and major impacts result at a threshold of 15-20% (UCLA School of Law's Frank G. Wells Environmental Law Clinic). The Malibu Creek Watershed averages 13% imperviousness. Impervious surfaces destroy vegetation and compact soils. Roads, parking lots, buildings and other impervious

surfaces collect and transfer pollutants; drainage conveyance systems quickly move run-off into the watershed, creating an increase in flow and velocity. Arizona Crossings, a type of road crossing which allows the waterway to flow over, culverts, and dams, including the Rindge Dam and Malibou Lake Dam, exist in the Santa Monica Bay Watershed. Dams restrict movement of aquatic species, such as the southern steelhead trout (*Oncorhynchus mykiss*), modify natural flow regime, and harbor invasive aquatic species such as Louisiana red swamp crayfish (*Procambarus clarkii*) and bullfrog (*Rana catesbeiana*), (California Regional Water Control Board Los Angeles Region Watershed Initiative Plan, 2004). Urbanization also introduces imported water from outside the watershed; it is estimated that 6.5 billion gallons of water are imported into the Santa Monica Bay Watershed every year (Heal the Bay, n.d.). The continual release of imported water disrupts the creeks natural ebb of summer dry flows and winter floods in the semi-arid Santa Monica Mountains (Ambrose & Que Hee, 1995).

Although the amount of pollutants has decreased with the passing of the Clean Waters Act in 1972, large amounts of pollutants are entering into the Santa Monica Bay Watershed from non-point urban run-off (Dijiri et al., 2003). These pollutants, identified in Table 1, are collected and transferred into the watershed by impervious surfaces. Pathogens, metals, organic toxins, and trash are identified as key pollutants coming from several point and non-point sources (UCLA School of Law's Frank G. Wells Environmental Law Clinic). Malibu Creek and Lagoon are listed by USEPA and the State Water Resources Control Board (SWRCB) as water bodies impaired by high levels of nutrients and algal growth. The presence of high levels of nutrients has increased algae and aquatic plant growth and biological oxygen demand, resulting in lower oxygen counts, and the killing of fish and other native aquatic life forms in Malibu Creek. (Santa Monica Bay Restoration Plan, 2008). Small coastal streams from the Santa Monica Mountains draining into the bay were sampled by Surface Water Ambient Monitoring Program (SWAMP) in 2003-2004. Results found that a number of drainages and many sites exhibited single sample exceedances of bacteria indicators and nutrient problems. Ranges of water toxicity were tested from the Index of Biological Integrity, and the scores for benthic invertebrate health were from good to very poor in various locations at a few sites. The grading system through Heal the Bay's Annual Beach "Report Card" follows the coastal streams and beaches in MRT's Service Area. From south of Tuna Canyon to Point Mugu, sites like Topanga State Beach at the creek mouth, Surfrider Beach and Escondido Creek all received the lowest scores/"grades", (F) that Heal the Bay offered. All of Heal the Bay's grades/results coincide with the Beneficial Uses and Water Impairment results (303d listing) found in Table 1 on pg. 68. In comparison with the 2004 SWAMP monitoring results, Heal the Bay's Santa Monica Bay results were significantly better in the summer of 2008, exhibiting water quality of 91% (A's and B's). Last year, Santa Monica Bay beaches scored an 86%. Locations that received poor to failing grades this summer were Castlerock and Santa Ynez storm drains at Castle Rock Beach (both F grades). There are causes for concern in the accuracy and consistency of sampling and comparisons in results of monitoring sites from county to county (and

beach to beach). Locations of the monitoring sites can vary from point zero up to 83 yards away from the storm drain.

Faunal support and habitat in the Santa Monica Mountains are also impacted by urbanization and the introduction of invasive, non-native plant and animal species; a healthy riparian habitat is vital to a watershed's health. Wetland habitat slows stream velocity, decreases total volume through infiltration, filters out pollutants, and is depended upon by aquatic species and wildlife (California Regional Water Control Board Los Angeles Region Watershed Initiative Plan, 2004). The California Regional Water Control Board Los Angeles Region states that even if water quality is improved, the riparian/wetlands habitat must also be improved or full beneficial use cannot be restored.

Some of the currently listed federal and state protected animal species found in the Santa Monica Bay Watershed include: California red-legged frog (*Rana draytonii*), southern steelhead trout, (*Oncorhynchus mykiss*), loggerhead shrike (*Lanius ludovicianus*), American peregrine falcon (*Falco peregrinum anatum*), bank swallow (*Riparia riparia*), southwestern pond turtle (*Clemmys marmorata pallida*), Bell's sage sparrow (*Amphispiza belli belli*), warbling vireo (*Vireo gilvus*), grasshopper sparrow (*Ammodramus savannarum*), American badger (*Taxidea taxus*), northern harrier (*Circus cyaneus*), Cooper's hawk (*Accipiter cooperi*), prairie falcon (*Falco mexicanus*), ringtail (*Bassariscus astutus*), and Least Bell's vireo (*Vireo bellii pusillus*).

Endangered or listed plant species in the Santa Monica Bay Watershed includes coastal dunes milk-vetch (*Astragalus tener titi*), and salt marsh bird's-beak (*Cordylanthus maritimus*).

Los Angeles River Watershed:

The Los Angeles Regional Water Quality Control Board (LARWQCB) has added much of the river and many of its tributaries to the §303(d) list, the state/federal list of impaired waterbodies.

The Los Angeles River Watershed contains only 3% of open spaces, parks, agriculture land use, or is vacant; 97% of the watershed is completely urbanized (Council for Watershed Health). The 51-mile long river was completely cement channelized by the U.S. Army Corp of Engineers in 1938 (American Rivers) and is considered to be the most modified river system in the world (Ackerman et al.). Water quality problems and issues are predominately from pollutants originating from dense clusters of residential, industrial, and other urban activities. Pollutant sources include both non-point sources (e.g., urban runoff and stormwater runoff), as well as point sources (e.g., wastewater effluent); see Table 2 for list of water impairments. Excessive nutrients and coliform are widespread problems in the watershed as well as excessive metals. Thousands of permitted discharges are allowed, including water reclamation plants, pollution from major tributaries, and storm drain outfalls. Three water reclamation plants along the Los Angeles River discharge 72% of the normal

volume in 2000, creating year round flows and increased velocity (Ackerman et al., n.d.).

The channelization of the Los Angeles River has resulted in an extreme loss of spatial structure, interspersed, and connectivity of plant and animal habitat functions. Wetlands and riparian areas are among the most impacted habitats in the Los Angeles River Watershed. An estimated 100 percent of the original lower riverine and tidal marsh and 98 percent of all inland freshwater marsh and ephemeral pond habitat have been destroyed (Dark, 2009). Much of the small areas of wetlands and riparian environments in the Los Angeles River watershed are found in or near the Santa Monica Mountains and San Fernando Valley (Dark, 2009). These areas are often disturbed and harbor invasive, non-native plants and animals which displace natives.

Special status animal species in the Los Angeles River Watershed Service Area include Riverside fairy shrimp (*Streptocephalus woottoni*), southern steelhead (*Oncorhynchus mykiss*), arroyo chub (*Gila orcuttii*), Pacific lamprey (*Lampetra tridentata*), unarmored three-spined stickleback (*Gasterosteus aculeatus williamsoni*), Santa Ana sucker (*Catostomus santaanae*), Santa Ana speckled dace (*Rhinichthys osulus*), red-legged frog (*Rana draytonii*), arroyo toad (*Bufo californicus*), southwestern pond turtle (*Clemmys marmorata pallida*), coast horned lizard (*Phrynosoma coronatum blainvillii*), tricolored blackbird (*Agelaius tricolor*), burrowing owl (*Athene cunicularia*), yellow-billed cuckoo (*Coccyzus americanus*), southwestern willow flycatcher (*Empidonax traillii extimus*), bald eagle (*Haliaeetus leucocephalus*), brown pelican (*Pelecanus occidentalis*), Coastal California gnatcatcher (*Polioptila californica*), light-footed clapper rail (*Rallus longirostris levipes*), California least tern (*Sternula antillarum browni*), Least Bell's vireo (*Vireo bellii pusillus*), Stephen's California vole (*Microtus californicus stephensi*), big free-tailed bat (*Nyctinomops macrotis*), southern grasshopper mouse (*Onychomys torridus ramona*), Pacific pocket mouse (*Perognathus longimembris pacificus*).

