



MSHCP Mitigation Fee Implementation Manual

February 2023



RCA's MSHCP MITIGATION FEE IMPLEMENTATION MANUAL

The Western Riverside County Regional Conservation Authority ("RCA") was formed in 2004 to achieve one of America's most ambitious environmental efforts, the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP" or the "Plan"). As the nation's largest habitat conservation plan of its kind, the MSHCP strengthens the sustainability and quality of life in western Riverside County by nurturing economic development opportunities, alleviating traffic congestion, protecting natural resources, and improving air quality.

This MSHCP Mitigation Fee Implementation Manual ("Manual") provides direction to local jurisdictions under the MSHCP concerning their obligations under the MSHCP and Permits regarding the imposition, collection, accounting, remittance, and calculation of the Local Development Mitigation Fee. The Local Development Mitigation Fee Program is administered by the RCA. The instructions in this Manual are intended to be consistent with and based on the MSHCP, the Implementing Agreement (IA), and the 2020 Nexus Study. The Manual is also intended to provide direction to Member Agencies concerning their Fee Ordinances and any related Resolutions. For questions and clarifications, please contact the RCA.

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French Valley Wildlife Area

I. INTRODUCTION



CHAPTER I. INTRODUCTION

A. Background on MSHCP and Implementing Agreement

The MSHCP, which became effective on June 22, 2004, when the federal incidental take permit was issued, is a comprehensive, multi-jurisdictional Habitat Conservation Plan (HCP) focusing on the permanent conservation of approximately 500,000 acres and the protection of 146 species, including 33 that are currently listed as threatened or endangered. The MSHCP was developed in response to the need for future growth opportunities in western Riverside County while addressing the requirements of the State and federal Endangered Species Acts. The MSHCP serves as an HCP pursuant to Section 10(a)(1)(B) of the federal Endangered Species Act of 1973 as well as a Natural Communities Conservation Plan (NCCP) under the NCCP Act of 2001. The MSHCP streamlines these environmental permitting processes by allowing the participating jurisdictions to authorize “take” of plant and wildlife species identified within the Plan Area and has saved taxpayers funds by expediting the construction of more than 30 major freeway and road improvements in Riverside County valued at more than \$5 billion. At the same time, Plan implementation provides a coordinated MSHCP Conservation Area and implementation program to preserve biological diversity and maintain the region’s quality of life.

The MSHCP, the associated Implementing Agreement (“IA”) (See Chapter VIII, Appendices for pages from the IA), and Incidental Take Permit collectively determine a set of conservation actions that must be taken to meet the terms of the Incidental Take Permit in order to continue to benefit from the regulatory streamlining and other benefits of the MSHCP. This includes the identification of the responsible parties, including the responsibilities of the Local Permittees.¹ One of the key requirements of the MSHCP, IA, and Incidental Take Permit (consistent with the requirements of the federal Endangered Species Act) is the provision of adequate funding by Local Permittees to the Implementing Entity (the Western Riverside County Regional Conservation Authority²) (“RCA”) to conduct their portion of the conservation actions identified in the MSHCP.

B. Purpose of MSHCP and Local Development Mitigation Fee

The purpose of the Local Development Mitigation Fee (“LDMF”) is to contribute to the funding required to implement the MSHCP and, as a result, help maintain the Incidental Take Permit for new private and public development in western Riverside County under

¹Local Permittees include the western Riverside County Cities, the County of Riverside (County), Riverside County Flood Control and Water Conservation District (Riverside County Flood Control District), Riverside County Regional Park and Open-Space District, Riverside County Department of Waste Resources, and Riverside County Transportation Commission (RCTC).

²The Western Riverside County Regional Conservation Authority is a joint powers authority established in 2004 to implement the MSHCP.

the federal and State of California (State) Endangered Species Acts. Maintaining the Incidental Take Permit is necessary to allow for future development, and without the development community paying for the cost of the MSHCP, individual applicants would need to apply independently for development approval under federal and State law if the project impacts a threatened or endangered species. The Federal Endangered Species Act specifically requires that the applicant for Incidental Take Permit “ensure that adequate funding for the [MSHCP] will be provided.”³ The LDMF helps provide the regional benefits of streamlined economic development in western Riverside County and the protection of contiguous open spaces that serve as a community amenity to residents, workers, and visitors.

