

IN-LIEU FEE ENABLING INSTRUMENT

RIVERSIDE-CORONA RESOURCE CONSERVATION DISTRICT

IN-LIEU FEE PROGRAM

This In-Lieu Fee Enabling Instrument (“Instrument”), dated this ___ day of _____, 2012 (“Execution Date”), is made by and between Riverside-Corona Resource Conservation District (“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 Regional Water Quality Control Board, Region 8 (“RWQCB”). The USACE, USEPA, and RWQCB comprise and are referred to jointly as the Interagency Review Team (“IRT”). The Program Sponsor and the IRT members who have agreed to sign this Instrument are hereinafter referred to jointly as the “Parties.” This Instrument sets forth the agreement of the Parties regarding the establishment, use, operation and maintenance of the Riverside-Corona Resource Conservation District In-Lieu Fee Program (the “Program”).

RECITALS

- A. The Program Sponsor is responsible for establishing and operating the Program.
- B. USACE and USEPA have jurisdiction over Waters of the U.S. pursuant to the Clean Water Act, 33 U.S.C § 1251 *et seq.* Waters of the U.S. include jurisdictional wetlands.
- C. RWQCB is charged with preserving, protecting, enhancing, and restoring water quality pursuant to the Porter-Cologne Water Quality Control Act, California Water Code Section 13000 *et seq.* in addition to Section 401 of the Clean Water Act.
- D. The IRT is the interagency group which oversees the establishment, use, operation, and maintenance of the Program.
- E. 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.
- F. 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.

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 the document that formally establishes an ILF Project and stipulates the terms and conditions of its construction and habitat establishment activities required to be conducted on the ILF Project site to establish Credits. Each Development Plan will be bound by the terms and conditions of the Instrument by reference.
10. “Enhance” or “Enhancement” means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a

specific aquatic resource Function(s). Enhancement results in the gain of selected aquatic resource Function(s), but may also lead to a decline in other aquatic resource Function(s). Enhancement does not result in a gain in aquatic resource area.

11. “Establish” or “Establishment” means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and Functions.
12. “Force Majeure” shall mean war, insurrection, riot or other civil disorder, flood, drought, lightning, earthquake, fire, landslide, disease, effects of climate change on habitat or hydrology, condemnation or other taking by governmental body. Other conditions beyond the Program Sponsor’s control will include: interference by third parties; condemnation or other taking by any governmental body; change in applicable law, regulation, rule, ordinance, or permit condition, or the interpretation or enforcement thereof; any order, judgment, action or determination of any federal, state or local court, administrative agency or governmental body; and/or suspension or interruption of any permit, license, consent, authorization or approval.
13. “Functions” mean the physical, chemical, or biological processes that occur in ecosystems.
14. “ILF Project” means Compensatory Mitigation implemented by the Program Sponsor under the Program.
15. “Impacts” mean adverse effects.
16. “Interim Management Period” means the period from the Program Establishment Date until all the Performance Standards in the Development Plan have been met.
17. “Interim Management Plan” means the document that describes the management, monitoring, Adaptive Management, reporting and other activities to be implemented by the Program Sponsor during the Interim Management Period. Each Interim Management Plan will be bound by the terms and conditions of the Instrument by reference.
18. “Long-term Management Period” means the period beginning upon conclusion of the Interim Management Period and continuing in perpetuity, during which each ILF Project is to be managed, monitored and maintained pursuant to the Long-term Management Plan.
19. “Long-term Management Plan” means the document that identifies specific land management activities that are required to be performed at each of the ILF Project sites, including, but not necessarily limited to, biological monitoring, improvements to biological carrying capacity, enforcement measures, and other actions designed to protect

or improve the habitat values of the ILF Project site. Each Long-term Management Plan will be bound by the terms and conditions of the Instrument by reference.

20. "Performance Standards" means the minimum standards set forth in the Development Plan to define the successful development of Waters of the U.S.
21. "Phase I Environmental Site Assessment" is an assessment of the environmental condition of the Property performed in accordance with the American Society of Testing and Materials (ASTM) Standard E1527-05 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process," or any successor to such ASTM Standard which is active at the time of the assessment.
22. "Preservation" means the protection of existing ecologically important wildlife, habitat or other ecosystem resources in perpetuity.
23. "Program Account" means an account established by the Program Sponsor at an institution that is a member of the Federal Deposit Insurance Corporation and that is used by the Program Sponsor for the purpose of providing compensatory mitigation for Department of the Army permits.
24. "Program Establishment Date" is the date determined pursuant to Section IV.D., when the Program is considered established and Transfer of Advance Credits may begin.
25. "Property Assessment" means the written ILF Project site evaluation signed by the Program Sponsor, using the form attached in **Exhibit I**.
26. "Remedial Action" means any corrective measures which the Program Sponsor is required to take to ameliorate any injury or adverse Impact to the ILF Project Site as Preserved, Restored or Enhanced or as a result of a failure to achieve the Performance Standards.
27. "Re-establishment" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area, Functions and services.
28. "Rehabilitation" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource Function, but does not in a gain in aquatic resource area.
29. "Restore" or "Restoration" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic

resource area, restoration is divided into two categories: re-establishment and rehabilitation.

30. "RIBITS" means the Regulatory In-Lieu Fee and Bank Information Tracking System.
31. "Services" mean the benefits that human populations receive from Functions that occur in ecosystems.
32. "Service Area" means the geographic area(s) within which Impacts to Waters of the U.S. that occur may be compensated through Credits from the Program.
33. "Subordination Agreement" means a written, recorded agreement in which the holder of an interest in, or lien or encumbrance on the ILF Project site makes the lien or encumbrance subject to and of lower priority than the Conservation Easement or equivalent protection mechanism, even though the lien or encumbrance was recorded before the Conservation Easement or equivalent protection mechanism.
34. "Transfer" means the use, sale, or conveyance of Credits by the Program Sponsor.
35. "Unlawful Act" shall mean the unlawful act of any person or entity other than the Program Sponsor and shall include an event or series of events, such as the intentional release within the ILF Project site(s), or any connected watercourse, of any Hazardous Substance, or the discharge of such a substance in violation of a statute, ordinance, regulation or permit, which event or series of events has a material and detrimental impact on the ILF Project site.
36. "Waters of the U.S." mean 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 Santa Ana River watershed 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 VII). Any deviation in excess of ten percent from the approved budget will require USACE approval before additional funds are disbursed. The USACE may review Program Account records with 14 days written notice. When so requested, Program Sponsor shall provide all books, accounts, reports, files, and other records relating to the Program Account.

D. Program Establishment Date

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

E. ILF Projects

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

F. Establishment and Use of Credits

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

SECTION V: ILF PROJECT ESTABLISHMENT AND OPERATION

This section identifies the general framework in which individual ILF Projects will be established and operated. Each ILF Project will be approved individually, as detailed herein, and the specific requirements for its operation, monitoring, and management will meet the USACE standard operating procedures at the time of its approval. The Program Sponsor shall provide for access to the ILF Project site by members of the IRT or their agents or designees at reasonable

times as necessary to conduct inspections and compliance monitoring with respect to the requirements of this Instrument. Inspecting parties shall not unreasonably disrupt or disturb activities on the ILF Project site, and will provide written notice within reasonable time prior to the inspection.

A. Establishment

1. Project Site Selection

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

2. Instrument Modifications

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

3. Permits

The Program Sponsor will obtain all applicable permits and authorizations needed to construct and maintain the ILF Project(s). This Instrument does not constitute or substitute for any such approval.

4. Financial Assurances

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

- a. Funds outlined in approved ILF Project budgets will be earmarked, held in the Program Account, and disbursed as work is accomplished to operate and monitor the individual ILF Projects.
- b. Funds outlined in approved ILF Project budgets will be earmarked, held in the Program Account to manage the individual ILF Project, including contingency 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 VII.A of this Instrument. The Program Sponsor shall upload annual reports into RIBITS.

4. Remedial Action Plan

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

- a. Within 60 days of the date of written notice from the IRT, the Program Sponsor shall develop a Remedial Action plan and submit it to the IRT for approval. The Remedial Action plan must identify and describe proposed actions to achieve the Performance Standards or ameliorate injury or adverse impact to the ILF Project site and set forth a schedule within which the Program Sponsor will implement those actions. The Program Sponsor shall implement the necessary and appropriate Remedial Action in accordance with the Remedial Action plan approved by the IRT. In the event the Program Sponsor fails to submit a Remedial Action plan to the IRT in accordance with this section, the IRT will notify the Program Sponsor that the Program Sponsor is in default and may identify Remedial Action the IRT members deems necessary. If (a) the Program Sponsor fails to develop a Remedial Action plan or to implement Remedial Action identified by the IRT, in accordance with this section, or (b) conditions have not improved or continue to deteriorate two years after the date that the IRT approved a Remedial Action plan or notified Program Sponsor of Remedial Actions the IRT

deemed necessary, then the USACE may direct funds from the Program Account to undertake Remedial Action on the ILF Project site.

- b. If the USACE determines, in consultation with the IRT, that the Program is operating at a Credit deficit (i.e., that Credit Transfers made exceed the Credits authorized for release, as adjusted in accordance with this Instrument), then the USACE shall notify the Program Sponsor. Upon the USACE giving such notice, Program Sponsor shall immediately cease Transfer of Credits. The USACE, in consultation with the IRT, will determine what Remedial

Action is necessary to correct the Credit deficit, and Program Sponsor shall implement such Remedial Action, in accordance with this Section V.B.4.

5. Long-term Ownership and Protection

Program Sponsor shall be responsible for ensuring long-term protection of each ILF Project through the use of real estate instruments 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: CREDIT ACCOUNTING

A. Advance Credits

Upon the Program Establishment Date, Program Sponsor is permitted to Transfer fifty (50) Advance Credits. The number of Advance Credits that are approved for Transfer was developed in coordination with the USACE and IRT and is based on (1) the 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. No more than 25%, or 12.5 Advance Credits, may be Transferred and later fulfilled as Preservation Credits. At least 75% of the Advance Credits must be fulfilled as Establishment, Enhancement, Buffer and/or Restoration Credits.

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 VII.
8. Subject to the limitations on any duty of the Program Sponsor to remediate outlined in Section VIII.A, if a ILF Project site is damaged after the Program Establishment Date, and such damage materially impairs Waters of the U.S. or habitat values on such damaged ILF Project site, then the USACE, in consultation with the IRT, may, at its discretion, direct Program Sponsor to suspend the Transfer of Credits and/or reduce the number of Credits allocated to the ILF Project in proportion to such damaged area unless and until the Program Sponsor has reasonably restored such damaged area, if required, pursuant to a Remedial Action plan approved by the IRT.

SECTION VII: PROGRAM REPORTING

A. Annual Report

Program Sponsor shall upload an annual report to RIBITS and furnish a copy to each member of the IRT, in hard copy and in editable electronic format, on or before September 30th of each year following the Program Establishment Date. Each annual report shall cover the period from July 1 of the preceding year (or if earlier, the Program Establishment 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.

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 VIII: OTHER PROVISIONS

A. Force Majeure

1. The Program Sponsor shall be responsible to maintain the ILF Project site and perform Remedial Action except for damage or non-compliance caused by Catastrophic Events, events of Force Majeure or Unlawful Acts. In order for such exception to apply, the Program Sponsor shall bear the burden of demonstrating all of the following:
 - a. That the damage or non-compliance was caused by circumstances beyond the control of the Program Sponsor and any person or entity under the direction or control of the Program Sponsor, including its employees, agents, contractors and consultants;
 - b. That neither the Program Sponsor, nor any person or entity under the direction or control of the Program Sponsor, including its employees, agents, contractors and consultants, could have reasonably foreseen and prevented such damage or non-compliance; and
 - c. The period of damage or non-compliance was a direct result of such circumstances.
2. The Program Sponsor shall cease Transfer of Credits and notify the IRT within seventy-two (72) hours of occurrence of a Catastrophic Event, event of Force Majeure, or Unlawful Act, and as promptly as reasonably possible thereafter Program Sponsor and the IRT shall meet to discuss the course of action in response to such occurrence. In the meantime, Program Sponsor shall continue to manage and maintain the ILF Project to the full extent practicable.

B. Default

1. *Notice of Violation.* In the event that the Program Sponsor is in violation of the terms of this Instrument or that a violation is threatened, the USACE may demand the cure of such violation. In such a case, the USACE shall issue a written notice to the Program Sponsor

(hereinafter “Notice of Violation”) informing the Program Sponsor of the actual or threatened violations and demanding cure of such violations.

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

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

4. *Notice of Dispute.*

a. If the Program Sponsor provides the USACE with a Notice of Dispute, as provided herein, the USACE shall meet and confer with the Program Sponsor at a mutually agreeable place and time, not to exceed thirty (30) days from the date that the USACE receive the Notice of Dispute. The USACE shall consider all relevant information concerning the disputed violation provided by the Program Sponsor and shall determine whether a violation has in fact occurred and, if so, whether the Notice of Violation and demand for cure issued by the USACE is appropriate in light of the violation.

b. If, after reviewing the Program Sponsor’s Notice of Dispute, conferring with the Program Sponsor, and considering all relevant information related to the violation, the USACE determines that a violation has occurred, the USACE shall give the Program Sponsor notice of such determination in writing. Upon receipt of such determination, the Program Sponsor shall have fifteen (15) days to cure the violation. If said cure reasonably requires more than fifteen (15) days, the Program Sponsor shall, within the fifteen (15) day period, submit to the USACE for review and approval a plan and time schedule to diligently complete a cure. The Program Sponsor shall complete such cure in accordance with the approved plan.

C. Dispute Resolution

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

D. Modification, Amendment and Termination of Instrument

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

2. *Termination/Program Closure.* Any Party to this Instrument may terminate its participation in this agreement by giving 60 days written notice to the other Parties. In the event that the Program operated by Program Sponsor is terminated (i.e., closed), Program Sponsor is responsible for fulfilling any remaining ILF Project obligations including the successful completion of ongoing mitigation projects, relevant maintenance, monitoring, reporting, and long-term management requirements. Program Sponsor shall remain responsible for fulfilling these obligations until such time as the long-term financing obligations have been met and the long-term ownership of all mitigation lands has been transferred to the party responsible for ownership and all long-term management of the project(s). Funds remaining in the Program Accounts after these obligations are satisfied must continue to be used for the Restoration, Establishment, Enhancement, and/or Preservation of aquatic resources within the Service Area. The USACE shall direct the Program Sponsor to use these funds to secure Credits from another source of third-party mitigation, such as another in-lieu fee program, mitigation bank, or another entity such as a governmental or non-profit natural resource management entity willing to undertake the compensation activities. The funds should be used, to the maximum extent practicable, to provide compensation for the amount and type of aquatic resource for which the fees were collected.