Calleguas Watershed:

The Calleguas Watershed suffers from low water and habitat quality. It is the most damaged watershed within Ventura County and is listed by the U.S. government and California state as a §303(d) impaired waterbody. Impacts from urbanization, stream channelization, and agricultural land use has changed the functionality of this watershed; once subject to summer low flow fluctuations, discharges from wastewater treatment facilities, urban run and agriculture run-off has created a perennial stream. These changes have negatively affected the ecologically important Mugu Lagoon, one of the largest and best-preserved salt marsh ecosystems in Southern California (Calleguas Creek Watershed Management Plan).

Through extensive development, farmland conversion, and the resulting redevelopment of orchards on steeper slopes, the altered hydrology of this watershed

has led to acceleration in erosion and sedimentation rates. Projected sedimentation estimates indicate that 430 acres of lagoon salt marsh, or approximately 40 percent, will be converted to upland habitat by the year 2030.

Since 1992, there have been five Ventura County flooding disasters declared by the President of the United States. Beyond those five declared national disasters, Ventura County has experienced a flood or flood-related hazard of less severity at least every five years, which still causes damage costing county residents, businesses, and taxpayers millions of dollars. The risks posed by these hazards increase as the county's population continues to grow. (Ventura County Watershed Protection District's 'Flood Mitigation Plan for Ventura County', March, 2005).

Aquatic life in both Mugu Lagoon and the inland streams of this watershed has been impacted by pollutants from nonpoint sources. DDT, PCBs, other pesticides, and some metals have been detected in both sediment and biota collected from surface waterbodies of this watershed. Additionally, ambient toxicity has been revealed in several studies from periodic toxicity testing in the watershed (ammonia from POTWs and pesticides such as diazinon and chlorpyrifos are implicated). Fish collected from Calleguas Creek and Revolon Slough exhibit skin lesions and have been found to have other histopathologic abnormalities. High levels of minerals and nitrates are common in the water column as well as in the groundwater. Sediment toxicity is also elevated in some parts of the lagoon. Reproduction is impaired in the resident endangered species, the light-footed clapper rail due to elevated levels of DDT and PCBs. It appears that the sources of many of these pollutants are agricultural activities (mostly through continued disturbance and erosion of historically contaminated soils), which cover approximately 25% of the watershed along the inland valleys and coastal plain, although the nearby naval facility has also been a contributor. Other non-point sources include residential and urban activities, which are present over approximately 25% of the watershed.

Although 50% of the watershed still remains as open space, there is a severe lack of benthic and riparian habitat. Based on limited survey data, amphibians do not appear to be abundant anywhere in the watershed, but western toads and Pacific tree frogs have been observed in terrestrial habitats around lawns and residences.

Some of the listed animal species (Federal and/State) of the Calleguas Creek watershed that would be targets for protection are as follows: California red-legged frog (*Rana draytonii*), American peregrine falcon (*Falco peregrinus ssp. Anatum*), Santa Monica Mountains hairstreak (*Satyrium auretorum ssp. fumosum*), Southwestern pond turtle (*Clemmys marmorata ssp. pallida*), and the coast horned lizard (*Phrynosoma coronatum ssp. frontale*).

Some of the listed plant species (Federal and/State) of the Calleguas Creek watershed that would be targets for protection are as follows: Greata's aster, (*Aster greatae*), Parish's brittle scale (*Atriplex parishii*), Davidson's salt scale (*A. serenana* var.

davidsonii), Santa Barbara morning-glory (*Calystegia sepium* ssp. *binghamiae*), southern tarplant 1B (*Centromadia parryi* ssp. *australis*), San Fernando Valley spineflower (*Chorizanthe parryi* var. *fernandina*), salt marsh bird's beak (*Cordylanthus maritimus* ssp. *maritimus*), slender-horned spineflower (*Dodecahema leptoceras*), Los Angeles sunflower (*Helianthus nuttallii* ssp. *parishii*), Orcutt's linanthus (*Linanthus orcuttii*), Davidson's bush mallow (*Malacothamnus davidsonii*), prostrate pincushionplant (*Prostrate navarretia*), California orcutti grass (*Orcuttia californica*), Brand's phacelia (*Phacelia stellaris*), Parish's gooseberry (*Ribes divaricatum* var. *parishii*), Gambel's water cress (*Rorippa gambelii*), and the San Bernardino aster (*Symphyotrichum defoliatum*).

5. Aquatic Resource Goals and Objectives for Each Service Area, Including a Description of the General Amounts, Types and Locations of Aquatic Resources the Program Will Seek to Provide

The challenge of the mitigation process is to restore the altered creeks and their ecological functions. MRT's main mitigation objectives include improving stream flow and percolation by removing restrictive built features, such as channels, culverts and old bridge abutments. We will additionally increase wetland area by re-grading constricted stream banks to wider, more natural configurations. MRT aims to improve habitat for native species (including endangered species), increase native plant and animal diversity and ecosystem connectivity by removing invasive plant and animal species and replanting native plants. New plants placed along stream banks will add to erosion control. We also will purchase land or arrange for conservation easements to be placed on land for preservation/ conservation purposes.

A. Removing Existing Structures and Re-grading (Restoration)

In MRT's service area, the restoration process may involve removing concrete channels and culverts, which will prevent accelerated erosion, improve connectivity within the stream and allow for flood flows. After concrete channels are removed, creek beds may be re-graded to re-create historic meanders, which will additionally slow down water flow and increase percolation. Foot bridges may be removed or widened to improve bank stability and erosion control. Supports of bridges located within the stream bed may be relocated to the upper banks to improve channel morphology. Old concrete pads, abandoned structures or other debris may be removed to improve percolation and groundwater recharge on floodplain terraces.

B. Removal of Non-Native Plants (Enhancement)

The removal of giant reed colonies is often the first step towards better stream health, as this non-native out competes the native plants with its aggressive thirsty roots. Its large biomass poses a flooding risk, while at the same time is not a desirable food source or shelter to native animals. By removing this invasive, as well as others such as fan palms, smilo grass and pepperweed, we would open up space for the replanting

of native plant species and the natural regeneration/ spread of native plants.

C. Revegetation of Riparian Areas (Enhancement/ Restoration)

Planting of nursery grown native plants in riparian zones to provide habitat and food for native animals, increase native plant and animal diversity and add connectivity of ecosystems. Natives such as willows will be planted as pole cutting on creek banks to provide slope stabilization and erosion control. MRT has several greenhouses where all of our plant propagation is done from site-specific native species by the native plant specialist we have on staff. Our plant specialist also oversees all of the plant selection, location and monitoring for restoration sites. MRT selects restoration plant species for site suitability and natural configuration, as much as possible.

D. Removal of Non-Native Animals (Enhancement)

Louisiana red swamp Crayfish (*Procambarus clarkii*) is an invasive species introduced to creeks in southern California over the last hundred years by sports fisherman, who used them as bait. These aggressive crayfish are omnivores and also burrowers, so they attack other aquatic species as well as the creek bed itself. Where large quantities of crayfish are found in an ecosystem, the numbers of native fish, amphibians and macro invertebrates are greatly reduced. MRT has worked closely with researchers at Pepperdine and UCLA to determine the damage caused by, and best methods of eradicating these non-natives. Currently, MRT is conducting a small scale crayfish removal program in Malibu Creek. Over 13,000 crayfish have been removed from an approximately 600 foot long stretch of creek between September 2011 and June 2012. Plans are underway to expand the program to other creeks within Santa Monica Bay Watershed, and potentially Calleguas Creek Watershed as well. This removal of a damaging invasive will allow for a greater abundance and diversity of native aquatic animal species to be restored. Because of the crayfish's borrowing characteristic, its removal should also improve channel morphology. Other invasive aquatic animal species within the service area include New Zealand mudsnail (*Potamopyrgus antipodarum*), mosquito fish (*Gambusia affinis*), bluegill (*Lepomis macrochirus*), brown bullhead (*Ameiurus nebulosus*), and green sunfish (*Lepomis cyanellus*), bullfrogs (*Rana catresbeianna*) and largemouth bass (*Micropterus salmoides*).

E. Preservation and Enhancement/Restoration

MRT manages negotiations for themselves or other public or non-profit agencies to purchase (or hold a conservation easement on) privately held lands to be kept in a natural state in perpetuity. MRT currently owns and/or manages several such nature preserves.