New development in the MSHCP Area will directly, indirectly, or cumulatively affect species and habitat in western Riverside County. Because of this, the County of Riverside along with several other agencies prepared and adopted the MSHCP to provide a regional, streamlined approach to benefit future development of all types in western Riverside County, including the development and improvements envisioned under the numerous General Plans and the Regional Transportation Improvement Program. The requirements of the MSHCP (habitat acquisition, management and monitoring, and program administration) are a direct result of the regional approach to mitigation that is engendered by all new development in the Plan Area under the pertinent environmental regulations. Consequently, the LDMF applies to all new development in western Riverside County whether or not the development is within a Criteria Cell.

The overall permit period was set at 75 years, ending in 2079. To cover ongoing management and monitoring costs beyond the duration when mitigation fees will be collected, the establishment of a non-depleting endowment is required. In other words, the endowment must be sufficient such that expected average interest revenues (after inflation and transaction costs) can cover the ongoing costs associated with management and monitoring in perpetuity. The endowment must be fully established by the end of the land acquisition period as it is assumed that no more mitigation fees will be collected after that time.

Finally, the LDMF is required by the MSHCP (MSHCP § 8.5.1) and the IA (IA §13.2(A)). Also, to be eligible for Measure A western County local streets and roads funds, Member Agencies are required to participate in the MSHCP. This is a requirement of the Measure A Ordinance adopted by Riverside County voters in November 2002. Annually, RCA certifies Member Agency compliance to RCTC.

C. Public Projects

A number of Public Projects also pay fees related to the MSHCP in order to mitigate the impact of public projects in accordance with the terms of the IA. These different types of

³See Section 1539(a)(2)(B)(iii) of the Federal Endangered Species Act.

Public Projects and the fees related to them are discussed more in the later chapters of this Manual.

D. RCA Administration of Fee Program

Section 2 of the Member Agencies' Fee Ordinance provides that the RCA is appointed as the Administrator of the Fee Ordinance. The RCA is authorized to receive all fees generated from the LDMF within the Cities or County, and to invest, account for, and expend such fees in accordance with the provisions of the Plan, IA, and Fee Ordinances. The RCA's Executive Director or his/her designee is authorized to act on behalf of the RCA as the Administrator of the LDMF Program. Furthermore, the RCA shall have the final determination regarding collection of the fee, the appropriate methodology to calculate the fee based on the information provided, and the interpretation of this Manual.

E. Purpose of Implementation Manual

The purpose of this Manual is to provide those jurisdictions and agencies that are participants in the MSHCP and IA with direction and policies for implementation of the LDMF Ordinance and Resolution adopted by each of the member jurisdictions. The Manual specifies implementation and responsibilities for the LDMF Ordinance and Resolution. The instructions in this Manual shall control the administration of the LDMF except where directly in conflict with the adopting Ordinance. Capitalized terms in this Manual shall have the same meaning as in the adopting Ordinance.

The RCA may, from time to time, amend this Manual as necessary to add additional direction, clarification, or guidance regarding implementation of the LDMF Ordinance.



Temescal Toscana Site

II. LOCAL JURISDICTION INSTRUCTIONS



CHAPTER II. LOCAL JURISDICTION INSTRUCTIONS

A. Legal Authority

The MSHCP notes that “new development affects the environment directly through construction activity and cumulatively through population bases that result from Development.” As a result, the Member Agencies are required to implement a LDMF that was expected to represent one of the primary sources of funding for the implementation of the MSHCP. The LDMF has been developed in accordance with California Government Code Section 66000 et seq. (the “Mitigation Fee Act”) that “allows cities and counties to charge new development for the costs of mitigating the impacts of new development.” Fees charged to Public Projects have been imposed pursuant to the IA.

The 2020 Nexus Study Chapter 8 (pages 56-59) discusses the legally required findings on the relationship between the fee and development. The relationship is more than simply disturbance of habitat; it is the regional impacts on habitat from development. The 2020 Nexus Study notes that new development in the Plan Area will directly, indirectly, or cumulatively affect species and habitat in western Riverside County. Expanding a home so more people can live there or more activities can take place or adding an Accessory Dwelling Unit (ADU) or Second Unit creates cumulative regional impacts; the MSHCP mitigates these impacts and streamlines the process for the infrastructure and development to accommodate the resulting growth.

