

CITY OF PALM DESERT

CITY MANAGER'S OFFICE

STAFF REPORT

REQUEST: REQUEST FOR APPROVAL OF CONSERVATION EASEMENT WITH THE COACHELLA VALLEY CONSERVATION COMMISSION (CVCC) FOR LANDS WITHIN THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT CONSERVATION PROGRAM (CVMSHCP) AND DIRECTION TO STAFF ON HILLSIDE PROPERTIES WHICH ARE OUTSIDE OF THE CVMSHCP BOUNDARIES

SUBMITTED BY: Ryan Stendell, Senior Management Analyst

DATE: August 23, 2012

CONTENTS: Aerial Map, Hillside Parcels
CVMSHCP Documentation
CVMC Documentation
Sample CVCC Conservation Easement

Recommendation

By Minute Motion:

1. Direct staff to prepare a Conservation Easement with the Coachella Valley Conservation Commission (CVCC) for lands within the Coachella Valley Multiple Species Habitat Conservation Program (CVMSHCP), subject to final approval by the City Manager and City Attorney;
2. Provide direction to staff on hillside properties which are outside of the CVMSHCP boundaries.

Background

In January of 2012, and due to the loss of the City's Redevelopment Agency, the City Council directed staff to investigate how to best protect properties in the hillsides that were acquired for preservation/open space. Staff reported back to the City Council in February of 2012, indicating that we have not lost our ability to re-zone properties and that the most immediate action necessary was to change the zoning from Hillside

Planned Residential to Open Space. This re-zoning action protects the City and former Redevelopment Agency property from development but does not prohibit future Councils from re-zoning the property again. The City Council also directed staff to investigate the possibility of a conservation easement and related costs for such an instrument. Since that time, staff has met with most agencies that would be interested in assisting the City with its conservation efforts. This staff report and related documentation will give the City Council the pros and cons of various options that can be utilized with our hillside properties.

Coachella Valley Multiple Species Habitat Conservation Program:

Approved in October of 2008, the CVMSHCP created the Coachella Valley Conservation Commission (CVCC) and requires all permittees to work with the CVCC to place conservation easements (or other legal instruments) on lands within the conservation areas. At the time of adoption of the CVMSHCP, Palm Desert was required to place approximately 1,000 acres of land (lands that the City had already owned at the time) into permanent conservation.

Discussion

For the purposes of this report, staff will discuss two separate categories of parcels: those inside the CVMSHCP Conservation Boundaries and those outside of the CVMSHCP Conservation Boundaries.

Parcels Inside of the CVMSHCP Conservation Area Boundaries:

The attached map indicates that there are approximately 116 acres of City-owned lands in the lower hillsides (indicated in red) that are within the conservation area. The MSHCP provides clear direction that the CVCC will conserve these parcels through a recorded legal instrument acceptable to the wildlife agencies.

The CVCC has a draft easement which has been approved by the wildlife agencies. Both CVAG and City staff agree that this draft easement would need to be modified to allow for existing uses (i.e. hiking trails, open space parks, etc.). Staff would also look to add provisions which would allow future uses if consistent with the goals and objectives of the MSHCP. There is no cost for the administration of the proposed conservation easements with the CVCC, as the management is already funded through the plan.

The proposed easements would have very little effect on how we currently are managing these lands. The easements would also begin to satisfy our requirements as a permittee to the CVMSHCP, while providing permanent conservation for these properties.

Parcels Outside of the CVMSHCP Conservation Boundaries:

The attached map indicates approximately 100 acres of land within the lower hillsides (indicated in blue) which are owned by the City and fall outside of the CVMSHCP Conservation Area. There are several options the City Council can consider for the conservation of these parcels, which staff will outline below. It is important to note the difference between a conservation easement and the management of these parcels. While a conservation easement may provide for some level of monitoring and reporting, it will not relieve the City from any of its obligations to manage these parcels (i.e. debris, hiking trail management, maintenance of open spaces). The current management of these parcels is accomplished via City staff and a service MOU with the BLM for monitoring and enforcement on the City's hiking trails.

1. Coachella Valley Mountains Conservancy (CVMC):

The CVMC has proposed their draft easement and endowment of \$15,000.00 for management of the 100 acres through a conservation easement. The \$15,000.00 would be for a period of 10 years, after which we would evaluate and adjust based on actual expenditures. In this scenario, staff would look to have the CVMC be the frontline management agency for these parcels.

Pros: Provides for permanent conservation

There could be a reduction in staff time relating to management of these parcels.

Cons: The burden of management will ultimately still lie with the City. While we might save ourselves a phone call, the CVMC would ultimately pass any action item to the City to be completed.

The City cannot remove the conservation easement once it is in place; only the CVMC could.

Requires an endowment of \$15,000.00 for 10 years.