E. Controlling Language

The Parties intend the provisions of this Instrument and each of the documents incorporated by reference in it to be consistent with each other, and for each document to be binding in accordance with its terms. To the fullest extent possible, these documents shall be interpreted in a manner that avoids or limits any conflict between or among them. However, if and to the extent that specific language in this Instrument conflicts with specific language in any document that is incorporated into this Instrument by reference, the specific language within the Instrument shall

be controlling. The captions and headings of this Instrument are for convenient reference only, and shall not define or limit any of its terms or provisions.

F. Entire Agreement

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

G. Reasonableness and Good Faith

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

determination, the determining Party shall furnish its reasons in writing and in reasonable detail within 30 days following the request.

H. Successors and Assigns

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

I. Partial Invalidity

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

J. Notices

1. Any notice, demand, approval, request, or other communication permitted or required by this Instrument shall be in writing and deemed given when delivered personally, sent by receipt-confirmed facsimile, or sent by recognized overnight delivery service, addressed as set forth below, or five days after deposit in the U.S. mail, postage prepaid, and addressed as set forth below.

2. Notice by any Party to any other Party shall be given to all Parties. Such notice shall not be effective until it is deemed to have been received by all Parties.
3. Addresses for purposes of giving notice are set forth below. Any Party may change its notice address by giving notice of change of address to the other Parties in the manner specified in this Section VIII.J.

Program Sponsor:

Riverside-Corona Resource Conservation District
4500 Glenwood Drive, Building A
Riverside, CA 92501-3042
Attn: District Manager
Telephone: (951) 683-7691
Fax: (951) 683-3814

Best Best & Krieger LLP
P.O. Box 1028
Riverside, CA 92502-1028
Attn: General Counsel for RCRCDD
Telephone: (951) 686-1450
Fax: (951) 683-3083

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 Regional Water Quality Control Board
Region 8
3737 Main Street, Suite 500
Riverside, CA 92501
Telephone: (951) 782-4130
Fax: (951) 781-6288

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 IX: EXECUTION

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

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

Program Sponsor
Riverside-Corona Resource Conservation District

Alfred B. Bonnett
President, Board of Directors

Date

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

R. Mark Toy, P.E.
Colonel, US Army
Commander and District Engineer

Date

U.S. Environmental Protection Agency, Region IX

Director, Water Division

Date

California Regional Water Quality Board
Region 8

Executive Officer

Date

Exhibit A: Prioritization and Compensation Planning Framework

The Compensation Planning Framework (§§332.8(d)(2)(viii)(A) & 332.8 (c))

Strategies that will be used by the RCRCD to select, secure and implement aquatic resources will involve the following.

- (a) **Section 332(c)(2)(i): The geographic Service Area, including a watershed-based rationale for the delineation of each Service Area.**

The geographic Service Area falls within the Santa Ana River Watershed, as set forth in Exhibit B. This watershed has lost many of its aquatic functions and values from external impacts in the watershed. Consequently, there are specific restoration needs within the watershed. In using this watershed as the basis for the Program, impacts within this watershed would be offset by compensatory mitigation within the same watershed, promoting the goal of no-net loss of functions on a watershed basis.

A watershed-based rationale for the creation of each proposed conservation area described in this section will be based upon what resources (wetland, riparian, ephemeral) would be best protected and how those resources would be conserved through the purchase and creation of new conservation easements and by restoring conservation easements that do not have sufficient funds for long term maintenance or restoration. Since many of the proposed conservation areas are in sub watersheds of the Santa Ana River, (see subunits and sub watersheds table 1) conserving and managing these lands through a series of conservation easements would best protect the resources for the long-term since many of these areas are on private lands with little or no current protection.

Under section 1900 of the State of California Fish and Game code, it states that “the maintenance of sufficient populations of all species of aquatic organisms to insure their continued existence shall be made and that areas containing diverse ecological and geological characteristics are vital to the continual health and well being of the state's natural resources and of its citizens.”

“There is insufficient incentive for private landowners to maintain and perpetuate significant local natural areas in their natural state. (d) Efforts to preserve natural areas have been fragmented between federal, state, local, and private sectors. The Legislature further finds and declares that it is the policy of this state to encourage the cooperation of federal, state, local, and private sectors, including private organizations and individuals, in efforts to maintain the state's most significant natural areas.” (DFG code sec. 1900-1930).

Protection of such lands in contiguous conservation easements in cooperation with the landowner will allow the RCRCD to secure and implement aquatic resource conservation by reducing threats to aquatic resources in these areas through the creation and management of these easements.

According to the Santa Ana Watershed Project Authority (SAWPA) Integrated Watershed Management Plan (see <http://www.sawpa.org/owow-generalinfo.html>), “Many water bodies of the mountains and coastal plains connect and wind their way through the alluvial fans and arroyos of the watershed. This network provides lush habitat in southern California’s otherwise semi-arid environment, cleans runoff before it reaches downstream shorelines, and provides opportunities for recharging precious groundwater basins along the way. Keeping the network of stream channels healthy as functioning habitat also keeps it

functioning optimally in providing other benefits.” (SAWPA IWMP, p. 11.) These habitat functions and values will be increased or maintained through the ILF program.

Table 1 - Hydrologic Boundaries, Subareas and Subunits – Santa Ana River Watershed within the RCRC Service Area proposed for the Program.

Watershed	DWR Unit #	Number of Established RCD C.E.s
Middle Santa Ana Hydro Subunit	Y – 1.B0	6
Temescal Hydro Subarea	Y – 1.B5	5
Arlington Hydro Subarea	Y – 1.B6	0
Riverside Hydro Subarea	Y – 1.B7	0
Lake Mathews Hydro Subunit	Y – 1.C0	2
Coldwater Hydro Subarea	Y – 1.C1	0
Bedford Hydro Subarea	Y – 1.C2	0
Cajalco Hydro Subarea	Y – 1.C3	1
Lee Lake Hydro Subarea	Y – 1.C4	0
Totals	9	14

The watershed-based rationale for each proposed conservation area is described below (§332.8 (c)(2)(i)).

1. **Bedford Wash** – Bedford Wash is contained in the Lake Mathews Hydro Subunit and within the Bedford Hydro subarea, which falls within the Santa Ana Watershed. Approximately 20 total acres.
2. **Lower Coldwater Creek** – Coldwater Creek falls within the Coldwater Hydro Subarea and in the Lake Mathews Hydro Subunit, Santa Ana Watershed. Approximately 18 total acres.
3. **Horsethief Creek** – Horsethief Creeks falls within the Lee Lake Hydro Subarea and in the Lake Mathews Subunit, Santa Ana Watershed. Approximately 12 total acres.
4. **Dawson Canyon and unnamed tributaries** – Dawson Canyon falls within the Cajalco Hydro Subarea and in the Lake Mathews Hydro Subunit, Santa Ana Watershed. Approximately 50 total acres.
5. **Lower Temescal Creek** – Lower Temescal Creek is within the Temescal Hydro Subarea and part of the Middle Santa Ana Hydro Subunit. Approximately 125 total acres.
6. **Upper Temescal Creek and unnamed tributaries** – Upper Temescal Creek falls within the Lee Lake Hydro Subarea and in the Lake Mathews Hydro Subunit, Santa Ana Watershed. Approximately 100 total acres.
7. **Arlington Creek** – Arlington Creek falls within the Arlington Hydro Subarea and in the Middle Santa Ana Hydro Subunit, Santa Ana Watershed. Approximately 15 total acres.
8. **La Sierra and McAllister Creeks** – Both of these creeks fall within the Riverside Hydro Subarea and the Middle Santa Ana Hydro Subunit, Santa Ana Watershed. Approximately 20 total acres
9. **Goldenstar Creek** – This creek falls within the Riverside Hydro Subarea and the Middle Santa Ana Hydro Subunit, Santa Ana Watershed. Approximately 12 total acres.

- 10. Olsen Canyon** – Olsen Canyon falls within the Cajalco Hydro Subarea and the Lake Mathews Hydro Subunit, Santa Ana Watershed. Approximately 8 acres.
- 11. Springbrook Wash** – This wash falls within the Riverside Hydro Subarea, Middle Santa Ana Hydro Subunit, Santa Ana Watershed. Approximately 25 total acres.
- 12. McBride Canyon** – This canyon falls within the Bedford Hydro Subarea, Lake Mathews Hydro Subunit, Santa Ana Watershed. Approximately 19 total acres.
- 13. McBride Flood Control Pond** – This pond habitat falls within the Bedford Hydro Subarea, Lake Mathews Hydro Subunit, Santa Ana Watershed. Approximately 2 total acres.
- 14. Reche Canyon and unnamed tributaries** – This ephemeral drainage falls within the Riverside Hydro Subarea, Middle Santa Ana Hydro Subunit, Santa Ana Watershed. Approximately 7 total acres.
- 15. Brown Canyon** – This ephemeral oak woodland falls within the Coldwater Hydro Subarea, Lake Mathews Hydro Subunit. Approximately 10 total acres.
- 16. Cajalco Creek and unnamed tributaries**– This creek falls with in the Cajalco Hydro Subarea and the Lake Mathews Hydro Subunit, Santa Ana River Watershed. Approximately 40 total acres.
- 17. Mockingbird Creek and unnamed tributaries**– This creek and its tributaries fall within the Arlington Hydro Subarea, Middle Santa Ana Hydro Subunit, Santa Ana River Watershed. Approximately 50 total acres.
- 18. Box Springs Creek** – This creek falls within the Riverside Hydro Subarea and the Middle Santa Ana Hydro Subunit, Santa Ana River Watershed. Approximately 5 total acres.
- 19. Grand Terrace Wetlands** – This drainage area falls within the Riverside Hydro Subarea and the Middle Santa Ana Subunit, Santa Ana River Watershed. Approximately 6 acres.
- 20. Main Street Canyon** – This watershed falls within the Arlington Hydro Subarea, Middle Santa Ana Hydro Subunit with approximately 27 acres.
- 21. Sycamore Canyon** – This drainage area falls within the Coldwater Hydro Subarea, Lake Mathews Hydro Subunit with approximately 4.5 acres.
- 22. Tagorada Conservation Easement** - This established .34 conservation easement falls within the Mockingbird watershed and requires .34 acres of restoration in the Cajalco Hydro Subarea, Lake Mathews Hydro Subunit.
- 23. Lee Lake Conservation Easement** – This established conservation easement contains 9 acres of habitat that falls within the Temescal Hydro Subarea and the Middle Santa Ana Hydro Subunit, Santa Ana Watershed and has 8.03 acres of enhancement and 0.95 acres of restoration.
- 24. Temescal Open Space** – This site has 8.50 acres of habitat in the Cajalco Hydro Subarea and the Lake Mathews Hydro Subunit, Santa Ana Watershed. The easement has 1.60 acres of restoration, 1.50 acres of enhancement and 5.4 acres of buffer.
- 25. Chandler Easement** – This site occurs in the Cajalco Hydro Subarea and is part of the Lake Mathews Hydro Subunit. The easement consists of 2.76 acres of preservation, 2.20 acres of enhancement and 0.54 acres of restoration.

(b) **Section 332.8(c)(2)(ii): A description of the threats to aquatic resources in the Service Area, including how the in-lieu fee program will help offset impacts resulting from those threats;**

Aquatic resource impacts in the Temescal, Santa Ana and other watersheds are expected from several sources, which could very well occur in the near future. Typical permitted actions allowing for minor amounts of impact have included maintenance, outfall structures, utility lines, temporary construction access, and storm water management. These types of activities would continue to have an extremely limited impact on aquatic resources. Activities with more substantial impacts include flood management activities, linear transportation projects, residential, commercial and institutional developments. The Program would help offset these impacts through more intelligent decision-making of compensatory mitigation through a watershed approach. The functions and values lost would be offset in a manner that would create a greater likelihood of restoration success.

Specific needs within the watershed would be identified and compensatory mitigation would be directed at these areas. Consideration of nearby landscape stressors would allow for more effective site-selection in order to reduce indirect effects of surrounding land uses (buffers) on particular habitat functions. Under the Santa Ana Watershed Project Authority Integrated Watershed Management Plan, many of the upper drainages are strewn with boulders and characterized by sand and gravel washes, such as Temescal Canyon. Within these areas, “the transport and depositional processes are less confined by higher terrain as water, dissolved material, and sediment move toward the sea. Over time, aquatic and terrestrial wildlife have adapted to this dynamic process. However, rapid urbanization has artificially increased the rate of sedimentation and loss of habitat in this part of the watershed, negatively affecting water quality and wildlife habitat.” (SAWPA, IWMP, p. 52.)

By helping to ensure these lands are properly managed, the ILFP will have the opportunity to increase aquatic resource values by targeting areas that require more intensive management strategies. Ecosystem restoration can include changing the flows in streams and rivers; restoring fish and wildlife habitat and controlling waste discharges.

Under the SAWPA Integrated Watershed Management Plan, “a prerequisite for any 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, p. 440.)

Once established, the RCRCDD will conduct preliminary monitoring of the priority ILF Project sites to determine current aquatic resource conditions, functional values and approximate acreages to be restored, enhanced or created and to determine occupation by listed and sensitive species. The acreages listed under the ILFP in Table 2 are intended to be conserved in easements or other appropriate legal mechanisms established through the program and, thus, will receive management based upon their condition determined at the time of acquisition.

1. If a Catastrophic Event, event of Force Majeure or Unlawful Act occurs at an ILF Project site before success criteria are met (usually within the first five (5) years), Program Sponsor will assess the particular site once it has been deemed safe to enter and perform the following steps:

- (a) Assess damage to current mitigation site, including but not limited to, loss of temporary irrigation system, erosion, plant material loss, sign and fencing loss, potential debris and trash removal;
- (b) Notify the U.S. Army Corps of Engineers of the identified loss;
- (c) Contact RCRC's insurance provider to determine if coverage is applicable;
- (d) Provide an ILF Project site specific Remedial Action plan to address any temporal losses to the U.S. Army Corps of Engineers for review and approval;
- (e) Provide weeding of the site, if necessary;
- (f) Replant based on percentage and plant diversity loss;
- (g) Obtain funding from either insurance (if available) or from the Remedial Action line item charged as part of the Program's fee associated with the ILF Project site in question.