B. Member Agency Obligations under MSHCP and Implementation Agreements

As set forth in Section 11.1 of the IA, the Member Agencies and the RCA have selected legal mechanisms to ensure implementation of the terms of the MSHCP and the IA.

1. Enactment of Fee Ordinance and Resolution

- a. Pursuant to Sections 11.1.1 and 11.1.2 of the IA, the Member Agencies shall adopt an Ordinance imposing the LDMF in substantially the form proposed by the RCA and the related Resolution within 90 days’ notice from the RCA. The Member Agencies shall also adopt any updated Fee Ordinance or Resolution within 90 days’ notice from the RCA.

2. Imposition of Fee

- a. The LDMF will be paid no later than at the issuance of a building permit. Notwithstanding any other provision of the Municipal or County Ordinance, as relevant, no building permit shall be issued for any Development Project unless the LDMF applicable to such Development Project has been paid. In a case where a building permit is not required, the LDMF shall be collected no later than the issuance of a grading

permit. The amount of the Fee shall be calculated in accordance with this Manual.

- b. Member Agencies may accept prepayment of fees at their own discretion (and allowed by Ordinance) for applicants wishing to pay the current fee in effect at the time of payment.
- c. In lieu of the payment of the LDMF as provided above, the Fee for a Development may be paid through a Community Facilities District, provided that such arrangement is approved by the RCA in writing.

3. **Remittance of Fees to the RCA**

- a. Timing. Pursuant to Section 8.5 of the MSHCP, Sections 12.2.1 and 12.2.2 of the IA, and Sections 19.A and 19.B of the Joint Exercise of Powers Agreement (JPA), the Member Agencies shall remit all LDMFs which are collected or should have been collected for any Development, as defined in the MSHCP, and contributions for Public Projects to the RCA on a monthly basis. Payment to the RCA shall be made no later than 90 days after the LDMFs were collected or should have been collected. Payment to the RCA shall be made no later than 90 days after the construction contract for the Public Project is approved by the Member Agency.
- b. Documentation and Records Requirements. The Member Agencies shall maintain complete and accurate records with respect to all LDMF revenues collected under their LDMF Ordinances and the calculation of contributions for all Public Projects. All such records shall be complete and allow for recalculation and validation.
- c. Annual Audits. The Member Agencies shall allow a representative of the RCA during normal business hours to examine, audit, and make transcripts or copies of such records.

4. **Imposition of CPI increases and other Fee Adjustments**

- a. Automatic Annual Fee Adjustment. The RCA will provide the Member Agencies with an automatic annual fee adjustment for the fee established by Resolution based on the average percentage change over the previous calendar year set forth in the Consumer Price Index for the Riverside-San Bernardino-Ontario metropolitan area or a replacement CPI index issued by the federal government. The Member Agencies shall implement the fee adjustment no later than

July 1st or 60 days after receiving notice from the RCA, whichever is later. All LDMF fees collected after a fee increase will pay the new fee even if an invoice was created prior to the fee increase.

- b. Periodic Fee Adjustment. The fee schedule may be periodically reviewed, and the amounts adjusted by the RCA Board of Directors. By amendment to the fee Resolution referenced in the Fee Ordinance, the fees may be increased or decreased to reflect the changes in actual and estimated costs of the MSHCP including, but not limited to, management and monitoring, endowment, and acquisition costs. The adjustment of the fees may also reflect changes in the facilities required to be acquired, in estimated revenues received pursuant to the Fee Ordinances, as well as the availability or lack thereof of other funds with which to implement the MSHCP. The Member Agencies shall adopt a resolution implementing the fee adjustment no later than 60 days after receiving notice from the RCA.

C. Fee Credits and Fee Credit Agreements

1. Fee Credits

When a Member Agency determines that a request for a fee credit ("Fee Credit") is appropriate for on-site conservation which meets the standards in Section 2 below, the Member Agency shall notify the RCA's Executive Director ("Executive Director") in writing as part of the Joint Project Review ("JPR") Application. This notification shall include all relevant documentation related to the project, including project description, map, criteria cells, and designation of land proposed for conservation.