2. Bureau of Land Management (BLM):

The City currently has a partnership with the BLM relating to the management of the City's hiking trail system. The BLM currently has a large stock of lands within our lower hillsides (indicated in yellow crosshatch on the attached map). This area of the hillside also falls within the boundaries of the Santa Rosa San Jacinto National Monument Boundary. The BLM has always looked to expand its lands

within the monument and typically uses Land and Water Conservation Funds for this purpose. Land and Water Conservation Funds are federally administered grants which could fund a future purchase and sale agreement with the City. Staff has discussed selling these parcels to the BLM in future years when funding is available.

Pros: Would provide conservation through the BLM taking fee title to the lands which are within the existing monument boundary.

There could be a reduction in staff time relating to management of these parcels.

BLM would be responsible for all aspects of management of these parcels and is staffed to do so. This would include the network of hiking trails, including all enforcement efforts.

Sale of these properties to the BLM could provide some positive cash flow to the City's General Fund.

Cons: Selling to the BLM would result in a loss of control to these parcels. BLM staff, both present and future, would be required to manage these parcels within the parameters of the National Monument. However, BLM would be the lead agency on the parcels and not the City.

3. City of Palm Desert Retaining Parcels:

The City Council could choose to retain these parcels in the as-is condition. Although not protected by a legal conservation instrument, the zoning has been changed to an Open Space designation which would be difficult to reverse. Any change in zone would require public notice and hearings. Staff would anticipate any proposed zoning changes by a future council would be extremely unpopular.

Pros: Preserves City control via ownership of the parcels.

Preserves a collaborative management approach with all involved agencies.

Cons: Management of these parcels does require some staff time throughout the year. Staff estimates management of these parcels currently to be approximately 8-12% of a Full Time Equivalent (FTE). The majority of that time would be allocated to the hiking trails.

While each approach has its own set of pros and cons, staff tends to lean toward working with the BLM on a purchase and sale agreement. The BLM is likely best suited to carry out the monitoring of these properties both on the passive parcels as well as parcels with hiking, biking, and equestrian trails on them. Staff's recommendation is to begin working with the CVCC on conservation easements for parcels within the CVMSHCP Conservation Boundaries and receive direction from the City Council on how to best proceed with the remaining parcels outside the boundaries.

Fiscal Analysis

There is no fiscal impact to the City related to the conservation easements with the CVCC. The fiscal impact of the remaining parcels will vary based on the direction received from the City Council. If the City Council chooses to offer a conservation easement to the CVMC, the Council would need to appropriate \$15,000.00 from the Council Community Contingency Reserve.

Submitted By:



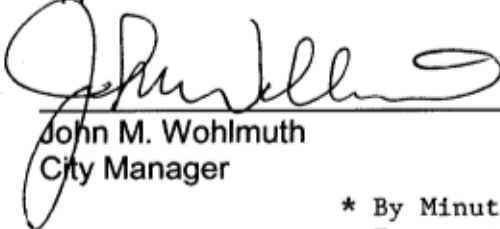
Ryan Stendell
Senior Management Analyst

Review and Concur:



CITY COUNCIL ACTION
APPROVED ✓ DENIED _____
RECEIVED _____ OTHER _____

Approval:



John M. Wohlmuth
City Manager

MEETING DATE: AUGUST 23, 2012
AYES: Harnik, Kroonen, and Spiegel
NOES: Benson and Finerty
ABSENT: None
ABSTAIN: None
VERIFIED BY: RDX/mqs

Original on File with City Clerk's Office

- * By Minute Motion: 1) Direct staff to prepare a Conservation Easement with the Coachella Valley Conservation Commission (CVCC) for lands within the Coachella Valley Multiple Species Habitat Conservation Program (CVMSHCP), subject to final approval by the City Manager and City Attorney; 2) retain City's hillside parcels that are outside of the CVMSHCP boundaries, with City staff continuing to oversee them with existing open space designation and possible potential sale of land to Bureau of Land Management (BLM) at a later time with a resulting net income to the City.
3-2 (Benson, Finerty NO)



PROTECTING OUR NATURAL AND CULTURAL HERITAGE

July 30, 2012

John Wohlmuth
City Manager
City of Palm Desert

Re: Coachella Valley Mountains Conservancy modified proposal of conservation easement on City parcels

Dear John:

Thank you for meeting with the Coachella Valley Conservation Commission (CVCC) and myself last week to discuss further details regarding potential conservation easements over the City's properties located in the Santa Rosa and San Jacinto Mountains National Monument (Monument) and the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP). This meeting was a follow up to the letter I wrote dated May 2nd, 2012 outlining the background and costs associated with granting a conservation easement to the Conservancy.

As we discussed, some of these properties fall within a designated Conservation Area of the CVMSHCP and have been identified under the Plan to be conserved through a "legal mechanism", such as a conservation easement. The CVCC and the Conservancy have different easement templates, which have been provided for you review and consider. The City has a few options on how to proceed with those properties within the Conservation Area, either an easement to the Conservancy or the CVCC, or possibly fee simple donation to CVCC. At the meeting we agreed that the City would follow up with CVCC on those options.