Several potential mitigation sites within MRT's service area have been evaluated and are listed here:

Santa Monica Bay Watershed Sites

1. Cold Creek



Location: The Cold Creek Subwatershed is in the south east portion of the Santa Monica Bay Watershed. Cold Creek has its headwaters on Saddle Peak (on the eastern side of the city of Calabasas) and flows, in general, southwesterly towards its confluence with Malibu Creek, near the intersection of Malibu Canyon Road and Piuma Road.

Acres: The proposed project area includes the preservation of approximately 5.1 acres of wetlands, riparian willow/oak forest, riparian woodland and riparian scrub (with an additional 5.8 acres of supporting upland chaparral); the restoration of 2.8 acres of riparian willow/oak forest and riparian woodland habitat; and the enhancement of 10.4 acres of riparian willow/oak forest and riparian woodland habitat, which includes 0.3 acre of emergent meadows.

Conditions/Threats: Two impermeable concrete pads left in place by former landowners near the creek reduces hydrologic function of the stream bank. A small dam and two intact bridge supports disrupt stream connectivity and fragment stream habitat. Vacated trails, old dirt roads and an ill-placed drain under Mulholland Highway are all causing erosion into the creek, increasing the creek's sediment loads and degrades water quality and fish habitat. Invasive, non-native plants, which have spread throughout the riparian corridor, displace native vegetation and reduce habitat value. The stretch of Cold Creek running through the unincorporated area of Monte Nido contains many invasive plant species.

Goals and Objective: Preservation: Cold Creek Preserve contains a large

portion of Cold Creek, and is owned by Mountains Restoration Trust and other government resource agencies. However, privately-owned undeveloped parcels through which the creek passes remain a threat if developed. MRT proposed to protect Cold Creek through the acquisition of three such parcels totaling 9.4 acres. An additional 1.5 acres can be protected through the establishment of a conservation easement. Altogether, the 10.9 acres has 3.8 acres of wetlands and riparian willow/oak forest and woodlands, 1.3 acres of wetlands and riparian scrub, and 5.8 acres of supporting upland chaparral habitat. Restoration: The removal of the two concrete pads, a small dam and two old bridge supports to improve perennial and ephemeral stream flow within riparian willow/oak forest and riparian woodlands habitat. An ephemeral step-pool stream will be restored for the Mulholland Highway drainage to prevent runoff erosion through a scrub riparian community. 1,830 linear feet of trail will be rerouted to restore and protect the creek from erosion. Enhancement: Sedge, rush, orchid, and cattail emergent meadows, riparian oak forests, mixed riparian sycamore, oaks, willows, and bay woodlands will be enhanced through the removal of invasive species and the planting of natives.

2. La Sierra Creek



Location: La Sierra Creek is located in the central portion of the Malibu Creek Watershed, northwest of Mulholland Highway and east of Kanan Road in Agoura Hills. Four tributaries feed into La Sierra Creek upstream from man-made Seminole Lake, near the Seminole Springs Mobile Home Park.

Acreage: The proposed work area includes approx. 13.3 acres of preservation of wetlands, riparian willow/oak forest, riparian woodland and riparian scrub; 0.3 acres of restoration of willow/ oak riparian forest, and enhancement of 4 acres of riparian forest and riparian woodland habitat.

Conditions and Threats: The portion of La Sierra Creek where mitigation work is proposed is within the La Sierra Preserve. The Preserve is owned by the Los Angeles County, managed by Mountains Restoration Trust and consists of 162 acres west of Seminole Lake.

Large portions of high quality headwater tributaries lie on two privately-owned parcels south and southwest of the preserve and remain undeveloped. Development of privately owned land is a threat to the La Sierra Preserve and Seminole Lake. Development would alter hydrological regimes by reducing water infiltration, increase polluted runoff from impermeable surfaces, increase erosion and sediment loads, and introduce invasive species into the wetlands. On the La Sierra Preserve, three in-stream structures disrupt the creek's hydrologic connections. The first is a corrugated metal pipe culvert installed along an unnamed tributary to improve accessibility for an unpaved, and now overgrown, road. The culvert disrupts hydrologic connectivity. Two more barriers, also located on the La Sierra Preserve, consist of a check dam placed by a previous land owner and an in-stream structure downstream. Close to the check dam, dwarf peppergrass (*Lepidium latipes*) has been found near a possible vernal pool.

Goals and Objectives: Preservation: Acquire the two adjoining parcels containing large portions of headwater tributaries south and southwest of the La Sierra Preserve. Total acreage for both parcels is 54.8 acres of which 12 acres are wetlands, riparian willow/oak forests, and riparian woodlands, 1.3 acres are riparian scrub, and 41.5 acres are supporting uplands chaparral habitat. Restoration: Restoration goals include the removal of the 3 in-stream structures and the pulling back the banks to reduce the creek's sedimentation load, connect aquatic habitats, and restore wetland functionality. Enhancement: The removal of non-native invasive plants such as thistle and mustard and the replacement planting of native plant species to improve soil stabilization, plant diversity, and spatial vegetation structure.

3. Malibu Creek

Location: Potential sites exist along portion of the creek running from Malibou Lake, which is south of the intersection of Mulholland Hwy. and Cornell Rd., and travels southwesterly approximately nine miles to the Pacific Ocean. Century Dam is located approximately 9,200 feet downstream of Malibou Lake, and is southwest of the intersection of Las Virgenes Road and Mulholland Highway. Rindge Dam is approximately 41,000 feet downstream of Century Dam and approximately 15,200 feet upstream from the Pacific Ocean on the east side of Malibu Canyon Road.

Acreage: Approx. 2 acres of enhancement of wetland and willow/oak riparian forest.

Conditions and Threats: Malibu Creek is situated largely in open park land, but suffers from upstream water pollution and erosion, as well as man-made in-stream structures which reduce stream function. The Rindge Dam, long

backfilled with sediment, is no longer providing flood protection, yet continues to serve as an impassible barrier to steelhead migration upstream. Century Dam, though smaller and further upstream is also a barrier to fish migration. Malibu Creek suffers from the introduction of invasive plant and animal species, such as giant reed and crayfish.

Goals and Objectives: The National Oceanic and Atmospheric Administration's National Marine Fisheries Service Southwest Regional Office has developed a Southern California Steelhead Recovery Plan. The ACOE, along with other agencies, is currently drafting a Malibu Creek Restoration Feasibility Study which includes plans for the removal of the Rindge Dam and other in-stream barriers within Malibu Creek and its tributaries. In anticipation of the dam removals, MRT and many other agencies are working to prepare Malibu Creek sub-watershed for the reintroduction of the steelhead. Enhancement: Within the stream, MRT can improve stream function by removing invasive crayfish. MRT have already begun these efforts in sections of Malibu Creek. In addition to helping the steelhead, removing crayfish will improve survival rates for native macro invertebrate and other fish species, according to research conducted by professors at Pepperdine University (Kats and Brewer, 2007.) MRT can remove giant reed and over non-native plant species within the riparian zone around Malibu Creek to reduce flooding problems. By planting more native plants, species diversity can be improved as well as interconnectivity of habitats.

4. Lindero Canyon Creek



Location: This nearly 8000 foot section of Lindero Canyon Creek on the easterly side of Thousand Oaks runs from Lakeview Canyon Road (west of

Lindero Canyon Road), south to the Ventura/ Los Angeles County line,(east of Lindero Canyon Road).