Fee Credits shall be applied only to the Project they are associated with in the JPR. Fee Credits shall only be provided to the underlying property owner or development company at the time the LDMF applies and are not transferrable to other entities, individuals, or development projects. Fee Credits shall not be applied retroactively. Fee Credits shall not be granted for on-site conservation that would not be considered developable land in the absence of the MSHCP. Some examples of such undevelopable land include that which could not be developed under the California Environmental Quality Act, land with topography consisting of 50 percent or greater slopes, land that is in a flood way, or land that could not be developed due to other local ordinance restrictions. In cases where both developable and undevelopable land are included in on-site conservation, only that land that is developable in the absence of the MSHCP shall be considered for Fee Credit.

2. Standards. Fee credits shall meet the following standards:

- a. Proposed conservation land must be within Criteria Cells and contribute to Reserve Assembly;

- b. Conservation land must be of a size, configuration, and location such that it can be managed as part of the MSHCP Conservation Area;
- c. In addition to the exclusions identified in Section 1 above, fuel modification/hazardous vegetation areas, manufactured slopes, storm drain or detention basin outfalls, constructed slope protection, utility easement areas, and Best Management Practices such as bioswales, infiltration trenches, and basins will be excluded from Fee Credits and will not be accepted for management by the RCA.

3. **Appraisal**

- a. The RCA or Member Agency will obtain an appraisal for the property being offered in exchange for the Fee Credit. The cost of the appraisal will be borne by the entity that commissions the appraisal.
- b. The appraisal shall be prepared by a licensed appraiser and meet the standards in Section 6.1.1 of the MSHCP. The property owner may select the appraiser from an approved list of appraisers used by the RCA.

4. **Decision**

- a. Member Agency – Approval Authority up to \$200,000. A Member Agency may approve Fee Credits up to \$200,000. The RCA will assist the Member Agency in making a determination on the Fee Credits if requested. Notwithstanding the above, the RCA is authorized to review and audit a Member Agency's approval of Fee Credits hereunder. In the event of a disagreement between RCA and a Member Agency regarding Fee Credits provided under this Section 4.a., the matter shall be referred to the RCA Board of Directors for consideration and further action.
- b. Board of Directors – Approval Authority Over \$200,000. All Fee Credits over \$200,000 require approval of the RCA Board of Directors. The Executive Director shall place the Fee Credit request on the agenda for the next regularly scheduled meeting of the RCA Board of Directors for which an agenda has not been posted.

- 5. **Reporting** The Member Agency will provide the RCA with a copy of all Fee Credit agreements within 30 days of execution. The Executive Director shall provide monthly reports to the RCA Board of Directors of all notifications concerning Fee Credits.

6. **Conveyance of Conservation Land.** Conservation land associated with approved Fee Credits shall be conveyed in fee title to the RCA or another entity or organization lawfully authorized to acquire and hold conservation easements pursuant to Civil Code Section 815.3. The conservation land shall be free of encumbrances that could adversely impact the ability to manage the conservation land in accordance with the MSHCP. Conveyance of the conserved land must occur prior to the point in time when MSHCP Fee payment is due for the Project, and the Member Agency shall not issue occupancy permits for the Project until such time as the conservation land has been conveyed and any Fee balance has been paid to the RCA. If a non-member agency holds title to the land, the entity must enter into a Management Memorandum of Understanding with the RCA agreeing to manage the land in accordance with the MSHCP prior to issuance of a grading permit for the Project.

D. Fee Exemptions

The following types of construction shall be exempt from the LDMF:

1. Reconstruction or improvements to an existing Development Project, that were damaged or destroyed by fire or other natural causes, provided that the reconstruction or improvements do not result in additional Usable Square Footage (for residential, see Chapter III, Section B.1.b.Type IV).
2. Rehabilitation or remodeling to an existing Development Project, provided that the rehabilitation or remodeling does not result in additional Usable Square Footage (for residential, see Chapter III, Section B.1.b.Type IV).
3. Accessory Dwelling Units, but only to the extent such fee is exempted under state law (California Government Code section 65852(f)(3). (see Chapter III, Section B.1.b.Type III).
4. Junior Accessory Dwelling Units, but only to the extent such fee is exempted under state law (California Government Code section 65852.22. (see Chapter III, Section B.1.b.Type III).
5. Existing structures where the use is changed from an existing permitted use to a different permitted use, provided that no additional improvements are constructed and does not result in additional Usable Square Footage.
6. Certain Agricultural Operations as allowed by the MSHCP, as amended. (see Chapter VI, Section B.)