If such a Catastrophic Event, event of Force Majeure or Unlawful Act were to occur, Program Sponsor plans to restore the ILF Project Site to its previous level of achievement at the point the Catastrophic Event occurred before seeking further Credit Releases.

2. If a Catastrophic Event, event of Force Majeure or Unlawful Act occurs at an ILF Project site after success criteria are met (i.e., during the Long-Term Management Period), Program Sponsor will assess the ILF Project site and determine whether action needs to be taken including, without limitation, the potential expenditure of removing invasive weed species if funds are available for this purpose, subject to the understanding that uncontrollable events, such as fire and floods, are part of the natural process.

(c) **Section 332.8(c)(2)(iii): An analysis of historic aquatic resource loss in the Service Area.**

Over the last 100 years, the Santa Ana Watershed and its associated tributaries have come under increased stress. Aquatic losses from these drainages has been dramatic during that time and as noted by Moyle (2002), "most of California's inland waterways today bear little resemblance to the streams and lakes encountered by the first European explorers and settlers." (SAWPA IWMP, p. 56.) In the watershed, this observation is true as flood control and channelization activities have left portions of these drainages channelized where once riparian gallery forests grew along a meandering stream. These impacts have reduced riparian areas in the watershed by more than 80% (Swift et al) and the remaining habitats are fragmented, degraded and do not provide the functional values they once did. Historic losses have come from:

- Stream channel alteration;
- Draining of streams, lakes and adjacent wetlands;
- Livestock grazing in riparian areas, sedimentation, and water pollution;
- Improper agricultural practices;
- In-stream aggregate mining; and

Watershed changes resulting in cumulative affects to aquatic resources These impacts have combined to reduce the functions and values of aquatic resources in both the Santa Ana River mainstem and its tributaries. Some watersheds have been impacted more than others, especially those that occur within a municipality or urban area such as Temescal Wash and Mockingbird Canyon. Chronic elevated water temperatures and high sediment loads are examples of water pollution that is not source-oriented and harder to control. The SAWPA Integrated Watershed Management Plan states that "Other examples of

aquatic losses include elevated but non-toxic levels of ammonia, increases in salinity, and low levels of dissolved oxygen (DO).” (SAWPA IWMP, p. 61.) Because native freshwater fishes mostly live in treated wastewater discharges in many of the creeks and streams, the issue of chronic low-level pollution is of great concern to biologists. Increases in the amount and quality of aquatic and riparian vegetation would improve the capacity of these waterways to reduce the amounts and concentrations of many of these pollutants.

(d) **Section 332.8(c)(2)(iv): An analysis of current aquatic resource conditions in the Service Area, supported by an appropriate level of field documentation.**

In addition to the analysis of current aquatic resource conditions presented for each proposed conservation area, the following documentation is provided for additional support.

a. Aquatic resources are threatened by non-point source water pollution, off-road use, dumping, invasive species (both aquatic and terrestrial) and the decline and removal of native vegetation as well as other activities listed in Section C above. By creating conservation easements on selected lands, the natural resource values of that land can be protected and become inline with DFG guidelines as stated above. Within the Santa Ana watershed (USGS hydrologic units 18070203 and 18070202) which include the middle Santa Ana hydro subunit and associated sub areas (Temescal, Arlington and Riverside) and the Lake Mathews hydro subunit and associated sub areas (Coldwater, Bedford, Cajalco, Lee Lake). Many of these drainages have no long-term protection. By securing conservation easements in these areas, aquatic threats can be reduced or discouraged by preventing dumping, off-road damage, invasive species trapping, invasive plant species removal and promoting natural vegetation succession.

b. Historic aquatic losses have come from the removal and degradation of both riparian and ephemeral habitats. The no-net-loss of wetlands and other nationally based programs have tracked large reductions in wetland and riparian acreage over the last decade. According to the Status and Trends of Wetlands report by the US Fish and Wildlife service; between 1950 and 1970, over 400,000 acres of wetlands were lost in the united states, and between 1980 and 2000, the rate declined to 290,000 per year, partially due to the passage of the Emergency Wetlands Resources Act of 1986. Between 2000 and 2008, an eighty percent decrease in losses to 58,000 acres was achieved. Although this is still a staggering number, it shows a decrease in lands lost with those losses attributed to a lack of enforcement, protection and education of the public about the value and function of wetlands on private lands. Of the wetlands remaining in the RCRCDD jurisdictional area, ninety percent are inland freshwater and shrub wetlands, with only 10% of that area still remaining.

c. Current aquatic resource conditions in the RCRCDD jurisdictional area are poor to good, depending upon the location. From 1985 to 2000, “30% of the estimated freshwater wetland losses were due to urban development”. (Status and Trends of Wetlands, US Fish and Wildlife Service Report, 2000). This national trend has also been seen in the Inland Empire and continues today, but at a slower rate due to the economic conditions of the housing market. The following species have been identified as sensitive, rare, threatened, or endangered by the US Department of Interior, the California Department of Fish and Game, and have been included in the Riverside County Multiple-Species Habitat Conservation Plan (MSHCP). Federally listed endangered or threatened species (FE, FT) and State listed endangered or threatened species (SE, ST) are protected.

Some species are considered sensitive by federal or state agencies and are designated as species of special concern (FSC or SSC, respectively), or candidate species for listing (C). Some of these are rare

and have protected status in the state (SP). In addition, the California Native Plant Society publishes a list of rare, threatened, and endangered plants and those that are particularly sensitive and rare are listed as 1A or 1B under the California Environmental Quality Act (CEQA). The Multiple-Species Habitat Conservation Plan (MSHCP) includes many unlisted sensitive species (e.g., CNPS, SSC, C, and other locally recognized sensitive species) in its plan, because with further habitat loss, they may become candidates for listings as threatened or endangered. The RCRCDC will also follow these plans during the course of its activities in the proposed conservation areas and will monitor these species when they occur.

All species listed below with FE, FT, SE, ST, SSC status, are in the MSHCP. The absence of other MSHCP species does not indicate that they can't be found in the District. The species listed are those with recent documentation, (within the last ten years).

CRUSTACEANS

Riverside Fairy Shrimp (*Streptocephalus wootoni*) FE

INSECTS

Quino Checkerspot Butterfly (*Euphydryas editha quino*)

FE Delhi Sands Flower-Loving Fly (*Rhaphiomidas terminatus abdominalis*) FE

FISH

Arroyo Chub (*Gila orcutti*) SSC

Santa Ana Speckled-Dace (*Rhinichthys osculus ssp.*) SSC

Santa Ana Sucker (*Catostomus santaanae*) FT

Rainbow Trout (*Oncorhynchus mykiss*)

AMPHIBIANS

Southwestern Arroyo Toad (*Bufo microscaphus californicus*) FE, SSC

California Red-Legged Frog (*Rana aurora draytonii*) FT

Western Spadefoot Toad (*Sub [=Scaphiopus] hammondii intermontanus*) SSC

Western Pond Turtle (*Clemmys marmorata*) FT, SSC

Coast Range Newt (*Taricha torosa torosa*) SSC

California Slender Salamander (*Batrachoseps attenuatus*) SSC

PLANTS

Munz's Onion (*Allium munzii*)

Chocolate Lilly (*Fritillaria biflora*)

Thread-leaved Brodiaea (*Brodiaea filifolia*)

The types, locations and approximate amounts of wetland, riparian and ephemeral habitats in the RCRCDC jurisdictional area need to be determined through detailed site visits that will assess the actual amount and type of habitats that are available in the proposed conservation easement areas. Since this will require hundreds of hours as well as GPS and GIS data points, this activity will be provided under the Program when approved. It is anticipated that credit sales would provide sufficient funds to conduct these necessary activities.

- (e) **Section 332.8(c)(2)(v): A statement of aquatic resource goals and objectives for the Service Area, including a description of the general amounts, types and locations of aquatic resources the program will seek to provide.**

The goal of the Program is the rehabilitation or re-establishment (collectively known as restoration) of lost aquatic resource functions of riverine ecosystems, particularly as they relate to habitat, water quality, and flood control purposes. Rehabilitation or re-establishment are preferred because of the greater likelihood of success. In some cases, enhancement would be chosen if the functional benefits are clear and apparent. Lastly, establishment (creation) could be an option, but not as likely given the difficulties of trying to establish riverine systems in areas with very limited hydrology to successfully provide this type of credit. In locations with appropriate hydrology, creation will be considered.

The proposed sites all fall within the SAWPA Integrated Watershed Management Plan for the Santa Ana River and provide aquatic resource values as they relate to water quality. All of the ILF Projects have ephemeral or perennial water resources that filter water flows from flood events and provide seasonal water sources that otherwise would not be present. Many of these areas will be enhanced by the planting of wetland plants that provide water-filtering benefits and that also provide sediment control through the growth of root masses.

According to the SAWPA Integrated Watershed Management Plan, “discharges from publicly owned treatment works (POTWs) have changed natural surface flows and provide base flows in many parts of the river’s drainage network. This treated wastewater has altered the natural system by providing year-round river flow. As populations have increased, urban runoff and wastewater flows have increased. Between 1970 and 2000, the total average volume rose from less than 50,000 to over 146,000 AFY, as measured at Prado Dam. Base flow is expected to rise to 370,000 AFY by 2025, a projected increase of 153% since 1990.” (SAWPA IWMP, p. 51.) These circumstances have also changed the way in which habitat management in these waterways is conducted and the rate at which these habitats grow. For example, tertiary treated wastewater is discharged into the Temescal Creek watershed at various rates year-round.

Other water sources are natural springs, seeps, urban runoff and groundwater. These all contribute to the location, density and structure of riparian and wetland vegetation. The types, locations and approximate amounts of wetland, riparian and ephemeral habitats in the Service Area are provided on the following pages. Descriptions of each proposed conservation area, the resources, threats, conditions and potential aquatic resources are listed in no particular order.

1



Location: **Bedford Wash**, Temescal Canyon, Riverside Co. in the Bedford Hydro Subarea, Temescal Subunit (§332.8(c)(2)(i))

Acreage: Approx. 20 acres of ephemeral and alluvial sage scrub habitat preservation with 5 acres of restoration and 15 acres of enhancement.

Condition: Poor to Fair (photo documented/aerials)

Threats: Nearby developments and removal of farming operations for development of nearby land, dumping and invasive weeds.

Goals: Creation of conservation easements and restoration and enhancement of native habitat.

Threats to this site are from the development of the stream channel for flood control purposes, nearby development and associated runoff from housing, commercial and industrial uses. Removal of farming operations that historically reduced runoff from vegetated cropland, and an increase in exotic weed species in some areas (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation from exotic weed species, manipulation of the alluvial channel for flood and farming practices and control of native vegetation through the use of herbicides. Alluvial sage scrub and ephemeral plants have been removed through equipment, herbicides and hand tools. Of the twenty acres of proposed habitat, ten acres have been degraded or removed through these activities (§332.8(c)(2)(iii)).

Current aquatic resources are poor to fair in quality and of limited size (less than 5 acres in each area). Since the site is ephemeral in nature, hydrologic functions as they relate to aquatic resources are limited to the winter and spring months when water is present due to rainfall (see also page 33) (§332.8 (c)(2)(iv)).

Preservation objectives, amounts, types and locations of aquatic resources in the Bedford Canyon area includes the upper part of the watershed that contains mule-fat and willow scrub of 5 to 8 acres, and the lower portion being mostly alluvial sage scrub with patches of mule-fat scrub of 4 to 6 acres and the remaining 6 acres being open land or channel (§332.8 (c)(2)(v)).

Proposed Bedford Wash Conservation Easement Area.





Location: Coldwater Creek, Temescal Canyon, Riverside Co., CA. in the Coldwater Hydro Subarea, Temescal Subunit (§332.8(c)(2)(i))

Acreage: Approx. 18 acres of aquatic and riparian forest habitat preservation with 3 acres of restoration, 15 acres of enhancement and 4,000 linear feet of non-corps jurisdictional aquatic enhancement.

Condition: Good to Excellent (photo documented/aerials)

Threats: Nearby development, invasive plants, fire.

Goals: Creation of conservation easements enhancement and preservation of native habitat, management of aquatic species.

Threats to this site are from downstream development near the stream channel, invasive plants such as cape ivy and Himalayan blackberry displacing native habitat. Degradation and extirpation of in stream aquatic species and habitat due to drought, fire or direct removal (§332.8(c)(2)(ii)).

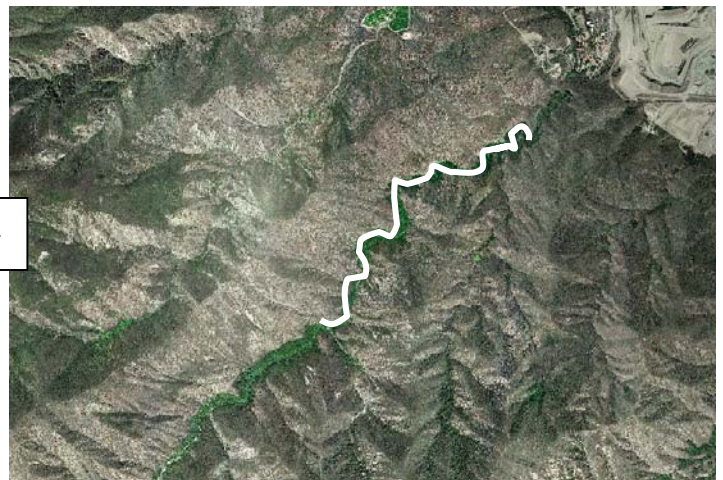
Historic aquatic losses at this location include displacement of native vegetation from cape ivy and wild grape, extirpation of native fish due to drought, flood or intentional removal. Between two and three acres of streamside habitat have been lost due to invasive ivy growth and riparian tree die-off due to drought and wild grape growth (§332.8(c)(2)(iii)).

Current aquatic resources are good to excellent and are considered rare at this elevation and location. The site consists of alder and maple streamside woodland, willow woodland and rainbow trout habitats. In addition, the alluvial sage scrub habitat is in fair to good condition. The 18 of this type of stream habitat do not occur in any other RCRCDD jurisdictional area outside of the national forest. The site is considered extremely sensitive. Perennial water flow originates from snow and rain on the east side of Santiago Peak which will provide a reliable source of natural water for restoration activities ranging in amounts from 1 cubic foot in summer to over 10 cubic feet in winter. (see also page 33) (§332.8(c)(2)(v)).