Acreege: Approximately 3 acres of enhancement

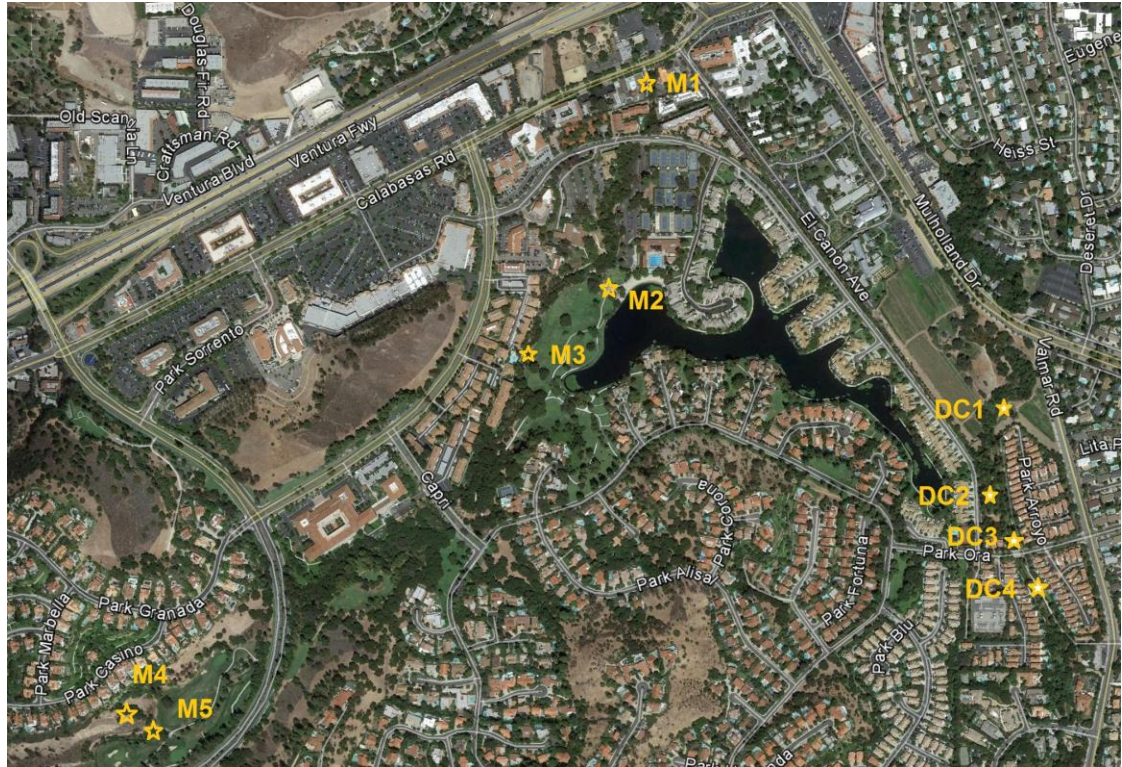
Condition/ Threats: Approximately 6,800 feet of the northerly portion of the mitigation site are bordered by homes and are currently being maintained by a private association. The southerly 1,050 foot portion of the creek is undeveloped. The entire mitigation site is a soft bottomed perennial tributary that is home to a large population of non-native crayfish. The creek banks contain invasive plant species such as smilo grass and pepperweed. This stream segment is within a 4.22 acre waterway listed on the U.S. Fish and Wildlife Service National Wetlands Inventory.

Goals and Objectives: Enhancement: Non-native plant and animal species removal and the planting of more riparian willow/oak woodland habitat native species would improve the bio-diversity of both the plant and animal life. It would also improve stream function by slowing erosion and sedimentation downstream.

Los Angeles River Watershed Sites

The improvement of the riverine and palustrine systems in the Los Angeles River Watershed portion of MRT's Service Area will enhance watershed hydrologic functions and promote groundwater recharge in the San Fernando Valley. Plant community diversity and connectivity of habitat can also be improved.

1. Dry Canyon and McCoy Creek



Location: These two Los Angeles River headwater creeks are within the Dry Canyon Creek Subwatershed, in the southwesterly portion of the Los Angeles River Watershed. Both creeks flow northerly thru the City of Calabasas. The proposed mitigation sites are all south of the 101 Freeway, west of Mulholland Drive and, with the exception of two located at Calabasas Country Club, all restoration and enhancement sites are east of Parkway Calabasas. The proposed land acquisition parcel is southeast of the other project sites nearer the Dry Canyon Creek headwaters.

Acreege: Within this Subwatershed there are approximately 15 acres of wetland habitat preservation (within a 175 acre potential acquisition), 2.3 acres of wetland/ riparian willow/oak forest habitat restoration, and approximately 2.7 acres of riparian willow/oak forest/scrub habitat enhancement.

Condition/Threats: Some contiguous, privately owned parcels contain 1.6 miles of riparian corridor, the largest intact and undisturbed piece of riparian habitat in the Santa Monica Mountains draining into the Los Angeles River. These parcels are adjacent to natural resource land owned by the City of Calabasas and MRCA, and should be protected from future development.

The Las Virgenes, McCoy and Dry Canyon Creeks Master Plan for Restoration

Phase II: Feasibility Study, prepared by Wildan in October 2005 documents current conditions and many potential projects. Much of the following information on McCoy and Dry Canyon Creeks is documented in Wildan's Master Plan for Restoration.

The condition of the two creeks in Calabasas range from natural to highly constricted. The upper extent of Dry Canyon Creek is largely free flowing and supports large willows, but downstream, various sections of the creek bank have been stabilized with a mixture of rocks and concrete and the stream course has been altered in several locations. Many non-native species, such as giant reed, occur on the banks.

McCoy Creek also flows, in part, in a natural state, but throughout its length, the un-channelized portions suffer from urban influences, including a golf course. Many areas of the creek have bank instability, undersized culverts and barriers to fish passage. In some areas the creek has been stabilized with concrete, riprap or check structures. Exotic species affecting the creeks include giant reed, common periwinkle and eucalyptus.

Goals and Objectives: Preservation: The purchase of 175 acres of privately held parcels (mentioned above) from a willing seller will result in the preservation of 15 acres of wetland habitat.

The Las Virgenes, McCoy and Dry Canyon Creeks Master Plan for Restoration proposed several construction restoration and enhancement projects to improve function within the watershed. Of the projects suggested for Dry Canyon Creek, MRT has already completed two, done significant work on a third, and is currently beginning work on a fourth (all near MRT headquarters.) Four other potential Dry Canyon Creek projects, and five potential McCoy Creek projects are discussed below.

Possible Restoration and Enhancement sites in Dry Canyon include: DC1) the removal of giant reed, the re-contouring of the banks and the planting of willows and other wetland habitat and riparian forest habitat plants along 250 linear feet of creek, DC2) the building of rock dams for erosion control along a 350' linear feet stretch of creek, the bioengineering of the channel, exotic species removal and the planting of riparian forest, DC3) removal of giant reed and the planting of riparian willow/ oak forest along 250 linear feet of creek, and DC4) the establishment of step pool morphology and the planting of banks and floodplain with riparian willow/oak forest along 440 linear feet of creek.

Possible Restoration and Enhancement sites in McCoy Creek include: M1) removing common periwinkle and eucalyptus, bioengineering 270 linear feet of

creek bank and planting riparian willow/oak forest, M2) the removal of a concrete overflow channel and adding natural cobble, in conjunction with the planting of wetland/ riparian plants along 60 linear feet of a manmade pond, M3) re-establishing a floodplain and re-contouring one bank along 400 linear feet of creek and planting heavily as a riparian willow/oak forest habitat, M4) remove non-native ornamental species and heavily plant both sides of 230 linear feet stretch of creek that crosses through a golf course with riparian willow/oak forest and upland tree and shrub species to improve water quality, M5) establish a more natural stream bed along a 310 linear feet stretch of creek that continues through the golf course, again removing ornamentals and replacing with riparian forest habitat.

2. Aliso Canyon Creek



Location: The mitigation site is near Granada Hills in the northwestern edge of the Los Angeles Watershed, west of Hesperia Avenue. This portion of the creek flows from near Potter Fire Road south-southeast to the Aliso right-of-way debris basin above the 118 freeway.

Acreage: Approx. 0.8 acres of restoration and 2.7 acres of enhancement

Condition/Threats: According to *An Implementation Blueprint for Enhancing Groundwater Recharge for the San Fernando Basin*, this area has high potential for hydrological and biogeochemical watershed function repair in conjunction with an infiltration facility and the right-of-way debris basin (Sheng & Wilson, 2008). Portions of the northern section located between Porter Fire Road and Sesnon Blvd remains fairly undisturbed, although the hillsides near Sesnon Blvd are unstable and prone to sliding. The northern portion of the site contains both Aliso Canyon Wash Park and Porter Ridge Park where an established and well-used trail runs parallel along the creek. In the lower 8,000 linear foot stretch from Sesnon Blvd. to the 118, many outlets discharge into the creek. Biogeochemical functions are disrupted by water pollutants documented to

often exceed California's Maximum Concentration Level (Sheng & Wilson, 2008.) The whole canyon was once a flood plain, but has been modified to no longer act as such. Many non-native plant species such as arundo, castor bean tree and tree tobacco exist throughout the site. The California red-legged frog, which is on the Endangered Species list, has been reported in the upper Aliso Canyon Creek (Welch et al., 2009). Broken asphalt exists near portions of the creek.