7. Vesting Tentative Tract Maps entered into pursuant to Government Code section 66452 et seq. (also, Government Code section 66498.1 et seq.) and Development Projects which are the subject of a development agreement entered into pursuant to Government Code section 65864 et seq., prior to the effective date of a Member Agency's original LDMF Ordinance, wherein the imposition of new fees are expressly prohibited, provided that if the term of such a vesting map or development agreement is extended by amendment or by any other manner after the effective date of the Member Agency's original LDMF Ordinance, the Fee shall be imposed.

Except as exempted above, all projects are required to make a mitigation payment/contribution and where no mitigation payment process is specified, the project will pay the updated per acre mitigation fee.

E. Project Area

As defined in the Fee Ordinance, the "Project Area" means the total area, measured in acres, within the Development Project including, without limitation, any areas to be developed as a condition of the Development Project (e.g., fuel modification areas and temporary impacts (excluding staging areas)). The Project Area shall be calculated in accordance with the following guidelines:

1. The Project Area shall be determined by the Member Agency staff based on the subdivision map, plot plan, and other information submitted to or required by the Member Agency.
2. An applicant may elect, at his or her own expense, to have a Project Area dimensioned, calculated, and certified by a registered civil engineer or licensed land surveyor. The engineer or land surveyor shall prepare a wet-stamped letter of certification of the Project Area dimensions and a plot plan exhibit thereto that clearly delineates the Project Area. Upon receipt of the letter of certification and plot plan exhibit, the Member Agency shall review and, if approved, will calculate the LDMF required to be paid based on the certified Project Area.
3. Where construction or other improvements on Project Area are prohibited due to legal restrictions on the Project Area, such as Federal Emergency Management Agency designated floodways or areas legally required to remain in their natural state, that portion of the Project Area so restricted shall be excluded for the purpose of calculating the LDMF.

F. Developer Refunds and Appeals

Under certain circumstances, such as double payment, expiration of a building permit, or fee miscalculation due to clerical error, an applicant may be entitled to a refund. Refunds

will be reimbursed by the end of the fiscal year on a first come, first served basis, depending upon the net revenue stream. Refunds will only be considered reimbursable if requested within three (3) years of the original LDMF payment. In all cases, the applicant must promptly submit a refund request with proof of LDMF payment to the RCA if the RCA collected the LDMF, or if collected by a local jurisdiction, the refund request shall be submitted to that local jurisdiction, which will subsequently forward the request to the RCA for verification, review, and possible action.

1. **Expiration of Building Permits.** If a building permit should expire, be revoked, or is voluntarily surrendered and is, therefore voided and no construction or improvement of land has commenced, then the applicant may be entitled to a refund of the LDMF collected which was paid as a condition of approval, less administration costs. Any refund must be requested within three (3) years of the original payment. The applicant shall pay the current LDMF in effect at the time in full if s/he reapplies for the permit.
2. **Double Payments.** On occasion due to a clerical error, a developer has paid all or a portion of the required LDMF for a project twice. In such cases, a refund of the double payment may be required if the request is made within three (3) years of the original payment.
3. **Balance Due.** When the LDMF is incorrectly calculated due to a Member Agency's clerical error, it is the Member Agency's responsibility to remit the balance due to the RCA. The error must be discovered within three (3) years of the original payment for the Member Agency to be held accountable. The amount due can be remitted through alternate methods agreed to by the RCA Executive Committee. If first approved through RCA staff in writing, the calculation is not subject to additional review.

G. Options for Administrative Add-On Costs to Fees

In the Fee Resolution mentioned in the Fee Ordinance, the Member Agencies are permitted to add an additional cost to the LDMF schedule to cover the Member Agency's costs of imposing, administering, collecting, and remitting the fees. The Member Agencies may not recover the costs of administering the provisions of their LDMF Ordinance using the LDMF revenues generated by them through said Ordinance.

H. Public Project Fees

Public Projects can be divided into four project types: road projects, linear projects (collectively referred to as infrastructure projects), civic projects, and Riverside County Flood Control District Projects.

1. **City/County Road Projects.** The Member Agencies shall contribute five (5) percent of the facility construction costs for City/County roads

for impacts related to City/County roadways to the RCA as set forth herein.