Preservation objectives, amounts, types and locations of aquatic resources in the Coldwater Creek area include the lower reach of the Coldwater watershed that contains 18 acres of alder and maple streamside woodland and associated rainbow trout in-stream habitat that will be preserved and managed under a conservation easement that will be established under the program.

Limited planting of riparian trees and removal of exotic plants will be conducted as well as monitoring of water quality and quantity on a monthly basis (§332.8(c)(2)(v)).

Proposed Coldwater Conservation Easement Area



3



Location: Horsethief Creek, Temescal Canyon, Riverside Co., CA. in the Lee Lake Hydro Subarea, Lake Mathews Subunit (§332.8(c)(2)(i))

Acreeage: Approx. 12 acres of aquatic and riparian forest habitat preservation with 12 acres of enhancement.

Condition: Fair to Good (photo documented/aerials)

Threats: Downstream development, invasive plants, fire, dumping, off-road uses.

Goals: Establishment of conservation easements, enhancement and preservation of native habitat, removal of trash, fencing.

Threats to this site are from downstream development, off road uses, illegal dumping and degradation of the stream habitat. Wild grape is killing alders in the lower stream area due to excessive growth. Non-native weeds are expanding and displacing native plants (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation from exotic grasses and off-road use in the main creek channel. Between two and three acres of streamside habitat have been lost due to equipment use, off road use and some tree die-off due to wild grape growth into tree canopies (§332.8(c)(2)(iii)).

Current aquatic resources are fair to good and are considered rare at this elevation and location. The site consists of alder and maple streamside woodland, willow woodland and mule-fat scrub habitats. The eighteen acres of this stream habitat are considered very sensitive and only occur in higher densities in Coldwater Canyon. Perennial water flows from springs above and through the proposed conservation area. Water flows decrease during summer months, but is still adequate to maintain the alder and willow habitat. The area contains some oak woodland on the upper slopes due to spring seeps. (see also page 33) (§332.8(c)(2)(v)).

Preservation objectives, amounts, types and locations of aquatic resources in the Horsethief Creek area include the lower reach of the watershed that contains 12 acres of alder and maple streamside woodland and willow scrub habitat that will be preserved and managed under a conservation easement that will be established under the program. Removal and limited control of wild grape into tree canopies will be conducted as will fencing and signage to curtail off-road access. Planting and establishment of alder and maple trees will be conducted along with monitoring of water quality and quantity (§332.8(c)(2)(i)).

Proposed Horsethief Conservation Easement Area.



4



Location: Dawson Canyon, Temescal Canyon area, Riverside Co., CA. in the Cajalco Hydro Subarea, Lake Mathews Hydro Subunit (§332.8(c)(2)(i))

Acreege: 50 acres of riparian and ephemeral habitat preservation with 15 acres of restoration, 30 acres of enhancement, 5 acres of non-corps jurisdictional oak woodland and 500 linear feet of non-corps jurisdictional aquatic enhancement.

Condition: Poor to Fair (photo documented/aerials)

Threats: Streamside impacts from homeowners, invasive plants, dumping, off-road use.

Goals: Establishment of conservation easements, enhancement and preservation of native habitat, removal of trash, prevention of fill.

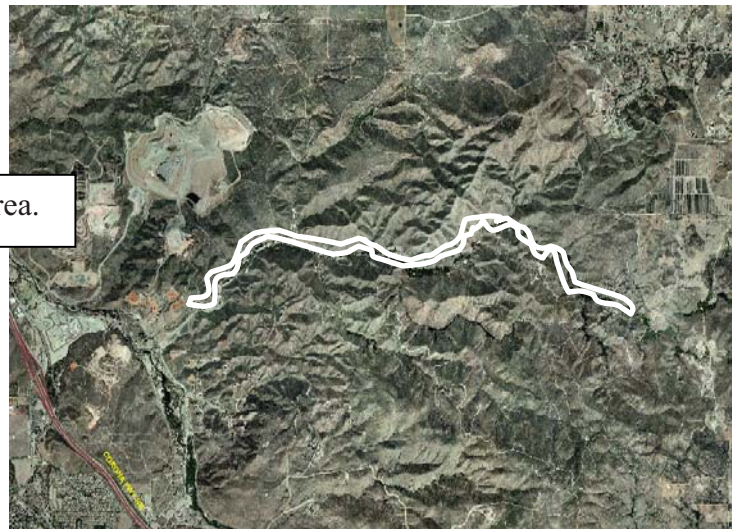
Threats to this site are from streamside uses by homeowners, placement of fill, dredging, road culverts, illegal dumping and degradation of the stream habitat (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation, planting of non-native vegetation in the form of landscaping, off-road use in the main creek channel, Between ten and fifteen acres of streamside habitat have been lost due to off road use, removal of mule-fat scrub, manipulation of the stream channel for control of flood waters (§332.8(c)(2)(iii)).

Current aquatic resources are poor to fair. The site consists of sycamore woodland, with mule-fat and willow scrub habitats and open cobble streambed. Perennial flows occur in the upper reaches of the canyon, with ephemeral flows in the lower half of the canyon. Flows can remain in the lower half during heavy rainfall years, but are not consistent. Flows range from .50 cubic feet to over 10 cubic feet per second, depending upon the year. (see also page 33) (§332.8(c)(2)(iv)).

Preservation objectives, amounts, types and locations of aquatic resources in the Dawson Canyon area include both the upper and lower reaches of the watershed that contain 20 acres of restoration and 50 acres that will be preserved and managed under a series of conservation easements that will be established under the program. Control of weeds and planting of riparian and ephemeral habitat will be conducted as reduction in of off-road access (§332.8(c)(2)(v)).

Proposed Dawson Canyon Conservation Easement Area.





Location: Lower Temescal Creek, Temescal Canyon area, Riverside Co., CA. in the Cajalco Hydro Subarea, Lake Mathews Hydro Subunit (§332.8(c)(2)(i))

Acreeage: Approx. 125 acres of riparian habitat preservation with 25 acres of restoration, 98 acres of enhancement, 2 acres of wetland creation, 2,000 linear feet of non-corps jurisdictional aquatic enhancement and 32.18 surface acres for amphibian enhancement.

Condition: Poor to Fair (photo documented/aerials)

Threats: Streamside impacts from mining, invasive plants, illegal dumping and off-road use.

Goals: Establishment of conservation easements, enhancement, restoration and preservation of native habitat, removal of trash and prevention of off-road use.

Threats to this site are from streamside uses by mining operations, off-road use, degradation of the stream habitat from displacement by invasive plants and dumping (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation, off-road use in the main creek channel, non-point source pollution and loss of native vegetation (§332.8(c)(2)(iii)).

Current aquatic resources are poor to fair. The site consists of mule-fat and willow scrub habitats with some wetland and open water areas due to groundwater infiltration in low areas and some listed species already occur in this watershed. Approximately 125 acres of this habitat type currently exist, with much of the area needing some type of restoration or enhancement. Perennial water flows from tertiary treated water during most of the year, with an estimated 10% of the flow originating from nuisance water from a nearby development. Floodwater flows in the winter months can range from 100 cubic feet to over 10,000 during heavy rainfall events. Summer flows range from 2 to 10 cubic feet, depending upon water treatment releases. These flows are expected to be reduced due to water districts reclaiming and reselling this water for landscape purposes. (see also page 33) (§332.8(c)(2)(iv)).

Preservation objectives, amounts, types and locations of aquatic resources in Lower Temescal Creek include 25 acres of restoration, 98 acres of enhancement and 2 acres of wetland creation for a total of 125 acres that will be preserved and managed under a series of conservation easements that will be established under the program. Control of weeds, planting of riparian and ephemeral habitat and a reduction in of off-road access (§332.8(c)(2)(v)).



Proposed Lower Temescal Canyon Conservation Easement Area.

6



Location: Upper Temescal Creek, Temescal Canyon area, Riverside Co., CA. in the Lee Lake Hydro Subarea, Lake Mathews Hydro Subunit (§332.8(c)(2)(i))

Acreeage: Approx. 100 acres of wetland and riparian habitat preservation with 50 acres of restoration, 48 of enhancement and 2 acres of creation, 6,105 linear feet of non-corps jurisdictional aquatic enhancement and 3.36 surface acres of amphibian enhancement.

Condition: Poor to Fair (photo documented/aerials)

Threats: Streamside impacts from gravel mining, dumping and off-road use.

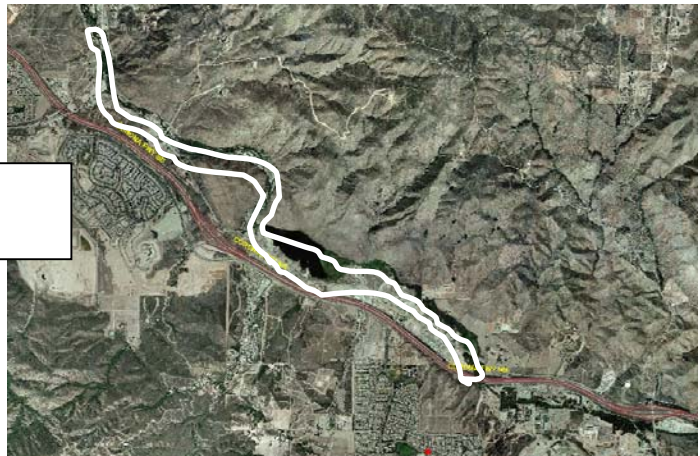
Goals: Establishment of conservation easements, enhancement and preservation of native habitat, removal of trash, prevention of off-road use and restoration of wetland areas.

Threats to this site are from streamside uses from gravel mining operations, off-road use, degradation of the stream habitat from dumping (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation, loss of wetland ponds, off-road use in the main creek channel, non-point source pollution and loss of native vegetation in the amount of 25 acres due to these activities over the last twenty five years (§332.8(c)(2)(iii)).

Current aquatic resources are poor to fair. The site consists of sycamore woodlands with willow and mule-fat scrub plant communities. The habitat varies during the year due to winter flood events and the lower summer water flows. Water flows in this area are from tertiary treated wastewater plants upstream and from limited natural runoff. Pond areas have water from underground sources that have “surfaced” due to gravel mining. Water flows range in amount from 2 cubic feet in the summer to over 5,000 ccf during winter floods. (see also page 33) (§332.8(c)(2)(iv)).

Preservation objectives, amounts, types and locations of aquatic resources in Upper Temescal Creek include 5 acres of wetland/open water restoration, 45 acres of riparian restoration, 48 acres of enhancement and 2 acres of creation for a total of 100 acres that will be preserved and managed under a series of conservation easements that will be established through the program. Control of weeds, planting of riparian and wetland habitats and a reduction in of off-road access will also be provided (§332.8(c)(2)(v)).



Proposed Upper Temescal Canyon Conservation Easement Area

7



Location: Arlington Creek, Riverside Co., CA. in the Arlington Hydro Subarea, Middle Santa Ana Hydro Subunit (§332.8(c)(2)(i))

Acreeage: Approx. 15 acres of riparian habitat preservation and 5 acres of enhancement.

Condition: Poor to Fair (photo documented/aerials)

Threats: Streamside impacts from invasive plants, graffiti, non-point source pollution.

Goals: Establishment of conservation easements, enhancement and restoration of native habitat, removal of graffiti.

Threats to this site occur from streamside uses by residents, graffiti on rocks and vandalism to natural structures (rocks/trees), degradation of the stream water quality from non-point source water pollution (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation, loss of native vegetation due to cutting and non-point source pollution degrading water quality and increasing algae. Of the fifteen acres of habitat, five have been degraded or lost due to these activities (§332.8(c)(2)(iii)).

Current aquatic resources and their condition are poor to fair. The site consists of mule-fat and willow scrub habitats. Perennial water flows originate from both rainfall and agricultural irrigation runoff from Eagle Valley. Nearby development has also contributed to increased flows to this creek. Issues with water quality may also occur and will be monitored once conservation easements are established. (see also page 33) (§332.8(c)(2)(iv)).

Preservation objectives, amounts, types and locations of aquatic resources in Arlington Creek include 5 acres of enhancement and 15 acres that will be preserved and managed under a series of conservation easements that will be established through the program. Control of weeds, planting of riparian vegetation will be provided (§332.8(c)(2)(v)).

Proposed Arlington Creek Conservation Easement Area.





Location: La Sierra and McAllister Creeks, Riverside Co., CA. in the Riverside Hydro Subarea, Middle Santa Ana Hydro Subunit (§332.8(c)(2)(i))

Acreeage: Approx. 20 acres of riparian habitat preservation and 5 acres of restoration and 15 acres of enhancement.

Condition: Poor to Fair (photo documented/aerials)

Threats: Streamside impacts from dumping, off-road use, weeds and nearby development.

Goals: Establishment of conservation easements, Enhancement, restoration and preservation of native habitat, prevention of off-road use and weed control.

Threats to this site occur from degradation of the stream water quality from sedimentation, displacement of native vegetation by weeds, dumping and off-road use within the waterway (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation from weeds, intentional removal from fire control and development of nearby home pads and housing tracts (§332.8(c)(2)(iii)).

Current aquatic resources and their condition are poor to fair. The site consists of mule-fat and willow scrub habitats, that can be restored through the removal of weeds, planting of native trees and shrubs. Perennial water flows originate from agricultural runoff and some urban septic tank leaching. Flows are perennial but inconsistent in amount, ranging from .50 cubic feet to less than .10 cubic feet in the summer, to over 10 cubic feet during winter storms. (see also page 33) (§332.8(c)(2)(iv)).

Preservation objectives, amounts, types and locations of aquatic resources include the 5 acres of riparian restoration and 15 acres enhancement with the entire area being preserved and managed under a series of conservation easements that will be established through the program (§332.8(c)(2)(v)).

Proposed La Sierra/McAllister Conservation Easement Areas.





Location: Goldenstar Creek, Riverside Co., CA. in the Riverside Hydro Subarea, Middle Santa Ana Hydro Subunit (§332.8(c)(2)(i))

Acreage: Approx. 12 acres of riparian habitat preservation, 2.5 acres of restoration, 9.5 acres of enhancement and 1,500 linear feet of non-corps jurisdictional aquatic enhancement.

Condition: Poor to Fair (photo documented/aerials)

Threats: Streamside impacts from landowners, weeds, nearby development and sedimentation.

Goals: Establishment of conservation easements, enhancement, restoration and preservation of native habitat, prevention of off-road use, reduce sedimentation and illegal fill.