Goals and Objectives: Restoration: Control erosion and establish bank stabilization in the northern section through removal of in-stream structures, hardened creek surfaces, such as asphalt, and re-grading of flood bank terraces to slow erosion and to improve infiltration and groundwater recharge. Enhancement: Remove non-native plant species, and plant native riparian willow/oak habitat species, which will improve infiltration, increase biodiversity and improve habitat connectivity. Such improvements will benefit threatened or endangered species in the area, such as the red-legged frog.

3-Limekiln Canyon Creek/ Moonshine Canyon Creek

Location: Limekiln Canyon and Moonshine Canyon Creeks are located near Porter Ranch. Limekiln Canyon extends north and south of the 118 freeway. It runs from its headwaters south-southwest towards the 118 freeway for approximately 17,800 feet, then continuing on south of the 118 for approximately 4,200 feet. Moon Canyon Creek is a tributary to Limekiln Canyon Creek, which runs approximately 9,700 feet from its headwaters southeast to its confluence with Limekiln Creek. Both creeks cross Sesnon Blvd. approximately midway between their headwaters and their confluence.

Acreage: Approx. 2 acres of restoration and 12 acres of enhancement.

Conditions/Threats: From the 118 Fwy north to Sesnon Blvd., both streams are largely bordered by development, and each stream runs through a long stretch of linear park. There are mildly to severely degraded natural habitat areas from the 4,300 linear foot greenbelt below the 118 Freeway, along Limekiln Creek north to the undeveloped resource land above Sesnon Boulevard. Numerous concrete storm water spillways and hillside drainage ditches channel urban runoff from impervious surfaces into the creeks. Areas of the stream bed which were formerly floodplains have been built up and in some locations placed in culverts. They have subsequently suffered erosion problems. Limekiln Canyon Trail is an abandoned twenty foot wide asphalt road that roughly parallels Limekiln Canyon Creek and at one point crosses the creek. Many non-native plant species exist, such as tamarisk, Mexican fan palm, castor bean, tree tobacco, smilo and hoary mustard. North of Sesnon Road, near Limekiln

Canyon Creek is an asphalt parking area. Moonshine Canyon Creek north of Sesnon Road has a residential development to the west of it and undeveloped land to the east.

Goals/Objectives: Restoration: The abandoned asphalt road that is being used as a trail along Limekiln Canyon Creek can be removed and replaced with a permeable surface to improve infiltration and groundwater recharge. The paved crossing within the creek bed can be removed, the banks re-graded and a (permitted) pedestrian bridge built over the creek to improve hydrologic connections. In at least one location, an existing culvert can be removed and the creek restored to natural grade to improve stream flow and reduce erosion. The asphalt parking area north of Sesnon Blvd. can be removed and the land re-contoured and replanted with native species to provide improved infiltration and soil stabilization. Enhancement: The various patches of non-native plants, such as castor bean, smilo and hoary mustard, can be removed and replanted with native riparian willow/oak woodland planting to improve interspersion and connectivity of habitats.

Calleguas Creek Watershed

Several sites within the Conejo Creek sub-watershed have been evaluated and three potential mitigation sites are listed here as examples of projects MRT would pursue.

1. Arroyo Simi/ Junipero Channel in Rocky Pointe Park

Location: The site is in the southeasterly portion of the Calleguas Watershed within Rocky Pointe Nature Park in Simi Valley.

Acreage: Approximately 5 acres of restoration of riparian willow/oak woodland habitat, including a vernal pool, and approximately 3 acres of enhancement of riparian scrub habitat.

Condition/Threats: The project site is described in detail in the Calleguas Creek Watershed Wetland Restoration Plan prepared by David Magney in October 2000. Much of the following information is documented in Magney's Restoration Plan.

The approximately 420 feet of Arroyo Simi within this reach is currently straightened and confined to a concrete-lined culvert, while the approximately 1,080 feet of Junipero Channel is straightened and confined between levees. The current site configuration restricts wetland function, as its primary purpose is to quickly funnel waters downstream.

The active floodways in Rocky Pointe Park are essentially devoid of vegetation, while the historical floodplains support native grass, walnut and oak communities as well as riparian scrub vegetation. A variety of non-native plant species exist throughout the site. A vernal pool is located between the two channels near the base of a large rock outcrop.

Goals and Objectives: The basic proposed design in the Restoration Plan is to remove the Arroyo Simi concrete culvert downstream of Kuehner Road and to remove the east side of the Junipero Channel levee to restore floodplain function. Small levees would be constructed to protect the residential neighborhood to the north and Kuehner Road. The channels would meander freely across the site, constrained on the north, east, and west by levees and on the south by the Simi Hills. (Note: the Kuehner Road bridge replacement proposed by Magney's plan is beyond the scope of this proposal, however a partnership with the city would be explored.)

The active floodways and the restored floodplain would be re-vegetated with native species appropriate to the location. Plant communities may include such species as California cattail, arroyo willow, California sycamore and mulefat.

This project will also include restoration of the vernal pool, consistent with the long-term vernal pool recovery strategy developed by the U.S. Fish & Wildlife Service.

2. North Fork of the Conejo Creek



Location: Waverly Channel carries the north fork of the Conejo Creek along the west side of Lynn Road, from Janss Road north. Beyond the channel the creek flows along its natural westerly course, until it reaches the Hill Canyon Waste Water Treatment Plant, which is the end of the mitigation site.

Acreeage: Approximately 0.4 acres of restoration and approx. 1.6 acres of enhancement

Condition/Threats: The approximately 910 foot long channel is targeted for removal. It is currently in disrepair and being undermined by water flow. The condition of the channel is so poor that if restoration funds are not soon made available, the concrete may simple be replaced as a stop gap measure that will only add expense in the long run. Little native vegetation exists along the channel. Many invasive plant species, such as thistle, pampas grass, fan palms and tree tobacco; as well as the invasive crayfish, persist along the approximately 12,580 feet of natural creek bed that meanders between the channel and the water treatment plant. Much of this section of creek runs through Wildwood Park, where there are several makeshift, constrictive stream crossings. A waterfall within the creek is a major draw, causing some degradation of the riparian habitat. Invasive species, such as smilo grass are found near the waterfall and along the creek.

Goals and Objectives: Restoration: To remove the concrete channel and restore approximately 900 feet of creek function of infiltration and energy dissipation through re-contouring of the banks, which would be followed by the planting of native riparian shrub and riparian woodland plant species to stabilize slopes. Within Wildwood Park, pedestrian bridges over the creek can be built to replace the current in-creek crossing, to open up and improve the water flow. Enhancement: The currently soft bottomed section of creek will also be enhanced, largely through invasive plant and animal species removal along its over 12,000 foot length, along with some riparian woodland and riparian shrub habitat planting.

3. Tributary to Conejo Creek



Location: Section of tributary to the north fork of Conejo Creek, south of Avenida de Las Arboles and west of Lynn Road in Thousand Oaks. The creek section begins at the outfall of a culvert running beneath Avenida de las Arboles and meanders southwest towards its confluence of the north fork of the Conejo Creek.

Acreage: Approx. 0.2 acres of restoration and approx. 1.3 acres of enhancement.

Condition/Threats: Upstream of the proposed creek section, a channel flows into an underground pipe daylights just south of Avenida de las Arboles. The mitigation site begins where this pipe daylights above a natural creek bed. The creek then meander for approximately 3,600 feet until it joins the north fork of the Conejo Creek (previously mentioned mitigation site.) This mitigation site together with the Waverly Channel/ Conejo Creek site compose the majority of a U.S. Fish and Wildlife Service National Wetlands Inventory 7.48 acre fresh water forested/ shrub wetland. The upstream culvert and channel have contributed to poor stream function. The water flow has no way to percolate and/or slow down prior to dropping into the perennial creek, putting the stream at risk for flooding and erosion. Creek alterations done upstream of Avenida de las Arboles, including the installation of the channel, culvert and storm drains has made restoration of that particular creek section a complicated and expensive proposition. The natural stream bank in the proposed mitigation site below Avenida de las Arboles is currently somewhat eroded and home to several invasive plants. The stream itself is home to the Western pond turtle, a California Species of Special Concern.

Goals and Objectives: Restoration: Restore and stabilize the creek bed near the culvert to help reduce further erosion by re-contouring the banks, adding boulders ,and planting willow cuttings. Enhancement: The removal of invasive plant species, such as smilo grass and mustard, and the planting of riparian

woodland habitat natives to add connectivity of animal corridors, improve animal habitat for the pond turtle and other species, promote animal diversity, and prevent erosion for better stream function.