- a. The five (5) percent contribution shall apply to the construction of new roads, the widening of existing roads, or other improvements which increase roadway throughput.
 - b. Maintenance projects, as defined herein (see Chapter 7, definitions), are exempt from the five (5) percent contribution.
 - c. The five (5) percent does not apply to:
 - i. Projects, or portions thereof, paid for by the existing Measure A (contribution already paid directly by RCTC); and
 - ii. Projects, or portions thereof, paid for by TUMF (contribution already paid directly by the Western Riverside Council of Governments (WRCOG)).
 - d. The Member Agency will include the payment of MSHCP fees within its grant applications to the Federal Highway Administration.
 - e. Only contributions for the Caltrans-funded portion of a Caltrans highway project shall be exempted from the Public Project fee. Caltrans contributions are covered pursuant to MSHCP section 8.4.4 (pages 8-11 & 8-12).
2. **City/County Linear Projects (Infrastructure).** The Member Agencies shall contribute five (5) percent of the facility construction costs for City/County linear infrastructure projects for impacts related to the project. Linear projects are treated the same as road projects. (See Chapter 2, Section H.1. above).
 3. **City/County Civic Projects.** The Member Agency will contribute a per acre mitigation fee based upon the current commercial/industrial fee for these types of facilities.
 4. **Riverside County Flood Control District Projects.** Riverside County Flood Control District will contribute mitigation through payment of three (3) percent of total capital costs for a Covered Activity. Such payment may be offset through acquisition of replacement habitat or creation of new habitat for the benefit of Covered Species, as appropriate. Such mitigation shall be implemented prior to impacts to Covered Species and their habitats.

I. Audit

Pursuant to the JPA, the Member Agencies shall maintain complete and accurate records with respect to all LDMFs collected under their LDMF Ordinance and the calculation of contributions for all Public Projects. All such records shall be complete and allow for recalculation and validation. The Member Agencies shall allow a representative of the RCA during normal business hours to examine, audit, and make transcripts or copies of such records.

J. Late Payments

Starting January 1, 2008, if a Member Agency fails to remit the monthly payment within 90 days as required in Section B.3.a above, any delinquent amounts will be assessed interest at the rate of the RCA's prevailing rate for invested funds. RCA invests with the Riverside County Treasurer Tax Collector. Therefore, RCA's prevailing rate is the County Treasurer's Pooled Investment Fund Book Yield.

K. No Effect on Withdrawal

The obligations imposed under this Manual on the Member Agencies shall not affect any more strict obligation imposed on each of them under Section 22.1 of the IA pertaining to withdrawal from the MSHCP.

III. MITIGATION PAYMENT REQUIREMENTS



Burrowing Owl



CHAPTER III. MITIGATION PAYMENT REQUIREMENTS

New private, public, and other development activity in western Riverside County must comply with the MSHCP, IA, Ordinances, and Resolutions and make the appropriate mitigation payment in order to obtain grading permits and/or building permits. This Chapter describes the mitigation payment mechanisms and formulas that apply to different types of projects. It first defines three broad project categories and then provides more detail on the different mitigation payment calculations that apply to different types of projects under these broad categories. The subsequent **Chapter IV** provides illustrative fee calculations for Private and Public Project examples to clarify the appropriate calculation of mitigation payments.⁴ RCA staff is available to answer questions about mitigation payment requirements for a specific project.

A. General Project Categories

All projects fall into one of three (3) general categories as described below. Local Permittees should first determine which general category any project falls under.

1. Private Projects

Private Projects include projects where the primary project purpose is for use by households, businesses, or other private entities (i.e. not accessible to the public except where allowed by a private owner/renter). These projects include homes, apartments, offices, industrial buildings, and retail stores, among others. This category also includes Private Projects that receive public support (e.g., support through direct public investments in infrastructure, ground leases of publicly owned land, or direct investment of public dollars in projects such as affordable housing).

Private Projects often require the development of public infrastructure, improvements, and amenities (e.g., streets, parks, and community buildings) by the project developer. In these cases, the Private Project developer will be responsible for making payments for the private and public components of the project. As discussed in more detail in subsequent sections, the mitigation fee payment calculation for privately developed public infrastructure, improvements, and amenities depends on the type of project (residential versus non-residential) and the nature and role of the improvements (whether they solely serve project residents or serve a broader community).