For the properties outside of the Conservation Area, the CVCC is not likely to take on a conservation easement as it is outside of their scope of interest as it was expressed in our meeting. The Conservancy is still willing to accept a conservation easement from the City as expressed in our May 2nd letter for those properties that are outside the Conservation Area which represents approximately half of the total properties originally proposed by the City.

The proposed cost to accept a Conservation Easement over this smaller subset of properties includes some of the same level of the Conservancy's resources to establish a baseline condition report, periodic compliance review, enforcement, amendments and record-keeping. However, due to the fewer number of parcels and acreage than we originally considered, we have determined that an *initial donation of \$15,000* would be

sufficient for the first ten years following dedication. Should the City decide to proceed with a Conservancy easement over all the properties originally considered, that amount remains \$25,000.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin McKernan', with a long horizontal flourish extending to the right.

Kevin McKernan
Executive Director
Coachella Valley Mountains Conservancy

CONSERVATION EASEMENT

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
Coachella Valley Conservation Commission)
73-710 Fred Waring Drive, Suite 200)
Palm Desert, CA 92260)
)

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED is made this ____ day of _____,
20____, by _____ ("Grantor"), in favor of
the COACHELLA VALLEY CONSERVATION COMMISSION, a California Joint Powers
Authority, ("Grantee,") with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property consisting of approximately ____ acres in the [*name of city,*] [*unincorporated area of*] County of Riverside, State of California, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"). An approximately ____ acre portion of the Property is more particularly described in Exhibit B attached hereto and incorporated herein by reference (the "Easement Property"); [*Note: depending on the parcel, it may also be necessary to reference a tract map, parcel map, etc. in this section;*]

B. The Easement Property possesses wildlife and habitat values (collectively, "conservation values") of great importance to Grantee, the people of the State of California, and the people of the United States;

C. The Easement Property provides potential habitat for the [*list species with common and scientific names;*] and contains natural communities including [*list names; also list sand transport areas and/or wildlife linkages, as applicable;*]

D. The California Department of Fish and Game ("CDFG") has jurisdiction, pursuant to California Fish and Game Code section 1802 and other laws, over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species;

E. The United States Fish & Wildlife Service ("USFWS") has jurisdiction over the conservation, protection, restoration, enhancement, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species to the

extent set forth in the Federal Endangered Species Act, 16 U.S.C. sections 1531, *et seq.*, and other federal laws;

F. The Coachella Valley Conservation Commission ("CVCC") is a California joint powers authority pursuant to Government Code sections 6500-6511 created to implement the Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan ("MSHCP") and is a governmental agency qualified to hold conservation easements pursuant to Civil Code section 815.3;

G. This Conservation Easement provides mitigation for certain impacts of a [*describe project type if applicable; e.g. residential development project*]; in [*the city of _____, or in the unincorporated area of*] County of Riverside, State of California, pursuant to the California Natural Community Conservation Planning Act Permit 2035-2008-001-06 dated September 9, 2008, issued by CDFG under the authority of California Fish and Game Code sections 2800 *et seq.* ("NCCP Permit"), and Permit No TE104604-0 dated October 1, 2008, issued by USFWS under the authority of section 10(a)(1)(B) and section 10(a)(2) of the Endangered Species Act of 1973 as amended (FESA) ("Section 10(a) Permit"), and the corresponding MSHCP dated September 2007 and Implementing Agreement, as same may be amended from time to time. The Section 10(a) Permit, the NCCP Permit, the Implementing Agreement, and the MSHCP, and any amendments thereto, are all incorporated herein by this reference. Information regarding these documents may be obtained from USFWS and CDFG, for each respective permit, and from CVCC regarding the Implementing Agreement and the MSHCP. Contact information for USFWS, CDFG, and CVCC is provided in the Notices section of this Conservation Easement Deed.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

In consideration of the above recitals and mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to United States and California law, including Civil Code sections 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a Conservation Easement in perpetuity over the Easement Property.

1. Purpose. The purpose of this Conservation Easement is to ensure the Easement Property will be retained forever in a natural condition and to prevent any use of the Easement Property that will impair or interfere with the conservation values of the Easement Property. Grantor intends that this Conservation Easement will confine the use of the Easement Property to such activities, including, without limitation, those involving the preservation and enhancement of native species, their habitat, and natural communities, in a manner consistent with the habitat conservation purposes of this Conservation Easement.

1.1 The term "natural condition," as referenced in the preceding paragraph and other portions of this Conservation Easement Deed, shall mean the condition of the Easement Property, as it exists at the time this Conservation Easement Deed is executed, as well as future enhancements or changes to the Easement Property that occur directly as a result of in-perpetuity

maintenance and management obligations that occur on the Easement Property as described herein.