6. Prioritization Strategy for Selecting and Implementing Mitigation Projects

MRT reviews many potential mitigation sites which all have merit and are discussed in detail above in section 5. Prioritization for their selection and implementation will be based on where the greatest stream improvement can be achieved by the type of restoration, enhancement and preservation work that MRT is best qualified to do and/or oversee. Therefore, criteria to be weighed in the selection process include the following:

A. Amount of Improvement to Be Achieved

Determining how much improvement can be achieved through MRT's efforts provides a particular site a comparative value to other potential projects. Under this criterion, MRT weighs the impact of their work, such as improving multiple stream functions at once. For example, a project which involves 1) removing a concrete channel and re-contouring and re-grading the stream banks to slow down water flow and increase percolation, 2) removing invasive plant species, such as smilo grass, giant reed and peppergrass that threaten plant and animal diversity, 3) removing invasive aquatic animal species such as the Louisiana red swamp crayfish and 3) planting natives to provide better connectivity to other natural stream segments upstream and downstream, would be given high priority. If an endangered species is found on or near the site, improving the habitat would be of significant importance. Or, if an invasive species can be totally eradicated from a mitigation site and the property returned to pristine condition, and there is low potential for additional invasion (e.g., from upstream sources), this would also get high marks for prioritization.

B. Long Term Success Potential

The likelihood that a project will experience long term success depends on a number of factors. One is the conservation status of the property and the positive or negative influence from surrounding area. Another is the ability of MRT, the property owner and/or managing agency to maintain and protect the mitigation site from future degradation.

C. MRT's Expertise

MRT has successfully managed many restoration projects including the removal of channels, culvert and bridge supports from streams, and the re-contouring of stream beds. MRT has experience and knowledge in the removal of invasive plant species and crayfish for enhancement of stream function. Our expertise has also been

demonstrated in the propagation, planting and monitoring of native plants for enhancement and restoration of stream projects. Therefore, MRT is especially capable of improving the plant and animal diversity within a stream ecosystem and helping with flood and erosion control. MRT also has the ability to negotiate real estate purchases and land covenants for the preservation of native wetland properties. A potential mitigation site that can benefit from MRT's skill set is given high priority.

D. Stakeholder Support

As the success of any mitigation project is dependent on the co-operation of various agencies and perhaps certain individuals, stakeholder support is an important element of a mitigation project. Knowing at the onset, that the agencies reviewing a proposed mitigation project are behind it, and that land owners (and perhaps neighboring landowners) are agreeable to the proposed work, gives the project higher priority than a similar project that faces opposition.

E. Urgency of Action

On a site that is quickly eroding or being overrun by invasive species such as giant reed or Louisiana red swamp crayfish, a fast response is importance to keep the problem from getting worse fast (and more difficult to rectify in the future.) Likewise, a site that is threatened by potentially eminent development would need to be purchased for preservation or given a protective easement. The more eminent the threat - if within the scope of MRT's ability to address - the higher the priority.

F. Resources Required

In selecting a mitigation site, the resources required to carry out the project is another important criteria for selection. Because MRT has its own plant propagation facilities as well as the equipment, supplies and staff to do planting and invasive species removal, a project that has strong needs in those areas, is a high priority for our selection. MRT also has a good working relationship with engineering firms and grading contractors who have assisted with previous Corps restoration projects.

G. Cost Effectiveness

Cost effectiveness is a consideration with any mitigation site selection. The more results that can be achieved with a finite amount of In-Lieu-Fees, the better. One cost effective approach is to do work on MRT owned land or on property owned by a cooperative agency without additional fees or red tape. Complete eradication of an invasive species such as fan palms, is more cost effective than fighting an ongoing battle against annual grasses. Likewise, bank stabilization that prevents future erosion keeps a problem from getting far worse and much more costly to repair.

7. How Any Identified Preservation Objectives Satisfy Criteria for Use of Preservation

The Program does not propose the sole use of preservation to satisfy compensatory mitigation requirements, unless all of the below requirements (3.i.-v.) are satisfied, and the Corps requires. All compensatory mitigation would have a component for long-term protection, which in essence would preserve establishment, restored, or enhanced aquatic resources. Preservation by conservation easement or deed restriction alone generally does not satisfy the requirements of the Rule, which emphasizes the importance of “no net loss” in wetland acreage and/or functions, pursuant to Executive Order 11900. The Program, therefore will be associated with enhancement, restoration, passive regeneration, and establishment, in addition to preservation. Pursuant to the Rule, where preservation is the sole form of compensatory mitigation, compensation ratios will be higher and associated credits will be lower than projects associated with enhancement, restoration, passive regeneration, and establishment activities (33 CFR 332(h)(2)).

Accordingly, pursuant to the Rule (33 CFR 332.3(h)), MRT provides the following information:

- A. The resources to be preserved provide important physical, chemical or biological functions for the watershed.

These resources include mixed willow/oak/sycamore riparian woodland, oak woodland, mulefat and willow scrubs habitats, mixed grasslands, mixed chaparral, and coastal sage scrub that are native resources for many of the subunits of Santa Monica Bay/Calleguas/Los Angeles River watersheds. In addition, wetland and riparian resources will be protected that support western pond turtle, coast range newt, arroyo chub, California tree frog, southern steelhead trout and other sensitive species. Currently, the bulk of the aquatic reaches within the Service Area have degraded aquatic functions and services (chemical or biological) due to permitted or non-permitted activities, many of which have decreased the function of the waterways. Providing creation, enhancement, restoration and protection of these areas will greatly increase both the functions and services of the aquatic resources. If these resources are not preserved, degradation is more likely to continue and may accelerate due to projected increases in non-point source pollution, erosion, and sedimentation.

- B. The resources to be preserved contribute significantly to ecological sustainability of the watershed. In determining the contribution of those resources to the ecological sustainability of the watershed, MRT must use appropriate quantitative assessment tools, where available.

The preservation objectives articulated in Section 6 “Prioritize Mitigation Projects...” are expected to contribute significantly to the ecological sustainability of the watersheds, both within the Service Area and within downstream waters. MRT will use a wetland functional or conditional assessment methodology, such as the

California Rapid Assessment Method (CRAM) or other similar quantifiable assessment program, in the Service Area, including the areas that may require enhancement, restoration or establishment. A *Habitat Monitoring and Mitigation Program (HMMP)* will also be developed in response to the results of the assessments. It should be noted that even when such methodology is used, there may be instances where unforeseen circumstances occur and adaptive management of these sites is necessary. In these instances, best management practices for the site will be pursued in an expedient manner based upon site assessment and input from the interagency review team (IRT). Lastly, acreage should generally be the units used to determine compensatory mitigation credits, in place of linear stream feet.

C. Preservation is determined to be appropriate and practicable.

In consultation with the Corps, MRT staff will determine that the preservation of these outlined geographic conservation areas is appropriate and practical to the watershed. Habitat areas that are severely fragmented or have incompatible overlying restrictions will not be considered for inclusion in the program.

D. The resources are under threat of destruction or diverse modifications.

The resources that will be considered for the Program are under threat of adverse modifications and/or destruction from outside impacts. The extent and type of threats vary from property to property, and can be discussed in more detail as specific lands are proposed for acquisition. Many of the proposed areas have sensitive or rare habitats. Some of these areas are under threat of removal, degradation or extirpation of species.

E. The preserved sites will be permanently protected through an appropriate real estate or other legal instrument (e.g. conservation easement, or fee title).

MRT will establish accounts (through one or more endowments established through purchase of mitigation credits) to fund long-term maintenance of all preserved lands in perpetuity. Preservation will normally be completed in advance or in conjunction with aquatic resources restoration, enhancement and establishment activated as described above. Focus will also be placed on the establishment of buffers in upland and riparian areas to enhance the physical and biological characteristics of the protected aquatic resources.