2. Public Projects

Public Projects include projects whose primary goal is to provide publicly accessible/useable infrastructure, improvements, or other amenities. Public Projects include a broad range of project types including transportation, flood control, water,

⁴All projects are required to make mitigation payments, except where specifically exempted in the Fee Ordinance.

wastewater, stormwater, parks, community centers, and other public buildings, among others.

Some Public Projects will involve the private sector. Private sector involvement could be through design, construction, operation, and/or funding. For mitigation purposes, these projects are considered Public Projects and are treated the same from a mitigation fee perspective.⁵

3. Participating Special Entities (PSE) Projects

Some types of projects can obtain the MSHCP benefit granting Take Authorization by participating as Participating Special Entities (“PSE’s”). This is a third project category and its mitigation payment requirements are described separately, though in many ways PSE projects are treated similarly to Public Projects.

B. Private Projects

This section categorizes the different types of Private Projects and the associated mitigation payment requirements. Private project mitigation payments are determined by the MSHCP LDMF for the current fiscal year and project characteristics. Chapter IV provides illustrative examples of different types of Private Projects to further clarify and support the calculation of the appropriate mitigation payment.

1. Private Project Types

Private Projects are further distinguished into three (3) types (along with some sub-types). In all cases, mitigation occurs through mitigation fee payment, though as described further below the mitigation fee type and calculation varies for these different types.

a. Non-Residential

The non-residential category of Private Projects encompasses the full and broad range of Private Projects that do not incorporate residential development. Uses include all commercial, industrial, and any other private non-residential projects.

b. Residential

The residential category of Private Projects covers the full range of residential development projects, including, but not limited to, residential subdivisions, apartment complexes, infill residential projects, affordable housing projects, single homesite developments, mobile homes, ADUs, and additions and renovations. Residential units do not include hotels, motels, congregate care residential facilities or individual spaces within

⁵As described above under Private Projects and explained in more detail later, when public infrastructure/improvements/amenities are part of a Private Project, the mitigation for the public part of the Private Project is incorporated into the Private Project mitigation requirement.

recreational vehicle parks. Mixed-use Private Projects (projects that combine residential and commercial/industrial uses) are addressed distinctly, as described below.

Because of the variation in the type and extent of public infrastructure, improvements, and amenities developed as part of private residential projects, distinctions between different types of residential projects are required. Distinctions are also required as State law limits and specifies the application of mitigation fees to ADUs.

- **Type I. Residential Development with Resident-Serving Public Improvements Only.** Residential projects whose public infrastructure, improvements, and amenities only serve project residents (e.g., in-tract roads, resident clubhouses, pocket parks, and parking for project resident/guest use) and do not provide broader community access or benefits.
- **Type II. Residential Development with Community-Serving Public Improvements.** Residential projects that include the development of public infrastructure, improvements, and amenities that serve more than project residents alone; e.g., backbone infrastructure such as roads that serve beyond the project residents or parks and amenities that serve more than just the new residential units.
- **Type III. Accessory Dwelling Units or Second Units.** State law restricts the imposition of mitigation fees on ADUs of less than 750 square feet and provides a formula for ADUs above this size. ADUs are considered a separate dwelling unit even if built within the existing dwelling unit. ADUs built at the time a tract is first built do not add to the number of units for the density calculation. Both the main home and the ADU have their own separate fee. At the time this manual was adopted, Government Code 65852.2(f)(3)(A) governed the fee for ADUs. Any amendments to this code shall therefore amend the methodology for calculating the LDMF on ADUs.
- **Type IV. Additions and Renovations.** The LDMF fee shall be paid for residential additions and renovations that add attached or detached Usable Square Footage beyond what currently exists on the property, if the LDMF was not previously paid on the property. The LDMF will be calculated by applying the same methodology used for Type III ADUs. If the LDMF fee was previously paid on the residential property, no additional fees are required for additions or renovations to the primary dwelling unit even if additional Usable Square Footage is added.

c. Mixed-Use Projects

The mixed-use category of Private Projects encompasses projects that include private residential and private non-residential uses. The mixed-use project category is divided into two types because of the two distinct mixed-use project forms – horizontally mixed-use and vertically mixed-use.

- **Type I. Horizontally Mixed-Use Projects.** Mixed-use projects where a distinct portion of the project land area is developed as residential and a distinct portion as non-residential. For example, a project that includes a residential subdivision and neighborhood shopping center.
- **Type II. Vertically Mixed-Use Projects.** Mixed-use projects where one or more land use is developed vertically above another. For example, a project where apartment units are developed above ground floor retail.