1.2 Grantor certifies to Grantee that to Grantor's actual knowledge there are no structures or improvements existing on the Easement Property at the time this Deed is executed. Grantor further certifies to Grantee that to Grantor's actual knowledge there are no previously granted easements existing on the Easement Property that interfere or conflict with the purpose of this Conservation Easement.

1.3 Grantee's acceptance of this Conservation Easement is expressly conditioned on the receipt from Grantor, prior to recordation, of either (a) a baseline report on the condition of the Easement Property in a form acceptable to Grantee or (b) payment of the sum necessary to reimburse Grantee for the cost of obtaining a baseline report as quoted by a contractor approved by Grantee. The baseline report shall be deemed evidence of the natural condition of the Easement Property at the time of the grant of the Conservation Easement. Exhibits to the baseline report shall include (a) an aerial photograph(s) of the Easement Property at an appropriate scale taken as close in time as possible to the date this Conservation Easement is executed; (b) an overlay of the boundaries of the Easement Property on such aerial photograph(s); and (c) on-site color photographs showing the major, distinct natural features of the Easement Property.

2. Grantee's Rights. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys to Grantee, and to USFWS and CDFG as third party beneficiaries hereof, or their respective designee(s), all mineral, air, and water rights necessary to protect and to sustain the biological resources of the Easement Property, and all present and future development rights, as well as all of the following rights:

- (a) To preserve and protect the conservation values of the Easement Property;
- (b) To enter upon the Easement Property at reasonable times in order to monitor Grantor's compliance with and to otherwise enforce the terms of this Conservation Easement, 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 Property;
- (c) To enter upon the Easement Property at reasonable times to carry out management and monitoring consistent with the conservation goals, monitoring program, and management plans for the MSHCP;
- (d) To prevent any activity on or use of the Easement Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Easement Property that may be damaged by any act, failure to act, or any use that is inconsistent with the purposes of this Conservation Easement; and
- (e) To enforce, by any means, including without limitation, injunctive relief, the terms and conditions of this Conservation Easement.

3. Prohibited Uses. Any activity on or use of the Easement Property inconsistent with the purposes of this Conservation Easement is prohibited, except as allowed by Grantor and Grantee pursuant to an express written approval. Without limiting the generality of the foregoing, the following uses by Grantor, Grantor's agents, and third parties, are expressly prohibited:

- (a) The application of water; the use of fertilizers, pesticides, biocides, herbicides or any agricultural chemical; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the purposes of this Conservation Easement;
- (b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways;
- (c) Grazing or other agricultural activity of any kind;
- (d) Recreational activities except as may be expressly authorized in writing by both Grantor and Grantee;
- (e) Residential, commercial or industrial uses;
- (f) [After recordation of the final map for Tract _____] [Any/any] further legal or de facto division, subdivision or partitioning of the Easement Property;
- (g) Construction, reconstruction or placement of any building, billboard or sign, or any other structure or improvement of any kind;
- (h) Dumping, depositing or accumulation of soil, trash, ashes, refuse, waste, biosolids or any other materials;
- (i) Planting, introduction or dispersal of non-native or invasive plant or animal species, except as otherwise approved by Grantee;
- (j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Easement Property, except as necessary to conduct authorized natural or cultural resources research or preservation in consultation with Native American Tribes, State Historic Preservation Office, and other entities/agencies as required by state or federal law;
- (k) Altering the surface or general topography of the Easement Property, including building of roads except as necessary to conduct authorized natural or cultural resources research or preservation in consultation with Native American Tribes, State Historic Preservation Office, and other entities/agencies as required by state or federal law;
- (l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for fire breaks, maintenance of existing foot trails or roads, or prevention or treatment of disease;

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation or underground water table on the Easement Property, and activities or uses detrimental to water quality, including but not limited to, degradation or pollution of any surface or subsurface waters;

(n) Shining artificial light into the Easement Property. Artificial lighting on the Property shall be shielded to prevent spillover of light into the Easement Property;

(o) Any activities prohibited under the MSHCP; and

(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 Property; changing the place or purpose of use of the above and below ground 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, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Property.

4. Grantor's Duties. To accomplish the purposes of this Conservation Easement, 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 Property;

(b) Undertake all necessary actions to perfect and defend the rights of the Grantee and third party beneficiaries identified in section 2 hereunder;

(c) Comply with the terms of this Conservation Easement and cooperate with Grantee in the protection of the conservation values;

(d) Pursuant to the requirements set out herein, repair and restore damage to the Conservation Easement 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 Property without first consulting with Grantee; and

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

[(f) Install and maintain a fence approved by and in coordination with Grantee to separate the Easement Property from the balance of the Property.]

5. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Easement Property,

including the right to engage in or to permit or invite others to engage in all uses of the Easement Property that are consistent with the purposes of this Conservation Easement.

6. **Grantee's Remedies.** USFWS and CDFG, as a third-party beneficiaries under this Conservation Easement, shall have the same rights as Grantee under this section to enforce the terms of this Conservation Easement. If Grantee determines that Grantor is in violation of the terms of this Conservation Easement or that a violation is threatened, Grantee shall give written notice to Grantor, CDFG, and USFWS of such violation and demand in writing the cure of such violation. If Grantor fails to cure the violation within thirty (30) days after receipt of written notice and demand from Grantee, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the 30-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by Grantor with the terms of this Conservation Easement, to recover any damages to which Grantee may be entitled for violation by Grantor of the terms of this Conservation Easement or for any injury to the conservation values of the Easement Property, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Easement Property to the condition in which it existed prior to any such violation or injury. Prior to implementation of any remedial or restorative actions, Grantor shall consult with Grantee. Without limiting Grantor's liability therefor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Easement Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the conservation values of the Easement Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of the terms of this Conservation Easement Deed. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement Deed are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement Deed, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section 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 sections 815, *et seq.*, inclusive. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

If at any time in the future Grantor, Grantee, or any successor in interest uses or threatens to use the Easement Property for purposes inconsistent with this Conservation Easement, or Grantee or any successor in interest releases or abandons this Conservation Easement in whole or in part, then, notwithstanding Civil Code section 815.7, the California Attorney General, USFWS, or any entity or individual with a justifiable interest in the preservation of this Conservation Easement has standing as interested parties in any proceeding affecting this Conservation Easement.

6.1 **Costs of Enforcement.** Any costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by Grantor's negligence or breach of this Conservation Easement shall be borne by Grantor.

6.2 **Grantee's Discretion.** Enforcement of the terms of this Conservation Easement Deed by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement Deed in the event of any breach of any term of this Conservation Easement Deed by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement Deed or of any of Grantee's rights under this Conservation Easement Deed. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

6.3 **Acts Beyond Grantor's Control.** Nothing contained in this Conservation Easement Deed shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Easement Property resulting from: (a) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Property resulting from such causes; or (b) acts by Grantee or its employees, directors, officers, agents, contractors, or representatives.

6.4 **CDFG and USFWS Right of Enforcement.** All rights and remedies conveyed to Grantee under this Conservation Easement Deed shall extend to and are enforceable by CDFG and USFWS. These rights are in addition to, and do not limit, the rights of enforcement under any other applicable permit, agreement or authority, including, but not limited to, the rights of enforcement under the NCCP and Section 10(a) Permits.

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

8. **Costs and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Easement Property. Grantor agrees that Grantee shall have no duty or responsibility for the operation or maintenance of the Easement Property, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Easement Property.

8.1 **Taxes; No Liens.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Easement Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep Grantee's interest in the Easement Property free from any liens, including those arising out of any obligations incurred by Grantor or any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Easement Property.

8.2 Hold Harmless. Grantor shall hold harmless, protect and indemnify Grantee, USFWS and CDFG, and their respective directors, officers, employees, agents, contractors, volunteers, and representatives and the heirs, personal representatives, successors and assigns of each of them (each an "Indemnified Party" and, collectively, "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 (a) 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 Property, regardless of cause, unless due solely to the negligence of the party to be indemnified; (b) Grantor's obligations hereunder, including but not limited to the obligations specified in the (sub)sections above entitled "Grantor's Duties," "Costs and Liabilities," and "Taxes; No Liens"; and (c) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the 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 Indemnified Party or reimburse Grantee for all charges incurred in defending the action or proceeding.

8.3. Extinguishment. If circumstances arise in the future that render the 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.

8.4 Condemnation. The purposes of the Conservation Easement are presumed to be the best and most necessary public use as defined at Code of Civil Procedure section 1240.680, notwithstanding Code of Civil Procedure sections 1240.690 and 1240.700.

9. Assignment by Grantee. This Conservation Easement is transferable, but Grantee or any successor in interest shall give Grantor, USFWS, and CDFG, at least thirty (30) days prior written notice of the transfer. Grantee or any successor in interest may assign its rights and obligations under this Conservation Easement in favor of an entity or organization authorized to acquire and hold conservation easements pursuant to Civil Code section 815.3 and reasonably acceptable to the USFWS and CDFG. Grantee or any successor in interest shall require the assignee to agree in writing that the conservation purposes that this Deed is intended to advance shall continue to be fulfilled by such assignee in accordance with the terms of this Conservation Easement Deed, the NCCP Permit and the Section 10(a) Permit, and shall require the assignee to record the assignment in the county where the Easement Property 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.

10. Release or Abandonment. Grantee or any successor in interest shall not release, modify, relinquish or abandon its rights and obligations under this Conservation Easement without the prior written consent of USFWS and CDFG.