8. Description of Stakeholder Involvement

Numerous governmental and non-governmental organizations work within the Service Area. MRT would continue its collaborative efforts with stakeholders, sharing data, expertise and other resources to collectively improve the aquatic functions of the watershed, utilizing watershed plans, recovery plans and priorities established by the

groups. Stakeholder involvement is critical to the success of conservation projects. The communities of the region are dependent upon a healthy ecosystem, and some community members are active conservation participants. MRT is a local non-governmental organization that works towards active stakeholder participation. Several organizations provide excellent forums for watershed issues, such as:

- A. *Malibu Creek Watershed Council*; A number of stakeholders began meeting in the late 1980's/early 1990's in the Malibu area. Through their efforts, a list of priority issues that need to be resolved was formulated. This led to the development of a Natural Resources Plan for the watershed which was prepared by the U.S. Natural Resources Conservation Service. Separate task forces and subcommittees have formed over the years to address specific issues. The Watershed Council consists of members from State and local agencies and organizations, environmental groups, business and dischargers, special districts and the general public. Their mission is to oversee and implement actions that will protect, enhance and restore habitats of the watershed, as well as improve water quality. Current active committees/task forces under the Council include those focusing on habitat/species, monitoring/water quality, education, and Rindge Dam. The Council's Malibu Lagoon Task Force served as an advisory group to a recently completed lagoon restoration plan. A copy of the final lagoon restoration plan funded by the Coastal Conservancy may be found at <http://www.healthebay.org/currentissues/mlhep/default.asp>. The Monitoring Subcommittee also meets regularly to serve as a Technical Advisory Committee to a Proposition 13 funded watershed-wide monitoring program. A Malibu Creek Ecosystem Restoration Feasibility Study is underway. The U.S. Army Corps of Engineers and California Department of Parks and Recreation are the major partners in this effort which will evaluate, among other options, the feasibility of restoring the ecosystem through removal of Rindge Dam. The Technical advisory group for the effort meets approximately monthly while a larger stakeholder focus group meets as needed. Watershed Council meetings occur every other month while subcommittees may meet intermittently or regularly. More information can be found at <http://www.malibuwatershed.org>.
- B. *Santa Monica Bay Restoration Commission (Watershed Council, Governing Board, Executive Committee, and Technical Advisory Committee)*; the SMBRC was formed in 1989 under the National Estuary Program and was originally called the Santa Monica Bay Restoration Project; it is charged with the responsibility of assessing the Bay's problems, developing solutions, and identifying implementation procedures. A Bay Restoration Plan was developed and is in the process of being implemented. A Regional Board member and sometimes a staff member attend the bimonthly meetings of the Commission's Governing Board, while another staff member attends the bi-monthly Technical Advisory Committee meetings. More information about SMBRC may be found at their website <http://www.santamonibabay.org>.
- C. *Topanga Watershed Committee*; the committee was formed in 1998 as a follow up to previous a community group working on developing alternatives to traditional flood

control measures. Their focus has expanded to include general watershed management and protection activities as well as volunteer monitoring. Work has also been completed to define the extent of restoration feasibly to Topanga Lagoon. The 205(j) grant-funded project conducted baseline water quality monitoring for two years during both dry and weather. A watershed management plan was finalized in 2002. Watershed residents continue work on implementation of actions identified in the Management Plan. The group meets on an as needed basis. More information about this group may be found at their website <http://www.topangacreekwatershedcommittee.org>.

- D. Los Angeles and San Gabriel Rivers Watershed Council;* The group was formed in 1995 following a large watershed conference held in the area which served as a springboard. The Council has a board of directors and became incorporated as a nonprofit organization in 1996. The group is tracking watershed activities, but has primarily focused on flood control issues in the Los Angeles River as well as opportunities to create greenbelts and restore habitat. The Council's goal is to help facilitate a process to preserve, restore, and enhance all aspects of the two watersheds. The Council has published a document entitled "Beneficial Uses of the Los Angeles and San Gabriel Rivers" which summarizes a great deal of information about the joint watershed. The Council has changed its meeting format and now conducts a quarterly watershed symposium. More information about this group may be found at their website <http://www.lasgrwc.org>.
- E. Friends of the Los Angeles River:* The Friends of the L.A. River is a non-profit organization formed in 1986 in support of Los Angeles River restoration activities. More information about the organization may be found at <http://www.folar.org>.
- F. Southern California Coastal Water Research Project (SCCWRP):* a research institute focusing on the coastal ecosystems of Southern California from watersheds to the ocean. SCCWRP was formed in 1969 to enhance the scientific understanding of linkages among human activities, natural events, and the health of the Southern California coastal environment; to communicate this understanding to decision makers and other stakeholders; and to suggest strategies for protecting the coastal environment for this and future generations. More information about this group may be found at their website <http://www.sccwrp.org/Homepage.aspx>.
- G. Santa Monica Mountains Conservancy/Mountains Recreation and Conservation Authority:* The Santa Monica Mountains Conservancy was established by the California State Legislature in 1980. Since that time, it has helped to preserve over 60,000 acres of parkland in both wilderness and urban settings, and has improved more than 114 public recreational facilities throughout Southern California. Through direct action, alliances, partnerships, and joint powers authorities, the Conservancy's mission is to strategically buy back, preserve, protect, restore, and enhance treasured pieces of Southern California to form an interlinking system of urban, rural and river parks, open space, trails, and wildlife habitats that are easily accessible to the general

public. More information about this group may be found at their website <http://smmc.ca.gov/>.

H. Resource Conservation District of the Santa Monica Mountains: The Resource Conservation District of the Santa Monica Mountains (RCDSMM) has proudly served the local community with its programs in watershed management, restoration, research and education for almost 50 years. The RCDSMM has planned and implemented riparian and wetland restoration projects, conducted monitoring for various sensitive habitats and species, worked toward the recovery of endangered fish populations, implemented habitat establishment and enhancement, and planned interpretive design projects. The RCDSMM works with public and private landowners to conserve natural resources throughout the Santa Monica Mountains and environs. The RCDSMM focus' on the following in our projects and activities: restoring native habitat and monitoring endangered species; providing environmental education to local schools; translating scientific research into practical solutions; promoting water conservation and improving water quality; collaborating on local projects with partners, including local, state, and federal agencies and organizations; and, offering a variety of volunteer opportunities. More information about this group may be found at their website <http://www.rcdsmm.org/>.

I. Calleguas Creek Watershed Stakeholder Committee: Beginning in 1996, a broad coalition of local property owners, water and wastewater agencies, environmental groups, agricultural parties, governmental entities, and other private interests joined together to openly develop a management plan for the Calleguas Creek Watershed. The Calleguas Creek Watershed Stakeholder Committee was formed to produce a plan for implementing a coordinated water quality and land use planning strategy for the watershed as a whole. To address the various issues and concerns in the watershed, the Stakeholder Committee was divided into four subcommittees: Water Resources/Water Quality; Habitat/Natural Resources/Recreation; Flood Protection and Sedimentation; and, Public Outreach and Education. Given the complexity of issues being addressed and the diverse nature of the Stakeholder Committee members, the planning process and implementation of recommendations will occur into the 21st century. The planning process is an opportunity for local parties to take a greater role in governing local resources, balancing the needs of all stakeholders, and assuring a healthy and sustainable watershed for future generations. More information about this group may be found at their website <http://www.calleguascreek.org/ccwmp/index.asp>.

9. Long-Term Protection and Management Strategy

The sites acquired, enhanced and/or restored with Program funds will be protected in-perpetuity by either the underlying governmental agency landowner's statutes or a conservation easement in a form acceptable to the Corps. Long term management of the resources will be the responsibility of MRT with funds provided by the ILF, and will be

funded largely through endowments established solely for this purpose (33 CFR 332.7(d)(2) and 332.8(u)(3)). Refer to Section VII “Description of the In-Lieu Fee Program Account” for further discussion of this topic.

10. Strategy for Periodic Evaluation and Reporting

MRT will create an annual report (with photos) briefly evaluating each current project. MRT will visit each mitigation site as necessary to inspect restoration or enhancement measures as needed, but no less than quarterly for the first five years, or until success criteria has been achieved, whichever occurs later. Thereafter site visits will occur on an annual basis. The reports will be provided to the Corps each year, and to any other regulatory agency upon request. On an annual basis, MRT will also gather and report comprehensive data on all of their current ILF projects, watershed (or sub-watershed) wide to provide an overall view of the Program's effect on the watershed's aquatic resources. MRT recognizes the need for adaptive management in many cases, and will coordinate with the Corps and other IRT members on a proposed approach to resolution of persistent problems or large-scale damage of mitigation sites.