Threats to this site occur from degradation of the stream from sedimentation from upstream uses, displacement of native vegetation due to off-road use within the waterway, removal or native vegetation for control of floodwaters by landowners and confined hydrology from fill materials (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation by invasive weeds, intentional removal of sediment and development of nearby home pads that have impacted the stream banks (§332.8(c)(2)(iii)).

Current aquatic resources and their condition are poor to fair. The site consists of approximately twelve (12) acres of mule-fat and willow scrub habitats, that will be restored through the removal of weeds, planting of native trees and shrubs. Perennial water flows in the upper reaches of this creek range from 1 cubic foot in the summer months to over 30 cubic feet in winter floods. Water is mostly urban and agricultural runoff of limited quality, although water quality will be tested once conservation easements are established. (see also page 33) (§332.8(c)(2)(iv)).

Preservation objectives, amounts, types and locations of aquatic resources include the 2.5 acres of riparian restoration and 9.5 enhancement with the entire 12 acres being preserved and managed under a series of conservation easements that will be established through the program (§332.8(c)(2)(v)).



Proposed Goldenstar Conservation Easement Area



Location: Olsen Canyon, Riverside Co., CA. in the Cajalco Hydro Subarea, Lake Mathews Hydro Subunit (§332.8(c)(2)(i))

Acreeage: Approx. 8 acres of riparian/ephemeral habitat preservation and 7 acres of enhancement and 1 acre of ephemeral restoration.

Condition: Fair to Good (photo documented/aerials)

Threats: Streamside impacts from off-road use, non-native weeds and recurrent fire.

Goals: Establishment of conservation easements, enhancement, restoration and preservation of native habitat, prevention of off-road use.

Threats to this site occur from degradation of the stream channel from off-road use as an access way, displacement of native vegetation due to off-road use, removal or native vegetation for off-road access and recurrent fire from intentional acts (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation by human activity, intentional removal of plants and fire, have all reduced the historic size of this canyon (§332.8(c)(2)(iii)).

Current aquatic resources and their condition are fair to good. The site consists of acres of sycamore woodland, with mule-fat and willow scrub habitats, ephemeral sycamore woodland that will be enhanced through the removal of roads, planting of native trees and shrubs. Ephemeral water flows originate from rainfall. Flows range from less than .50 ccf in the winter, to only subsurface flow in the summer months. (see also page 33) (§332.8(c)(2)(iv)).

Preservation objectives, amounts, types and locations of aquatic resources include the 1 acre of ephemeral restoration and 7 acres of enhancement and the entire 10 acres being preserved and managed under a conservation easement that will be established through the program (§332.8(c)(2)(v)).

Proposed Olsen Canyon Conservation Easement Area





Location: Springbrook Wash, Riverside Co., CA. in the Riverside Hydro Subarea, Middle Santa Ana Hydro Subunit (§332.8(c)(2)(i)).

Acreeage: Approx. 25 acres of riparian and ephemeral habitat preservation, 5 acres of restoration and 20 acres of enhancement.

Condition: Poor to Fair (photo documented/aerials)

Threats: Streamside impacts from off-road use, non-native weeds, dumping and development

Goals: Establishment of conservation easements on 25 acres, enhancement, restoration and preservation of native habitat, prevention of dumping, reduction in sedimentation through strategic planting

Threats to this site occur from degradation of the stream channel from sedimentation, displacement of native vegetation from off-road use, removal or native vegetation for flood control (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation by human activity, intentional removal of plants, dumping and other activities have degraded the wash even though hydraulic conditions exist for native plant establishment. All 25 acres have been impacted in one way or another (§332.8(c)(2)(iii)).

Current aquatic resources and their condition are poor to fair. The site consists of mule-fat and willow scrub habitats in areas that have surface water flows into summer, and ephemeral areas of alluvial scrub that need restoration through the control of non-native plants, planting of native trees and shrubs. Ephemeral water flows come from the north side of Box Springs Mountain and surface springs when rainfall is adequate. (also see page 33) (§332.8(c)(2)(v)).

Preservation objectives, amounts, types and locations of aquatic resources include 5 acres of restoration with the site being preserved and managed under conservation easements that will be established through the program (§332.8(c)(2)(v)).



Proposed Springbrook Wash Conservation Easement



Location: McBride Canyon, Riverside Co., CA. in the Bedford Hydro Subarea, Lake Mathews Hydro Subunit (§332.8(c)(2)(i))

Acreage: Approx. 19 acres of riparian and ephemeral habitat preservation with 10 acres of enhancement.

Condition: Fair to Good (photo documented/aerials)

Threats: Streamside impacts from non-native trees, development and past uses.

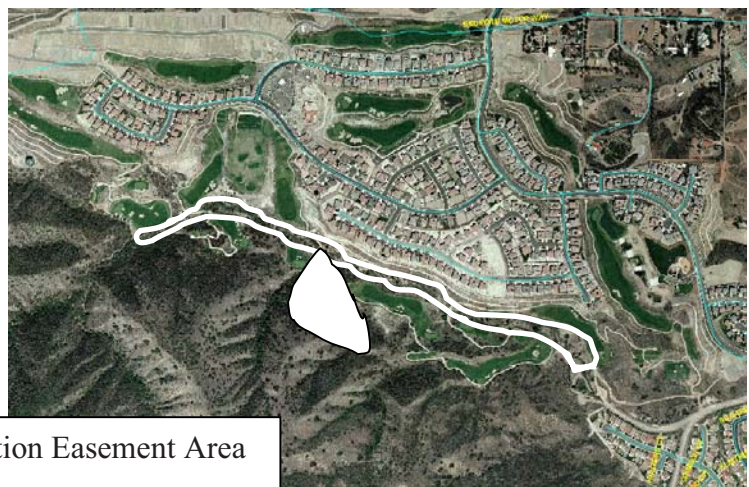
Goals: Establishment of a conservation easement, enhancement and preservation of native habitat through planting on 19 acres.

Threats to this site occur from degradation of the stream channel from non-native eucalyptus trees, removal of native vegetation for flood control (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation by human activity, non-native trees and other human activities that have degraded the canyon over the years along with confinement of the wash even though hydraulic conditions exist for native plant establishment. About 3 acres remain impacted in one way or another (§332.8(c)(2)(iii)).

Current aquatic resources and their condition are fair to good. The site consists of mule-fat and willow scrub habitats, ephemeral areas of sycamore woodland that need enhancement through the control of non-native plants, planting of native trees and shrubs. Ephemeral water flows from winter rainfall range from 5 ccf to over 20 ccf during flood events. (see also page 33) (§332.8(c)(2)(iv)).

Preservation objectives, amounts, types and locations of aquatic resources include 10 acres of enhancement and the entire site being preserved and managed under a conservation easement that will be established through the program (§332.8(c)(2)(v)).



Proposed McBride Canyon Conservation Easement Area



Location: **McBride Flood Pond**, Riverside Co., CA. in the Bedford Hydro Subarea, Lake Mathews Hydro Subunit (§332.8(c)(2)(i))

Acreeage: Approx. 2 acres of riparian and open water habitat preservation and 2 acres of enhancement.

Condition: Fair to Good (photo documented/aerials)

Threats: Streamside impacts from non-native trees and development.

Goals: Establishment of a conservation easement, enhancement and preservation of native habitat through planting and management.

Threats to this site occur from degradation of the stream channel from non-native eucalyptus trees, removal of native vegetation for flood control and off-stream hydrology reduction (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation from human activity, non-native trees and reduction in stream hydrology. About .50 have been lost in the area but will be restored through the program (§332.8(c)(2)(iii)).

Current aquatic resources and their condition are fair to good. The site consists of mule-fat and willow scrub habitats of 1 acre and .50 acres of open water. Approximately .50 acres of mule-fat and willow need enhancement through the control of non-native plants, planting of native trees and shrubs. Perennial water occurs due to spring-fed conditions. (see also page 33) (§332.8(c)(2)(iv)).

Preservation objectives, amounts, types and locations of aquatic resources include 2 acres of enhancement and the entire site being preserved and managed under a conservation easement that will be established through the program (§332.8(c)(2)(v)).



Proposed McBride Flood Control Pond Conservation Easement Area.



Location: Reche Canyon, Riverside Co., CA. in the Riverside Hydro Subarea, Middle Santa Ana Hydro Subunit (§332.8(c)(2)(i))

Acreeage: Approx. 7 acres of riparian and ephemeral habitat preservation and 6 acres of enhancement and 1 acre of restoration.

Condition: Fair to Good (photo documented/aerials)

Threats: Streamside impacts from development, sedimentation and landowner intrusions.

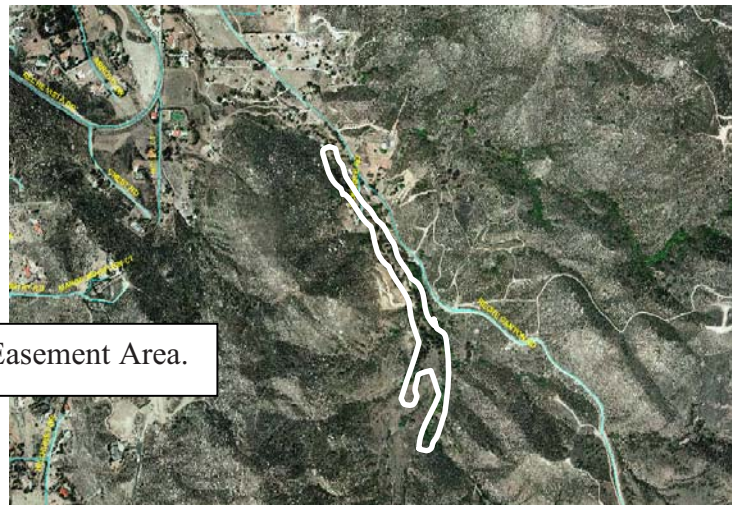
Goals: Establishment of conservation easements, enhancement and preservation of native habitat through planting, sediment control and landowner education.

Threats to this site occur from degradation of the stream channel from landowner impacts form sediment control activities, removal of native vegetation for flood control purposes and stream hydrology reduction (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation from human activity, reduction in stream hydrology due to flood control activities and about 1.50 have been lost in the area due to these activities (§332.8(c)(2)(iii)).

Current aquatic resources and their condition are poor to fair. The site consists of mule-fat and willow scrub habitats that can be restored through the control of non-native plants, planting of native trees and shrubs and control of landowner activities in the waterway. Ephemeral water flows originate from rainfall on the north side of Blue Mountain. In addition, other flows originate from subsurface water in the upper reaches of the canyon. Winter flows range in volume from 5 ccf to over 20 ccf during flood events. (see also page 33) (§332.8(c)(2)(iv)).

Preservation objectives, amounts, types and locations of aquatic resources include 6 acres of enhancement and one acre of restoration with the entire site being preserved and managed under a conservation easement that will be established through the program in cooperation with the landowners (§332.8(c)(2)(v)).



Proposed Reche Canyon Conservation Easement Area.



Location: **Brown Canyon**, Riverside Co., CA. in the Coldwater Hydro Subarea, Lake Mathews Hydro Subunit (§332.8(c)(2)(i))

Acreage: Approximately 10 acres of riparian and oak woodland habitat preservation with 5 acres of enhancement, 5 acres of restoration.

Condition: Fair to Good (photo documented/aerials)

Threats: Streamside impacts from development, and flood facilities.

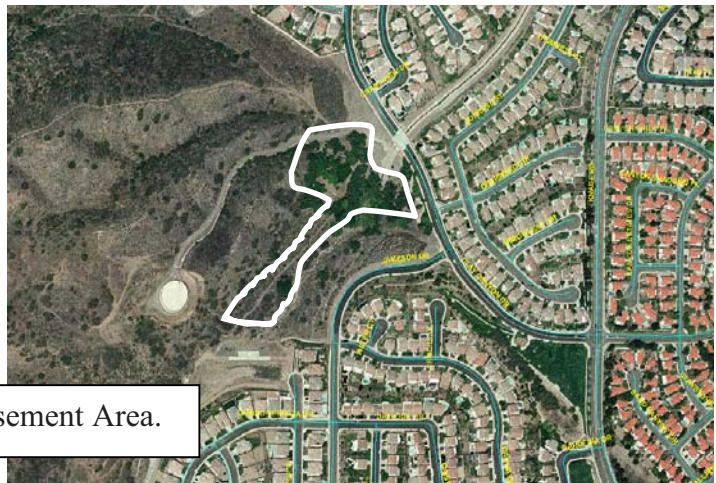
Goals: Establishment of conservation easements, enhancement and preservation of native habitat through planting and homeowner education.

Threats to this site occur from nearby development for nearby landowner intrusions of non-native plants, building of paintball courses and flood control activities (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation from human activity due to flood control activities. About an acre of habitat have been lost in the area due to these activities (§332.8(c)(2)(iii)).

Current aquatic resources and their condition are fair to good. The site consists of mule-fat and willow scrub habitats, oak woodlands and upland Riversidean sage scrub. Ephemeral water flows in the amount of 1 ccf come from rainfall events, but may increase to over 20 ccf during flood events. (see also page 33) (§332.8(c)(2)(iv)).

Preservation objectives, amounts, types and locations of resources include 5 acres of restoration, 5 acres of restoration and the entire site being preserved and managed under a conservation easement that will be established through the program. Planting of native trees and shrubs will be done and the total acreage will be managed until success criteria are met (§332.8(c)(2)(v)).



Proposed Brown Canyon Conservation Easement Area.



Location: **Cajalco Creek**, Riverside Co., CA. in the Cajalco Hydro Subarea, Lake Mathews Hydro Subunit (§332.8(c)(2)(i))

Acreage: Approximately 40 acres of riparian and mule fat scrub habitat preservation with 12 acres of restoration, 28 acres of enhancement.