11. Subsequent Transfers. Grantor agrees to incorporate the terms of this Conservation Easement Deed in any deed or other legal instrument by which Grantor divests itself of any

interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee, USFWS and CDFG of the intent to transfer any interest in the Easement Property at least thirty (30) days prior to the date of such transfer. Grantee, USFWS and CDFG shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, conditions and restrictions of this Conservation Easement Deed. The failure of Grantor or Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement Deed or limit its enforceability in any way.

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

To Grantor:

To Grantee:

Coachella Valley Conservation Commission
73-710 Fred Waring Drive, Suite 200
Palm Desert, California 92260

With a copy:

To CDFG:

Department of Fish and Game
Office of the General Counsel
1416 Ninth Street, 12th Floor
Sacramento, California 95814-2090
Attn: General Counsel

To USFWS:

U.S. Fish and Wildlife Service
Attn: Field Supervisor
6010 Hidden Valley Road, Suite 101
Carlsbad, CA 92011

or to such other address as either party shall designate by written notice to the other. 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, five (5) 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.

13. **Amendment.** This Conservation Easement Deed may be amended by Grantor and Grantee only by mutual written agreement, with the written approval of the USFWS and CDFG (which approval shall not be unreasonably withheld or delayed). Any such amendment shall be consistent with the purposes of this Conservation Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Riverside County, State of California.

14. **No Hazardous Materials Liability.** Grantor represents and warrants that it has no knowledge of any release, threatened release, storage or disposal of Hazardous Materials (defined below) in, on, under, about or affecting the Easement Property.

14.1 Without limiting any other indemnification obligations set out hereinabove, Grantor agrees to indemnify, protect and hold harmless the Indemnified Parties (as defined hereinabove) against any and all Claims (as defined hereinabove) arising from or connected with any Hazardous Materials present, alleged to be present, or otherwise associated with the Easement Property at any time, except any Hazardous Materials placed, disposed or released by Grantee, its employees or agents. This release and indemnification includes, without limitation, Claims for injury to or death of any person or physical damage to any property; and 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 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 Indemnified Party or reimburse Grantee for all charges incurred in defending the action or proceeding.

14.2 Despite any contrary provision of this Conservation Easement Deed, 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 to Grantee any of the following:

(a) 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. sections 9601, *et seq.*; hereinafter, "CERCLA"); or

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

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

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

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

14.3 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; the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*); the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (49 U.S.C. sections 5101, *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. sections 6901 *et seq.*); the Hazardous Waste Control Law (California Health & Safety Code sections 25100, *et seq.*); the Carpenter-Presley-Tanner 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 Deed. 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.

14.4 Grantor represents, warrants and covenants to Grantee that Grantor's activities (including those of its agents, employees, invitees and contractors) upon and use of the Easement Property will comply with all Environmental Laws.

15. General Provisions.

15.1 Controlling Law. The interpretation and performance of this Conservation Easement Deed shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state, and by applicable federal law (including the FESA).

15.2 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement Deed shall be liberally construed to affect the purposes of this Conservation Easement and the policy and purpose of Civil Code sections 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.

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

15.4 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment in compliance with all provisions herein.

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

15.6 Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement Deed 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 Property.

15.7 Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement Deed terminate upon the transfer of its interest in the Conservation Easement or Easement Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

15.8 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.

15.9 Warranty. Grantor represents and warrants that there are no outstanding mortgages, liens, encumbrances or other interests in the Easement Property which have not been expressly subordinated to this Conservation Easement Deed, and that the Easement Property is not subject to any other conservation easement or interest that is adverse to this Conservation Easement.

15.10 Additional Easements. Grantor shall not grant any additional easements, rights of way or other interests in the Easement Property (other than a security interest that is subordinate to this Conservation Easement Deed), or grant or otherwise abandon or relinquish any water agreement relating to the Easement Property, without first obtaining the written consent of Grantee, USFWS and CDFG. Grantee, USFWS and CDFG may withhold such consent if it determines 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 Property. This section shall not prohibit transfer of a fee or leasehold interest in the Easement Property that is subject to this Conservation Easement Deed and otherwise complies with the terms of this Deed.

15.11 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both 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.