Exhibit B: Program Service Area Map

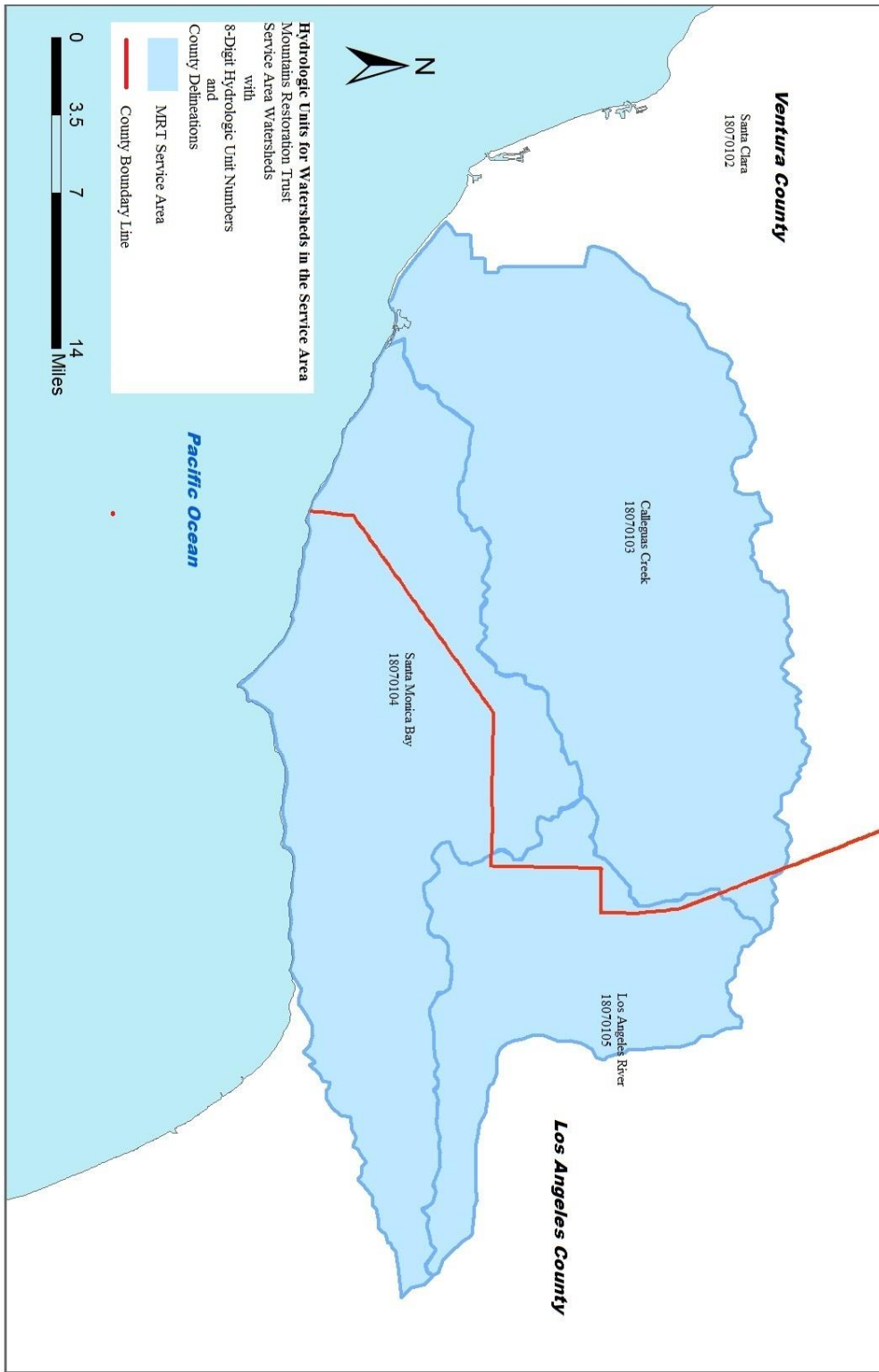


Exhibit C: Instrument Modifications

Instrument Modifications

As ILF Projects are identified, Program Sponsor 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). Other forms of Instrument modifications, including expansion of approved ILF Projects, will also follow the process outlined herein.

Requests for Instrument modifications will be accompanied by the appropriate supporting documentation as determined by the District Engineer. The Parties 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
- Proposed service area
- 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 USACE 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 District Engineer for a completeness review. The draft amendment will include the following information as required by 33 C.F.R. 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 USACE 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 it 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 to the Program 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 will have 30 days to notify the USACE if they have concerns with the proposed modification. If IRT members or Program Sponsor notify the USACE 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 C.F.R. 332.8) within 15 days of receipt of the notification, the USACE will notify the Program Sponsor of its 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 Form

Mountains Restoration Trust 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 Mountains Restoration Trust In-Lieu Fee Program to [Permittee Name]

The Mountains Restoration Trust 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, Mountains Restoration Trust 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:)
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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 [ILF Sponsor name], a _____ ("**Grantee**") with reference to the following facts:

R E C I T A L S

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 "A"** 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 on **Exhibit "B"** 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 [and Government Code 65966]. 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, Region IX of the United States Environmental Protection Agency (“**USEPA**”), and [list all agencies who are signatory to ILFEI] 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, USEPA, and [include the other agencies] 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 Interim Management Plan; or

(2) In-perpetuity maintenance obligations (“**Long-Term Maintenance**”) that occur on the Easement Area as described in Section 14 herein; or

(3) 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 “C.”** The present Natural Condition is evidenced in part by the depiction of the Easement Area attached on **Exhibit “D,”** 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 County area 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 the 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 Property, 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 of 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;

(e) 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;

(f) 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 ACOE 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 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 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 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 65966 (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: [INSERT NAME AND ADDRESS]

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

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 or qualification under state or federal laws, and must be consistent with the OVLC Easement Amendment Policy. 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 Ventura 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.

(3) 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).

(4) 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 ACOE 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].

(o) 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.

(p) Funding. Funding for the perpetual management, maintenance and monitoring of the Easement Area is specified in and governed by the ILFEI and the Long-term 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 _____, is accepted by the undersigned officers on behalf of Grantee.

GRANTEE:

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

Attest:

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

Exhibit A

Legal Description of Property

[See attached]

Exhibit B

Legal Description and Depiction of Easement Area

[See Attached]

Exhibit C

Title Report

[See Attached]

Exhibit D

Map of plotted encumbrances and the major, distinct natural features on the Easement Area

[See Attached]

Exhibit E

Annual Inspection Report Form

[See Attached]

Annual Review of the Easement Area

(All actions shall be undertaken at the discretion of the _____, 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

		(Circle One)	
1. Supplemental Watering	NOT OBSERVED	OBSERVED	N/A
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<hr/>			
<hr/>			
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(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
<hr/>			
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(If observed, describe corrective action or response taken)

3. Fire Protection activities.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

4. Off-Road Vehicle use.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

5.	Grazing or agriculture.	OBSERVED	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

6.	Horseback riding, bicycling, hunting or fishing.	OBSERVED	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

7.	Construction or placement of any building, billboard or sign.	OBSERVED	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

8.	Dumping or accumulation of trash.	OBSERVED	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

9.	Planting of non-native plants.	OBSERVED	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

10.	Excavation or extraction of minerals/soil.	OBSERVED	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

11.	Recent alterations of topography/grading.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

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

13.	Activities detrimental to water quality.	NOT OBSERVED	OBSERVED	N/A
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(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 Mountains Restoration Trust (MRT) and the Los Angeles District of the U.S. Army Corps of Engineers, and Region IX of the U.S. Environmental Protection Agency, 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 Ventura River Watershed In-Lieu Fee Program (VRWILF).

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 upon the Property pursuant to the VRWILF 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.
2. The Property is available to be burdened by the Conservation Easement for the conservation purposes identified in the Conservation Easement, in accordance with the VRWILF Program Instrument.
3. 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.]
4. 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 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.
5. 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.

6. 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.

7. 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.

8. 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; and
- 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)

[Attached]

Exhibit J: Credit Ledger Report Form

Exhibit J: Credit Ledger						
Santa Monica Bay/ L.A. River/ Calleguas Creek Watershed ILF Program						
		Advanced Credits in Service Area			Project Site	
		Advanced Credits Initially Awarded By ACOE	Advanced Credits Sold By MRT	Advanced Credits Available for Sale by MRT	Credits Awarded by ACOE from approved Development Plan	Number of Credits Released
	Re-establishment					
	Rehabilitation					
	Establishment					
	Enhancement					
	Buffer					
	Total					