Condition: Poor to Fair (photo documented/aerials)

Threats: Streamside impacts from development, landowner intrusions, off-road use and illegal dumping

Goals: Establishment of conservation easements, restoration and preservation of native habitats through planting and irrigation

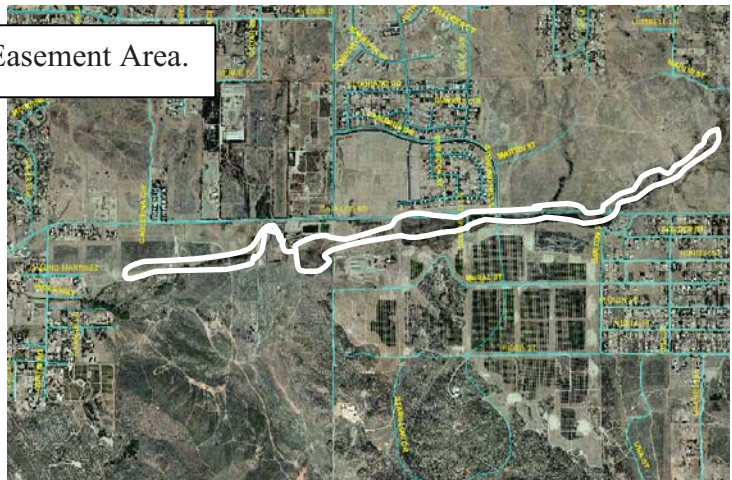
Threats to this site occur from nearby development, non-native plants, building of house pads, dumping and off-road courses (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation from human activity due to fill, off-road damage, dumping and grading. About 3.50 acres of habitat have been lost in the area due to these activities. (§332.8(c)(2)(iii)).

Current aquatic resources and their condition are poor to fair. The site consists of mule-fat and willow scrub habitats, mixed grasslands and mule-fat stinging nettle scrub. Perennial and ephemeral water flows come from rain and urban nuisance water. Upper reaches of the creek have perennial flows due to urban and agricultural runoff of limited quality. Water testing is conducted in areas where RCRCDC holds a conservation easement. Some listed species already occur in this watershed. (see also page 33) (§332.8(c)(2)(iv)).

Preservation objectives, amounts, types and locations of aquatic resources include 12 acres of restoration, 28 acres of enhancement and parcels being preserved and managed under a conservation easement that will be established through the program. Planting of native trees and shrubs will be done and the total acreage will be managed until success criteria are met (§332.8(c)(2)(v)).

Proposed Upper Cajalco Creek Conservation Easement Area.





Location: **Mockingbird Creek**, Riverside Co., CA. in the Arlington Hydro Subarea, Middle Santa Ana Hydro Subunit (§332.8(c)(2)(i))

Acreeage: Approximately 50 acres of riparian and mule fat scrub habitat preservation with 5 acres of restoration and 45 acres of enhancement.

Condition: Poor to Fair (photo documented/aerials)

Threats: Streamside impacts from development, landowner intrusions and off-road use

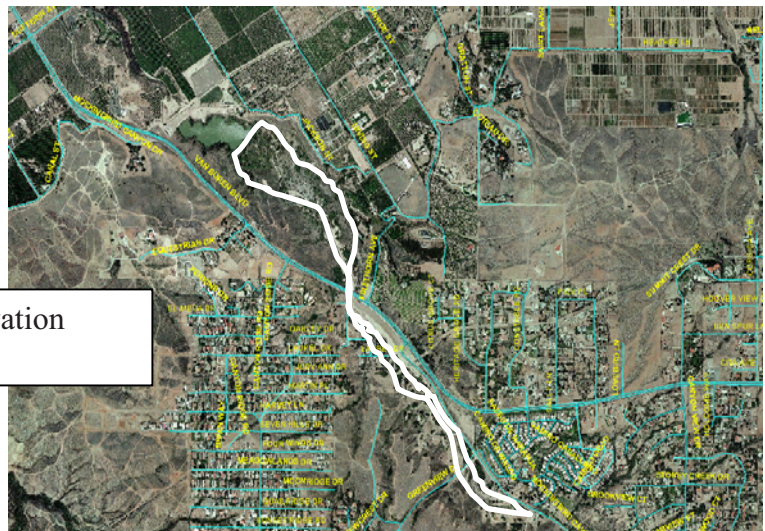
Goals: Establishment of conservation easements, restoration and preservation of native habitat through planting, irrigation, homeowner education and prevention of fill

Threats to this site occur from homeowner intrusions, weeds that displace native habitat, building of house pads, dumping and fill used to stabilize stream banks (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation from human activity (fill, off-road damage, dumping and grading). About 3 acres of habitat have been lost in the area due to these activities, mainly willow and Mule-fat scrub habitat (§332.8(c)(2)(iii)).

Current aquatic resources and their condition are poor to fair. The site consists of approximately 20 acres of mule-fat and willow scrub habitats, and 30 acres of mixed mule-fat and stinging nettle scrub with open ground between habitat clumps. Approximately 5 acres need restoration work. Perennial water flows originate due to agricultural and urban runoff. Flows range from .50 ccf to over 30 ccf during storm events. Some areas of the creek have surface water while others have subsurface flows due to sandy substrates that do not allow surface flows due to their depth. Some listed species already occur in this watershed. (see also page 33) (§332.8(c)(2)(iv)).

Preservation objectives, amounts, types and locations of aquatic resources include 5 acres of restoration and parcels being preserved and managed under a conservation easement that will be established through the program. Planting of native trees and shrubs will be done and the total acreage will be managed until success criteria are met (§332.8(c)(2)(v)).



Proposed Mockingbird Canyon Conservation Easement Area.



Location: **Box Springs Creek**, Riverside Co., CA. in the Riverside Hydro Subarea, Middle Santa Ana Hydro Subunit (§332.8(c)(2)(i))

Acreage: Approximately 5 acres of riparian and mule fat scrub habitat preservation with 2 acres of restoration and 3 of enhancement.

Condition: Poor to Fair (photo documented/aerials)

Threats: Streamside impacts from development Invasive weeds

Goals: Establishment of conservation easements, Enhancement and preservation of native habitat through planting, removal of weeds and fencing

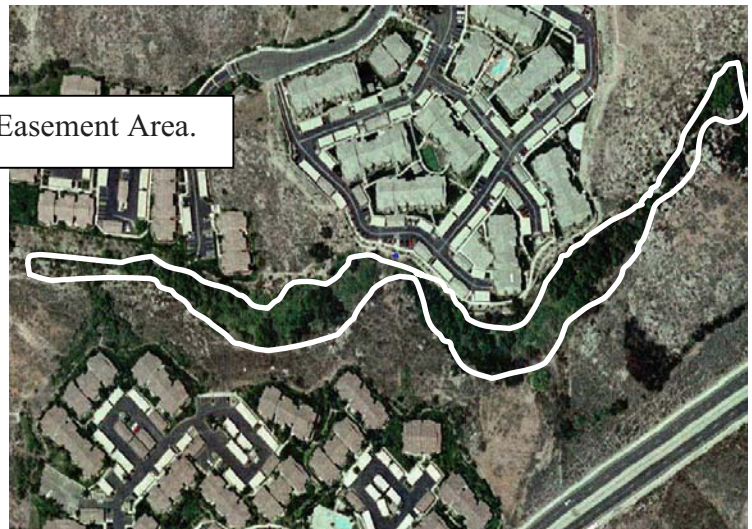
Threats to this site occur from nearby development, weeds that displace native habitat, building of drainage structures and fill used to stabilize stream banks (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation from human activity with about 1 acres of habitat have been lost in the area due to these activities (§332.8(c)(2)(iii)).

Current aquatic resources and their condition are poor to fair. The site consists of approximately 5 acres of mule-fat and willow scrub habitats with some fair willow scrub between patches of non-native weeds (arundo, castor bean and tree tobacco). Approximately 2 acres need restoration. Perennial water flows originate due to urban runoff and some natural springs. Flows can range from 1 ccf during the summer to over 10 ccf during storm events. (see also page 33) (§332.8(c)(2)(iv)).

Preservation objectives, amounts, types and locations of aquatic resources include 2 acres of restoration and the entire site being preserved and managed under a conservation easement that will be established through the program. Planting of native trees and shrubs will be done and the total acreage will be managed until success criteria are met (§332.8(c)(2)(v)).

Proposed Box Springs Creek Conservation Easement Area.





Location: **Grand Terrace Wetlands**, San Bernardino Co., CA. in the Riverside Hydro Subarea, Middle Santa Ana Hydro Subunit (§332.8(c)(2)(i))

Acreage: Approximately 6 acres of riparian and wetland habitat preservation with 1 acres of wetland creation and 1 acre riparian restoration and 4 acres of enhancement.

Condition: Poor to Fair (photo documented/aerials)

Threats: Streamside impacts from development, urban runoff, weeds, some trash.

Goals: Establishment of conservation easement, creation and preservation of native habitat through planting and fencing of area.

Threats to this site occur from nearby development, weed trees that displace native habitat, building of drainage structures and fill used to stabilize stream banks and altered hydrology. (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation from human activity with about .50 acres of habitat being lost due to invasive trees, damage from agriculture activities and no protection. (§332.8(c)(2)(iii)).

Current aquatic resources and their condition are poor to fair. The site consists of weed trees caused by drought conditions that resulted from altered channel hydrology. Ephemeral water flows originate from urban runoff with high flows during storm events due to direct street runoff from storm drains. Flows range from a few cubic feet to a maximum of 20 ccf due to the size of the drainage system. (also see page 33) (§332.8(c)(2)(iv)).

Preservation objectives, amounts, types and locations of aquatic resources include 1 acres of wetland creation and one acre of riparian creation with the entire 6 acres being preserved and managed under a conservation easement that will be established through the program. Planting of native trees and shrubs will be done and the total acreage will be managed until success criteria are met (§332.8(c)(2)(v)).





Location: **Main Street Canyon**, Riverside Co., CA. in the Riverside Hydro Subarea, Middle Santa Ana Hydro Subunit (§332.8(c)(2)(i))

Acreage: Approximately .55 acres of ephemeral habitat restoration and 27 acres of protection.

Condition: Poor to Fair (photo documented/aerials)

Threats: Streamside impacts from development, urban runoff, weeds, some trash.

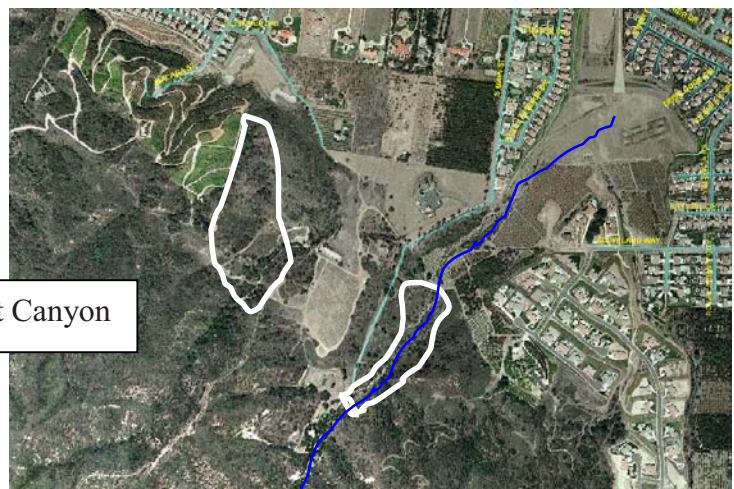
Goals: Establishment of conservation easement, creation and preservation of native habitat through planting and fencing of area.

Threats to this site occur from new development, drought caused by diversion of water flows, weeds that displace native habitat and building of drainage structures to divert water. (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation from human activity with about .50 acres of habitat being lost due to agriculture activities. (§332.8(c)(2)(iii)).

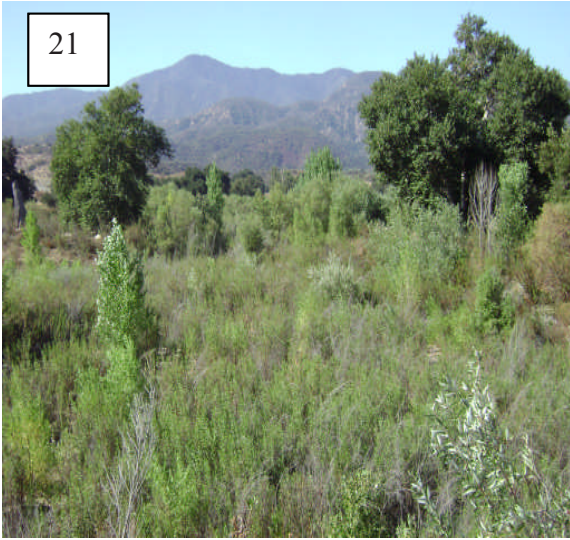
Current aquatic resources and their condition are poor to fair. The site consists of mule-fat and willow scrub and alluvial scrub. However, most of the area suffers from drought conditions that resulted from altered channel hydrology. Approximately .55 acres of ephemeral habitat are possible. Ephemeral water flows originate from rain events in the Santa Ana Mountains. Flows can range from 5 ccf to over 500 ccf during heavy rain events. (also see page 33) (§332.8(c)(2)(iv)).

Preservation objectives, amounts, types and locations of aquatic resources include 27 acres of preservation and .55 acres of restoration, all being managed under a conservation easement. Planting of native trees and shrubs will be done and the total acreage will be managed until success criteria are met (§332.8(c)(2)(v)).



Main Street Canyon

21



Location: Sycamore Canyon, Riverside Co., CA. in in the Coldwater Hydro Subarea, Lake Mathews Hydro Subunit (§332.8(c)(2)(i))

Acreeage: Approximately 2.5 acres of ephemeral alluvial sage scrub habitat restoration and 2 acres of oak woodland restoration and 4.5 acres of preservation.

Condition: Fair (photo documented/aerials)

Threats: Impacts from development and weeds and altered hydrology.

Goals: Establishment of a conservation easement, preservation of native habitat, planting and monitoring.

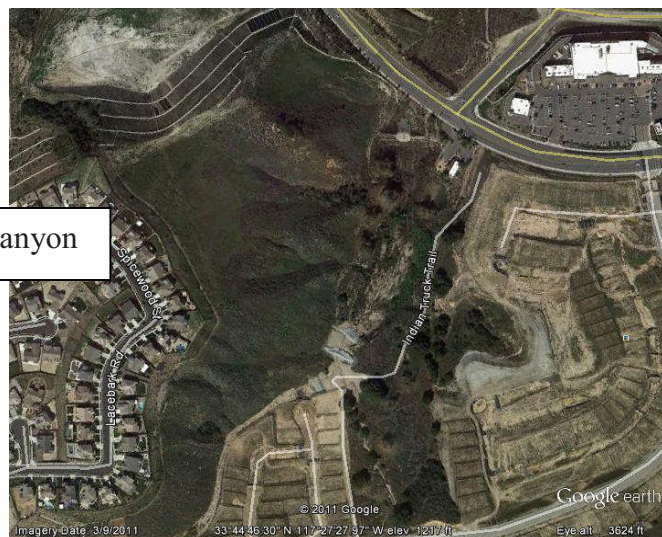
Threats to this site occur from new development, drought and flood hydrology caused by fire and diversion of water flows through and around agriculture, weeds that displace native habitat and building of drainage structures to control water flows. (§332.8(c)(2)(ii)).