15.12 Recording. Grantee shall record this Conservation Easement in the Official Records of the County in which the Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR:

By: _____

TITLE: _____
Authorized Representative

Approved as to form:

By: _____
General Counsel for Grantor

GRANTEE:

Coachella Valley Conservation Commission

By: _____

TITLE: _____
Authorized Representative

Approved as to form:

By: _____
Toni Eggebraaten, General Counsel
Coachella Valley Association of Governments

Approved as to form:

By: _____
, General Counsel
California Department of Fish & Game

CERTIFICATE OF ACCEPTANCE

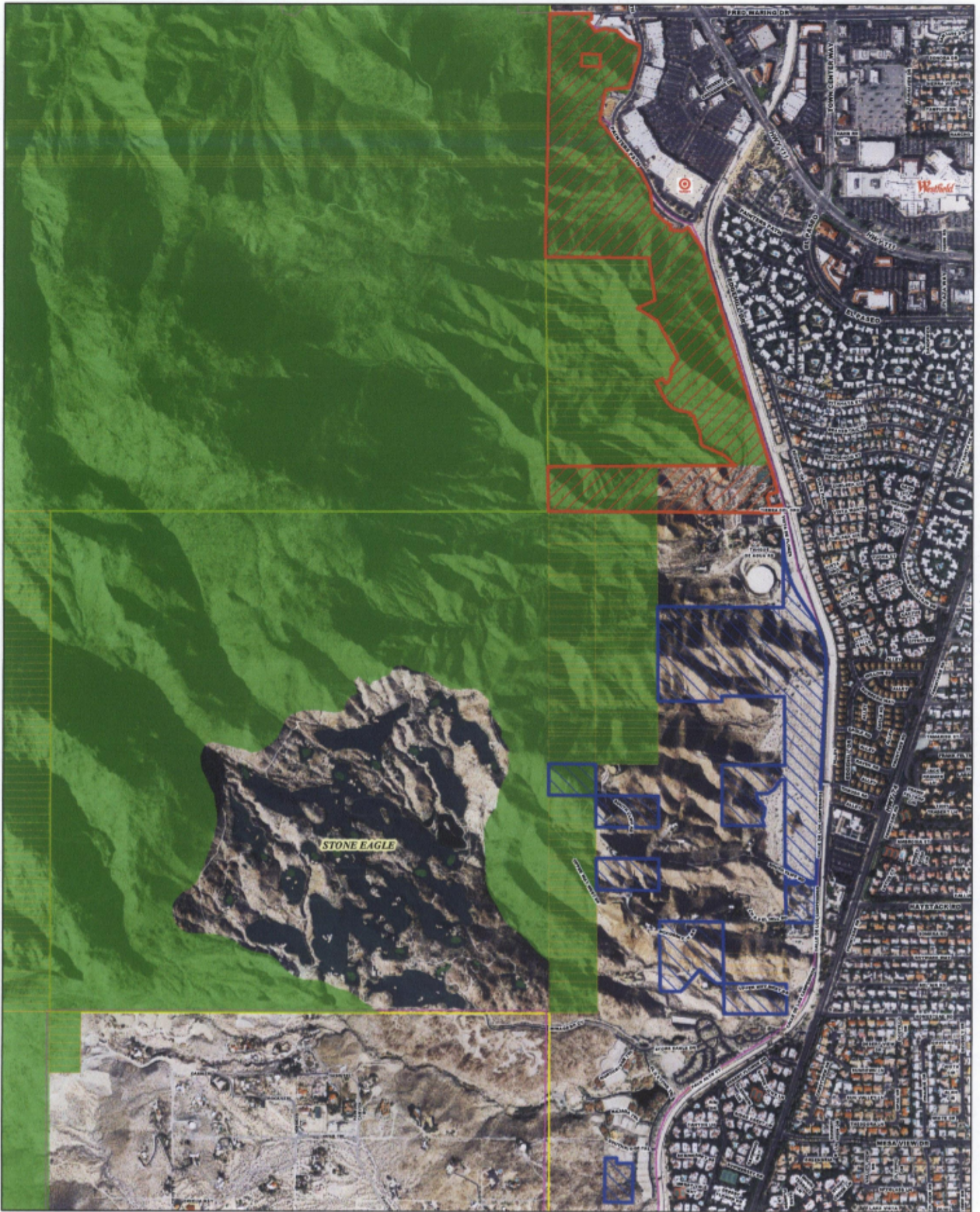
This is to certify that the interest in real property conveyed by the foregoing Conservation Easement Deed by _____ dated _____, is hereby accepted by the undersigned officer on behalf of the Grantee, Coachella Valley Conservation Commission, pursuant to authority conferred by the Commission on _____.

COACHELLA VALLEY CONSERVATION COMMISSION

By: _____

TITLE: _____
Authorized Representative







DATE: _____



LOCATOR MAP



DATE:
7/2012

- | | | |
|--|---|--|
|  To CVCC - 116.22 Acres |  CVMSHCP Conservation Area |  BLM Land |
|  To BLM - 98.87 Acres |  SRSJNM Boundary |  Palm Desert City Boundary |



VICINITY MAP

4.1.2 Local Permittee Existing Conservation Lands, Including CVFTL HCP Lands

As part of their mitigation obligation under the Plan, the Local Permittees will commit to manage and protect approximately 8,800 acres of Existing Conservation Lands as part of the MSHCP Reserve System, and consistent with the Conservation Area and Covered Species Goals and Objectives of the Plan. This includes the Covered Species Conservation Goals and Objectives in Section 9. The Local Permittee Existing Conservation Lands are summarized in Table 4-3. Local Permittee lands in the MSHCP Reserve System that are currently conserved and which will be managed for Plan purposes include lands owned by the Cities and County Parks. Prior to relinquishment of the CVFTL Permit, CVCC will conserve the parcels through a recorded Legal Instrument acceptable to the Wildlife Agencies. CVCC may obtain conservation easements on or fee title to the lands owned by the Cities and County Parks. CVCC will enter into MOUs with these jurisdictions assuring management of these lands consistent with the MSHCP.