Historic aquatic losses at this location include displacement of native vegetation from human activity, agriculture activities and flood control structures. (§332.8(c)(2)(iii)).

Current aquatic resources and their condition are fair. The site consists of mule-fat and alluvial sage scrub, oak woodland and non-native grassland vegetation. However, most of the area suffers from drought conditions that resulted from altered channel hydrology. Ephemeral water flows originate from rain events in the Santa Ana Mountains. Flows can range from 0 ccf in the summer to over 100 ccf during heavy rain events. (§332.8(c)(2)(iv)).

Preservation objectives, amounts, types and locations of aquatic resources include the 2.5 acres of restoration, 2 acres of oak woodland restoration and 4.5 of preservation. Planting of native trees, shrubs and grasses will be done and the area would be monitored until success criteria are met under an HMMP. (§332.8(c)(2)(v)).

Sycamore Canyon



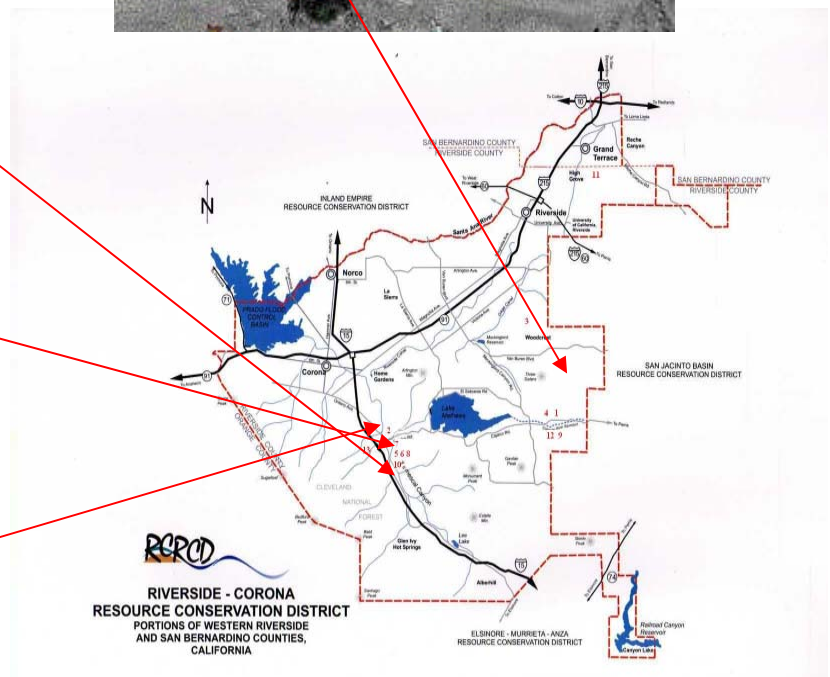
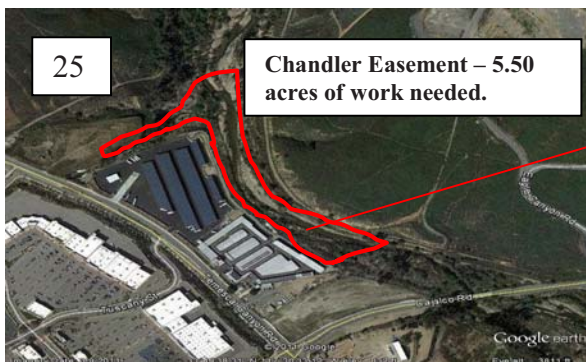
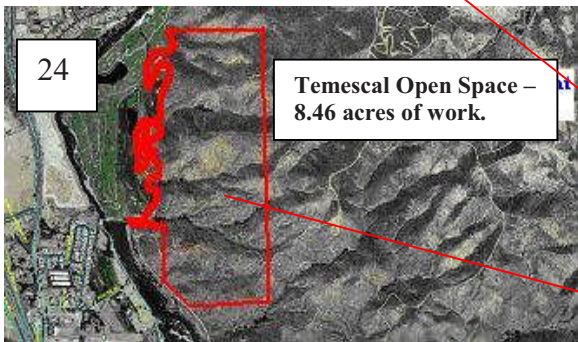
RCRCD Currently Established Conservation Easements Proposed for use in the Program

22. Tagorada Conservation Easement - This established .34 acre easement falls within the Mockingbird watershed and requires .34 acres of restoration in the Cajalco Hydro Subarea, Lake Mathews Hydro Subunit.

23. Lee Lake Conservation Easement – This area falls within the Temescal Hydro Subarea and the Middle Santa Ana Hydro Subunit, Santa Ana Watershed and has 8.03 acres of enhancement and 0.95 acres of restoration.

24. Temescal Open Space – This area occurs in the Cajalco Hydro Subarea and the Lake Mathews Hydro Subunit, Santa Ana Watershed and has 1.60 acres of restoration, 1.50 acres of enhancement and 5.4 acres of buffer.

25. Chandler Easement – The easement consists of 2.76 acres of preservation, 2.20 acres of enhancement and 0.54 acres of restoration, falling within a 7.75 acre area.



Prioritization Strategy (§332.8(c)(2)(vi)).

While all the proposed areas have significant natural values, some of the areas currently provide good habitat for sensitive and listed species, while other areas will provide that habitat once restored or created. Most of these areas are not currently slated for development, but nearby land uses impact their ability to function properly. Sites that have the highest potential for negative impacts will be preserved first. The prioritization strategy for the In-Lieu fee program will be to identify project sites within the proposed areas (pp. 15-37) described in this Prospectus that have the highest habitat value for conservation and active management. The goal will be to acquire either fee title or conservation easements in these areas, and to place into conservation and restore these riparian and ephemeral habitats. Specifically, the District will:

- 1. Restore aquatic resources on existing District conservation easement lands* as well as in areas that contain sensitive, rare or listed plants, animals or habitat that have been impacted by development or negative human activity and which require immediate conservation to reduce or eliminate removal or loss. The initial priority will be restoration of aquatic resources on lands already held in conservation by the District, namely, the Tagorada, Lee Lake, Temescal Open Space and Chandler conservation easements. The second priority will be to identify adjacent or neighboring areas in need of immediate conservation, and to acquire and preserve such lands.
- 2. Purchase conservation easements or fee title* on lands that have trash, weeds, off-roading or other activities which negatively impact or degrade aquatic and related habitat, and which are not currently protected. The targeted geographic conservation areas are identified elsewhere in this document.
- 3. Creation, restoration, enhancement and long-term management* of habitat lands will be conducted once new conservation easements have been recorded. In this phase, focus will be placed upon habitats that are not currently under imminent threat from human activity, that have invasive weeds and/or that have other conserved lands near or adjacent to the proposed restoration site.

Since many of these areas are not currently under conservation or within conservation easements that the RCRCDC manages, acquiring conservation easements within these areas needs to be a priority. The RCRCDC will use the USGS “Aquatic Species and Habitat Assessment Protocol for Southwest Ecoregion Rivers, Streams and Creeks” for both amphibians and fishes to determine the quality and quantity of species present. Assessment protocol for native fishes will be used from the California Department of Fish and Game to assess native fish populations and conditions.

Explanation of How Preservation Objectives Identified and Addressed in the Prioritization Strategy Satisfy the Criteria for Use of Preservation in § 332.3(h) (§332.8(c)(2)(vii)).

Preservation will be only one type of the compensatory mitigation credits that the Program seeks to serve (with other credit activities being enhancement, restoration, creation and passive regeneration as described in Section 10 herein). The main component of the preservation strategy will be to preserve, create, restore and/or enhance aquatic resources using a conservation easement or deed restriction in combination with long-term maintenance of the preserved land in perpetuity. The District will set aside endowment funds sufficient to cover the long-term maintenance requirements.

Section 332.8(c)(2)(vii) requests applicants to address the preservation criteria enumerated in Section 332.3(h). Accordingly, the District provides the following information:

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

All of the areas proposed for protection, or already protected via conservation easement, by the District have biological functions considered essential for the continued health of the subject watersheds. The prioritization strategy will allow the District to focus first on enhancement, establishment and restoration of resources on lands already preserved by the District. These resources include mule-fat and willow scrub habitats, mixed grasslands, mule-fat/stinging nettle scrub that are native resources for many of the hydro subareas and subunits of the Santa Ana Watershed. In addition, wetland and riparian resources will be protected that support western pond turtle, coast range newt, arroyo chub, California tree frog, burrowing owl and other listed and sensitive species. Currently, the bulk of the aquatic reaches within the proposed conservation areas do not have adequate aquatic values (chemical or biological) due to degraded stream substrates, dumping, diversions, fill and other activities, all of which have decreased the function of the waterways. Providing creation, enhancement, restoration and protection of these areas will greatly increase both the function and value of the aquatic resources. If these resources are not preserved, increased degradation will continue to occur and increase non-point source pollution, erosion and sedimentation.

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

The preservation objectives implemented through the prioritization strategy above will contribute significantly to the ecological sustainability of the watersheds. The District will use a wetland function assessment methodology, such as the California Rapid Assessment Method (CRAM) or other similar assessment program, in each of the District's proposed conservation areas to determine habitat quality and quantity, and the areas that would require enhancement, restoration or creation. A Habitat Monitoring and Mitigation Plan (HMMP) will also be developed to follow the recommendations of the assessment. However, it is likely that even when such a 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 used based upon site assessment at the time of the problem. It should be noted that acreages should be used to determine compensatory mitigation requirements in place of linear stream feet where appropriate, or where adequate stream conditions exist to help assess aquatic resource functions.

iii. Preservation is determined by the district engineer to be appropriate and practicable.

While the district engineer must make the final determination, District staff has initially determined that the preservation of these geographic conservation areas outlined in this Prospectus is appropriate and practical for the watershed. This initial determination seems consistent with resource agency objectives in the area insofar as agency permits and other requirements continue to focus on the Temescal Wash and other aquatic areas that are identified by the District in the Program. Habitat areas that are severely fragmented, will be developed or have incompatible overlying restrictions will not be considered for inclusion in the program.

iv. The resources are under threat of destruction or adverse modifications.

The resources that will be considered for the Program are under threat of adverse modification 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 habitat such as Coldwater salmonid/montaine habitat, upper Temescal Canyon

Western pond turtle habitat and Cajalco Creek burrowing owl habitat. Many of these areas are under threat of removal, degradation or extirpation of species. (see analysis on pages 33 & 34).

v. *The preserved sites will be permanently protected through an appropriate real estate or other legal instrument (e.g., conservation easement, title transfer to state resource agency or land trust).*

The District will permanently protect project sites through appropriate real estate or other legal instruments, such as conservation easement agreements and deed restrictions on all parcels acquired. In addition, the District will establish accounts (through one or more endowments established through payment of mitigation credits) to pay for 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 activities as described above. Focus will also be placed on the creation of buffers in upland and riparian areas to enhance the physical and biological characteristics of the protected aquatic resources.

Public and Private Stakeholder Involvement (§332.8(c)(2)(viii)). The District has existing MOU's aimed at watershed protection and related objectives with the Santa Ana Watershed Association, local water districts and the Riverside Land Conservancy. The District is in the process of developing MOU's with the Riverside County Flood Control and Water Conservation District, San Bernardino County Flood Control District, Riverside County Regional Park and Open Space District and the Riverside County Habitat Conservation Agency. In 2010, the District signed an MOU with the Western Riverside County Regional Conservation Authority (RCA) to help coordinate mitigation efforts on lands RCA owns. The District is also party to many cooperative agreements with private landowners related to implementation of District habitat enhancement activities on private lands. Depending on the needs of the project in question, the District would plan to involve these private and public entities, as appropriate. Presently, there are no District projects involving Native American tribes.

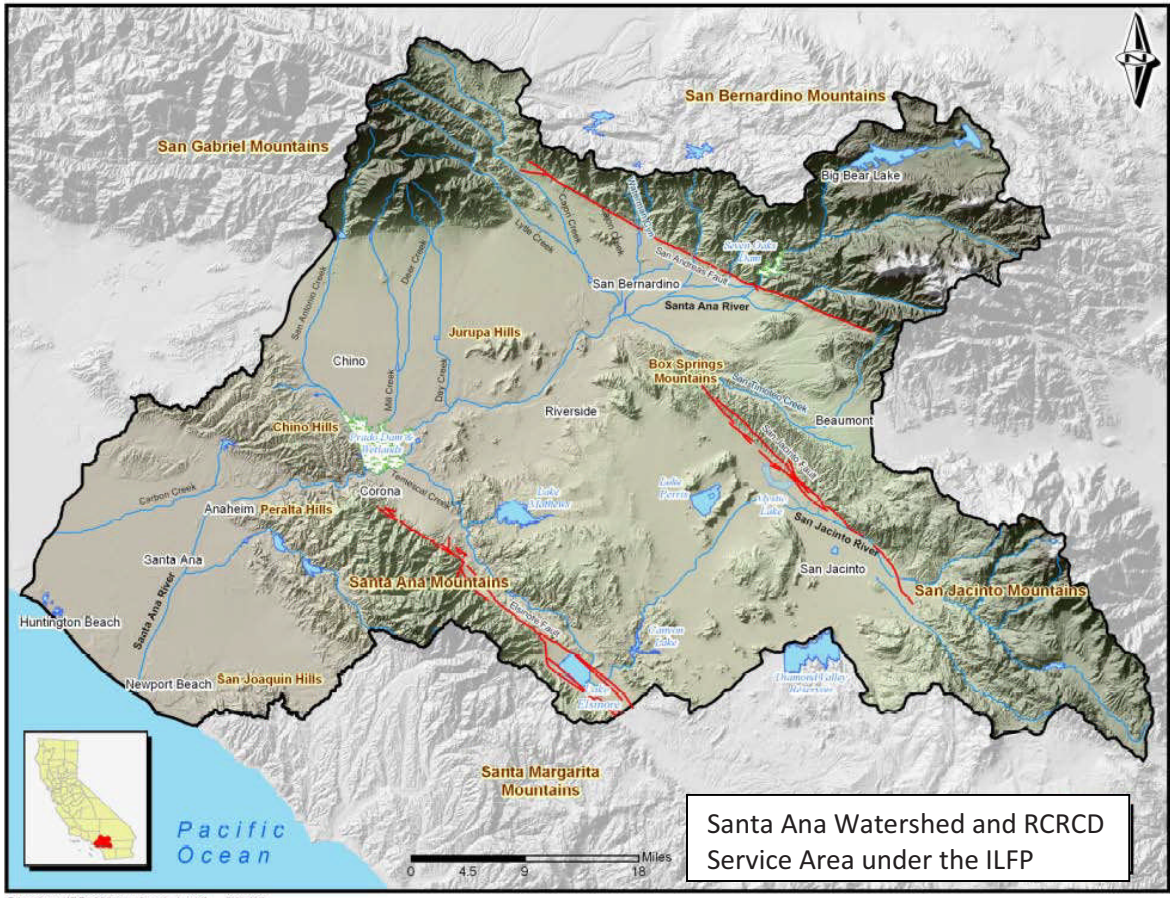
Long-term Management Strategies (§332.8 (c)(2)(ix)). Project sites will be managed on a long-term basis through the recordation of a conservation easement or a deed restriction on the project site in favor of the District. Long-term maintenance of the project site will be funded by an endowment established at the time of the recordation of the conservation easement or deed restriction and funded by sales of credits to permittees.

Periodic Progress Evaluations (§332.8 (c)(2)(x)). The District will draft an annual report that (1) briefly evaluates the current state of each project site and (2) reports on the progress of the program in achieving the goals and objectives set forth for each geographic services area encompassing those project sites. The annual report may contain photographs, as appropriate. Where practicable, adaptive management will be used in the event potential problems are identified. Reports will be provided to the U.S. Army Corps of Engineers and any other regulatory agency, upon request.

Additional Information (§332.8 (c)(2)(xi)). Information necessary for effective planning on existing conservation easements, such as title reports for lands already under RCRCDC control, title reports, parcel maps and recorded conservation easements for the Tagorada, Lee Lake and Temescal Open Space easements, can be found in appendices B, C and D.

Exhibit B: Program Service Area Map

Exhibit B



Santa Ana Watershed and RCRC Service Area under the ILFP

F:\projects\IRP_2004\surface2_1.mxd 5W-421

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

RCRCD 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 RCRCD In-Lieu Fee Program to [Permittee Name]

The Riverside-Corona Resource Conservation District 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, RCRCD 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:)
)
 Riverside-Corona Resource Conservation)
 District)
 4500 Glenwood Drive, Building A)
 Riverside, California 92501)
 Attn: District Manager)
)
)
)
 Exempt from Recording Fee (Gov. Code § 27383))
)

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT

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

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing
 approximately ___ acres, located in the City of _____, County of _____, State of
 California, designated Assessor Parcel Number(s) _____ (the “Property”). The
 Property is legally described on **Exhibit “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 in **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. 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
 W02-WEST:5JDA1\400197905.5 H-1
 24632.00029\7036801.3
 4/18/12

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 the Santa Ana Region of the California Regional Water Quality Control Board (“**RWQCB**”) 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 RWQCB are together referred to in this Conservation Easement as the “**Signatory Agencies.**” The ILFEI, the Development Plan and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein.

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

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

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

1. Purposes.

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

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

- (1) Compensatory mitigation activities, including implementation,

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

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

(c) Grantor represents and warrants that there are no structures or improvements existing on the Easement Area at the time this grant is executed. Grantor further represents and warrants that there are no other previously granted easements existing on the Easement Area that interfere or conflict with the Purposes of this Conservation Easement as evidenced by the Title Report attached at **Exhibit "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 ACOE 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 ACOE or any designees or agents of Grantor, Grantee, and ACOE 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 Riverside and San Bernardino 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 ACOE or its designees as third party beneficiaries of this Conservation Easement:

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

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

(c) To prevent any activity on or use of the Easement Area that is inconsistent with the Purposes of this Conservation Easement and to require the restoration of such areas or features of the Easement Area that may be damaged by any act, failure to act, or any use that is inconsistent with the Purposes of this Conservation Easement; and

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

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

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

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

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

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

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

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

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

(e) Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing;

(f) Residential, commercial, retail, institutional, or industrial uses;

(g) Any legal or de facto division, subdivision or partitioning of the Easement Area;

(h) Construction, reconstruction or placement of any building, road, wireless communication cell towers, billboard, sign, or any other structure or improvement of any kind except those signs specifically allowed under Section 5(e) or as specifically provided for in the Development Plan or Management Plan;

(i) Dumping soil, trash, ashes, refuse, waste, bio-solids, garbage or any other material;

(j) Planting, gardening, or introduction or dispersal of non-native plant or animal species;

(k) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Easement Area;

(l) Altering the surface or general topography of the Easement Area, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Easement Area with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Development Plan or Management Plan;

(m) Removing, destroying, or cutting of trees, shrubs or other vegetation, except for (1) emergency fire breaks as required by fire safety officials, (2) prevention or treatment of disease, (3) control of invasive species which threaten the integrity of the habitat, (4) completing the Development Plan and Management Plan, or (5) activities described in Section 2;

(n) Manipulating, impounding or altering any natural watercourse, body of water or water circulation on the Easement Area, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters except for as specifically provided for in the Development Plan or Management Plan;

(o) Creating, enhancing, and maintaining fuel modification zones (defined as a strip of mowed land or the planting of vegetation possessing low combustibility for purposes of fire suppression) or other activities that could constitute fuel modification zones;

(p) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Easement Area; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, round water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area, including but not limited to: (1) riparian water rights; (2) appropriative water rights; (3)

rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Easement Area; and (4) any water from wells that are in existence or may be constructed in the future on the Easement Area;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Enforcement.

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

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

The Notice of Violation shall be sent to the other Party and third party beneficiaries listed under Section 15 of this Conservation Easement.

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

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

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

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

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

(e) Notice of Dispute.

(1) If the violating Party provides the non-violating Party and/or third party beneficiaries with a Notice of Dispute, as provided herein, the non-violating Party and/or third party beneficiaries shall meet and confer with the violating Party at a mutually agreeable place and time, not to exceed thirty (30) days from the date that the non-violating Party and/or third party beneficiaries receive the Notice of Dispute. The non-violating Party and/or third party beneficiaries shall consider all relevant information concerning the disputed violation provided by the violating Party and shall determine whether a violation has in fact occurred and, if so, whether the Notice of Violation and demand for cure issued by the non-violating Party and/or third party beneficiaries is appropriate in light of the violation.

(2) If, after reviewing the violating Party’s Notice of Dispute, conferring with the violating Party, and considering all relevant information related to the

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

(f) Conflicting Notices of Violation.

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

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

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

(g) Immediate Action. In the event that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, the Party and/or third party beneficiary seeking enforcement pursuant to Section 7(b) above may immediately pursue all available remedies, including injunctive relief, available pursuant to both this Conservation Easement and state and federal law after giving the violating Party at least twenty four (24) hours’ written notice before pursuing such remedies. So long as such twenty-four (24) hours’ notice is given, the non-violating Party may immediately pursue all available remedies without waiting for the expiration of the time periods provided for cure or Notice of Dispute as described in Section 7(c). The written notice pursuant to this paragraph may be transmitted to the violating Party by facsimile and shall be copied to the other Party and/or third party beneficiaries listed in Section 15 of this Conservation Easement. The rights of the non-

violating Party and/or third party beneficiaries under this paragraph apply equally to actual or threatened violations of the terms of this Conservation Easement. The violating Party agrees that the remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the non-violating Party and third party beneficiaries shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which they may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this Section 7(g) shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code Section 815, *et seq.*, inclusive.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Costs and Liabilities.

(a) Grantor, its successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance (except Long-Term Maintenance by Grantee) of the Easement Area. Grantor agrees Grantee and 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: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, regardless of cause and (ii) the obligations or rights specified in Sections 4, 5, 6, 9(a), 10, and 19(l), except that any indemnification under this Section 9(b) shall be inapplicable to Third-Party Beneficiary Indemnified Parties with respect to any Claim due to the negligence or intentional acts only of USACE or any of its employees.

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

11. Condemnation. The Purposes of the Conservation Easement is presumed to be the best and most necessary public use as defined in Civil Procedure Code Section 1240.680 notwithstanding of Civil Procedure Code Sections 1240.690 and 1240.700. Nevertheless, if the Easement Area is taken, in whole or in part, by exercise of the power of eminent domain, Grantor and Grantee shall be entitled to compensation in accordance with applicable law.

12. Transfers of Conservation Easement or Easement Area.

(a) Conservation Easement. This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or

organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Easement Area is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 13.

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

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

14. Additional Interests. Grantor shall not grant any additional easements, rights of way or other interests in the Easement Area (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a “**Transfer**”) any mineral, air, or water right or any water associated with the Easement Area, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or the Signatory Agencies determine(s) that the proposed interest or Transfer is inconsistent with the Purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Easement Area. This Section 14 shall not limit the provisions of Section 2(d) or 3(p), nor prohibit transfer of a fee or leasehold interest in the Easement Area that is subject to this Conservation Easement and complies with Section 12. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

15. Notices. Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy

to each of the Signatory Agencies, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: [INSERT NAME AND ADDRESS]

To Grantee: Riverside-Corona Resource Conservation District
4500 Glenwood Drive, Building A
Riverside, CA 92501
Attn: District Manager

With a Copy to: Best Best & Krieger LLP
3750 University Avenue, Suite 400
P.O. Box 1028
Riverside, CA 92502-1028
Attn: General Counsel to the RCRC

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

California Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501

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

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

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

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

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

19. General Provisions.

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

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

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

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

action shall not affect the application of the provision to other persons or circumstances.

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

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

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

(h) Termination of Rights and Obligations. Except as otherwise expressly set forth in this Conservation Easement and provided the transfer was consistent with the terms of this Conservation Easement, a party's rights and obligations under this Conservation Easement shall terminate upon transfer of the party's interest in the Conservation Easement or Property (respectively), except that liability for acts or omissions occurring prior to transfer shall survive transfer.

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

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

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

(l) No Hazardous Materials Liability.

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

(2) Without limiting the obligations of Grantor under Section 9(b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee

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

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

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

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

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

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

GRANTOR:
[insert name]

By:

By: _____
Name: _____
Title: _____

[attach notary acknowledgment]

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Conservation Easement by _____, a _____ company, dated _____, 20____, to the Riverside-Corona Resource Conservation District, 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 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 RCRC, as deemed necessary, a minimum of one time per year.)

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

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

1. REMOVAL OF TRASH OR MAN MADE DEBRIS:

Date(s) Performed: _____

Corrective Action/Response Taken: _____

2. MAINTENANCE OF ANY INFORMATIVE SIGNAGE:

Date(s) Performed: _____

Corrective Action/Response Taken: _____

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

Date(s) Performed: _____

Corrective Action/Response Taken: _____

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

Date(s) Performed: _____

Corrective Action/Response Taken: _____

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

Date(s) Performed: _____

Corrective Action/Response Taken: _____

Additional Notes: _____

PART II
PROHIBITED ACTIVITIES

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

(If observed, describe corrective action or response taken)

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

(If observed, describe corrective action or response taken)

		NOT OBSERVED	OBSERVED	
3.	Fire Protection activities.			N/A
<hr/> <hr/> <hr/> <hr/>				

(If observed, describe corrective action or response taken)

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

(If observed, describe corrective action or response taken)

5.	Grazing or agriculture.	OBSERVED	NOT OBSERVED	N/A
----	-------------------------	----------	-----------------	-----

(If observed, describe corrective action or response taken)

6.	Horseback riding, bicycling, hunting or fishing.	OBSERVED	NOT OBSERVED	N/A
----	---	----------	-----------------	-----

(If observed, describe corrective action or response taken)

7.	Construction or placement of any building, billboard or sign.	OBSERVED	NOT OBSERVED	N/A
----	--	----------	-----------------	-----

(If observed, describe corrective action or response taken)

8.	Dumping or accumulation of trash.	OBSERVED	NOT OBSERVED	N/A
----	-----------------------------------	----------	-----------------	-----

(If observed, describe corrective action or response taken)

9.	Planting of non-native plants.	OBSERVED	NOT OBSERVED	N/A
----	--------------------------------	----------	-----------------	-----

(If observed, describe corrective action or response taken)

10.	Excavation or extraction of minerals/soil.	OBSERVED	NOT OBSERVED	N/A
-----	---	----------	-----------------	-----

(If observed, describe corrective action or response taken)

11.	Recent alterations of topography/grading.	NOT OBSERVED	OBSERVED	N/A
-----	---	--------------	----------	-----

(If observed, describe corrective action or response taken)

12.	Recently removed or destroyed trees or shrubs.	NOT OBSERVED	OBSERVED	N/A
-----	--	--------------	----------	-----

(If observed, describe corrective action or response taken)

13.	Activities detrimental to water quality.	NOT OBSERVED	OBSERVED	N/A
-----	--	--------------	----------	-----

(If observed, describe corrective action or response taken)

Additional
Notes:

Exhibit I: Property Assessment Form

Exhibit I

PROPERTY ASSESSMENT

for

the RCRC D In-Lieu Fee Program

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 Riverside-Corona Resource Conservation District (“RCRC D”) and the Los Angeles District of the U.S. Army Corps of Engineers, Region IX of the U.S. Environmental Protection Agency, and the California Regional Water Quality Control Board, Santa Ana Region, 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 RCRC D In-Lieu Fee Program.

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

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

1. Property Owner is the sole owner in fee simple of certain real property containing approximately _____ acres located in the City of _____ *[insert city name]*, County of *[insert county name]*, State of California, designated as Assessor’s Parcel Number(s) *[insert parcel number(s)]* (the “Property”), as legally described in the Preliminary Report. Property Owner has, and upon the recordation of the Conservation Easement Property Owner shall have, good, marketable and indefeasible fee simple title

to the Property subject only to any exceptions approved in advance of recordation, in writing, by the Signatory Agencies.

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 RCRC D In-Lieu Fee 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: [INSERT NAME OF] MITIGATION SITE

		Advanced Credits in Service Area			Project Site		
		Advanced Credits Initially Awarded By ACOE	Advanced Credits Sold By RCRC (including ACOE Permit # and/or RWQCB Permit #)	Advanced Credits Available for Sale by RCRC		Credits Awarded by ACOE from approved Development Plan	Number of Credits Released
	Rehabilitation/ Restoration						
	Enhancement						
	Buffer						
	Establishment						
	Total						