Also included in the Local Permittee Existing Conservation Lands are lands owned by the Center for Natural Lands Management, which were acquired with local mitigation fees pursuant to the CVFTL HCP, and lands owned by CVWD and managed pursuant to the CVFTL HCP. The CVFTL HCP required establishment of three preserves for the Conservation of the CVFTL and its Habitat. These are the Coachella Valley Preserve in the Thousand Palms area, the Willow Hole/Edom Hill Preserve near the west end of the Indio Hills, and the Whitewater Floodplain Preserve east of Indian Avenue in the Whitewater River area. These lands are displayed in Figure 6-2 in Section 6.6.1.3 of the Plan. These preserves consist of BLM, CDFG, USFWS, State Parks, CVMC, CVWD, TNC, and CNLM lands. Table 6-1 shows the ownership in the three reserves. Of the land in the reserves, approximately 1,700 acres in the Whitewater Floodplain Reserve is CVWD land, and approximately 500 acres was acquired with local CVFTL mitigation fees. These lands will be included in the MSHCP Reserve System.

In conjunction with Plan approval and Permit issuance, the CVFTL Incidental Take Permit will be relinquished per 50 CFR 13.26 and 50 CFR 17.22(a)(7). A new Incidental Take Permit will be issued pursuant to the MSHCP. Prior to relinquishment of the CVFTL Permit, CVCC shall conserve these lands through a recorded Legal Instrument acceptable to the Wildlife Agencies. CVCC may obtain conservation easements on or fee title to these mitigation lands. (See Section 6.6.1.3 of the Plan and Section 16.2 of the IA for additional details.)

Table 4-3: Local Permittee Existing Conservation Lands¹

<i>Permittee</i>	<i>Acres (1996)</i>	<i>Acres (November 2006)</i>	<i>Land Designation</i>	<i>Conservation Area</i>
City of Cathedral City	0	100	Deed Restricted	Edom Hill
City of Indian Wells	600	600	Leased to Living Desert	Santa Rosa and San Jacinto Mountains
City of La Quinta	0	100	Deed Restricted	Santa Rosa and San Jacinto Mountains
City of Palm Desert	0	1,000	Deed Restricted	Santa Rosa and San Jacinto Mountains

City of Palm Springs	1,800	2,100	Deed Restricted	Santa Rosa and San Jacinto Mountains
City of Rancho Mirage	0	1,000	Conservation Easement	Santa Rosa and San Jacinto Mountains
CVWD	1,200	1,700	Restricted pursuant to CVFTL HCP	Whitewater Floodplain
County Parks	400	400	Regional Open Space	Upper Mission Creek/Big Morongo Canyon; Santa Rosa and San Jacinto Mountains
CVAG	0	1,300	Transportation mitigation	Willow Hole; West Deception; Indio Hills/Joshua Tree Linkage
Center for Natural Lands Management	0	500	Acquired with CVFTL local mitigation fees pursuant to the CVFTL HCP	Thousand Palms
TOTAL	4,000	8,800		

¹ Acreage is rounded to the nearest 100 acres.

From CVMShCP Implementing Agreement:

13.2 County and Cities Obligations. The County and the Cities have the following obligations under the MSHCP and this Agreement:

- A. Adopt and maintain ordinances or resolutions as necessary, and amend their general plans as appropriate, to implement the requirements and to fulfill the purposes of the Permits, the MSHCP and this Agreement for private and public projects. Such requirements and policies include: 1) compliance with relevant processes to ensure application of the Conservation Area requirements set forth in Section 4.0 of the MSHCP and thus, satisfaction of the local acquisition obligation; 2) require compliance with the applicable Land Use Adjacency Guidelines set forth in Section 4.5 of the MSHCP; 3) maintain a record of total acres developed and their location within its jurisdiction and transmit such information monthly to the CVCC; 4) convey any changes in County or city boundaries or general plan land use designations to CVCC at the end of each calendar year; 5) ensure compliance with the Avoidance, Minimization and Mitigation Measures in Section 4.4 of the MSHCP; 6) ensure implementation consistent with the Species Conservation Goals and Objectives in Section 9; and 7) permanently protect and manage Mitigation Land within the reserve system legally owned and/or controlled by the entity unless conveyed to the CVCC.