2. Private Project Mitigation Fee Schedule

The 2020 Nexus Study developed a consistent per gross acre mitigation fee. For residential projects, this per gross acre fee was then translated into per residential unit fees for three different residential development density categories (to allow for a continuation of the existing fee structure). The mitigation fee schedule is shown in Table 3-1 and includes the mitigation fees provided under the 2020 Nexus Study (actual fee levels will vary with fee phase-in and annual adjustments).

Table 3-1: Updated Fee Levels (effective January 1, 2022)

Development Type		Fee
Residential Development		
Low Density	(fewer less than or equal to 8.0 units per Gross Residential Project Acre)	\$3,635 per Unit
Medium Density	(between 8.0 and 14.0 units per Gross Residential Project Acre)	\$1,515 per Unit
High Density	(more than 14.0 units per Gross Residential Project Acre)	\$670 per Unit
Non-Residential Development		
Commercial/Industrial/Non-Residential Mitigation Fee ¹		\$16,358 per Gross Project Acre

[1] The per gross acre also applies to the public components to private projects and to certain types of public and PSE Projects.

Private Project Mitigation Fee Calculations by Project Type

The table below shows the mitigation payment approach for residential projects.

Table 3-2: Mitigation Payment Approach for Residential Projects

PRIVATE PROJECT MITIGATION PAYMENT APPROACH - RESIDENTIAL

MITIGATION PAYMENT FORMULA FOR DIFFERENT TYPES OF RESIDENTIAL PROJECTS *

Residential Developments - Type I

Residential Development with Resident-Serving Public Improvements Only

Fee Calculation:

Fee Payment = Number of Residential Units x Per Unit Mitigation Fee for Appropriate Density Category

Notes:

1. Density Category = Total Number of Residential Units/Gross Residential Project Acres
2. Type I Residential Development cannot include any public improvements that serve beyond the project residents (i.e. only resident-serving public improvements; not "community-serving" public improvements)

Residential Developments - Type II

Residential Development with Community-Serving Public Improvements

Fee Calculation:

Fee Payment = Number of Residential Units x Per Unit Mitigation Fee for Appropriate Density Category
plus Gross Acres of community-serving Public Improvements x Per Gross Acre Fee

Notes:

1. Density Category = Total Number of Residential Units/Gross Residential Project Acres
2. Type II Residential Development includes "Community-serving" Public Improvements that serve beyond the project residents and are not covered by the per residential unit mitigation fee
3. Gross Project Acres = Gross Residential Project Acres + Gross Community-Serving Public Improvement Acres

Residential Developments - Type III & IV

Development of an Accessory Dwelling Unit (ADU) or Additions/Renovations

Fee Calculation:

Fee Payment for ADUs or Additions/Renovations of less than 750 square feet
= \$0

Fee Payment for ADUs or Additions/Renovations of 750 or more square feet
= Per Unit Mitigation Fee for Appropriate Density Category x (ADU or Addition/Renovation square feet/Primary Dwelling Unit (Current) square feet)

Notes:

1. California Government Code Section 65852.2(f)(3)(A) (as of September 13, 2021) provides the basis for calculating fees on ADUs. Jurisdictions should monitor any amendments to this state code or other state laws that govern fees on ADUs.
2. The above code section does not allow charging of mitigation fees to ADUs of less than 750 square feet
3. The above code section provides the formula for calculating fee payments by larger ADUs
4. Density Category = Total Lot Square Footage/1 acre.
5. Fees Previously Paid - If the LDMF fee was previously paid on the residential property, no additional fees are required for additions or renovations to the primary dwelling unit even if additional square footage is added.
6. Fees Not Previously Paid - The LDMF shall be paid for residential additions or renovations if the LDMF was not previously paid on that property. The fee is calculated using the state code for ADUs.

* The term "Public Improvements" is used as a collective term for all Public Infrastructure, Improvement, and Amenities.

The table below shows the approach for non-residential projects and mixed-use projects.

Table 3-3: Mitigation Payment Approach for Non-Residential and Mixed-Use Projects

MITIGATION PAYMENT FORMULA FOR NON-RESIDENTIAL AND MIXED USE PROJECTS *

Non Residential Projects

All Non-Residential Projects

Fee Calculation:

Fee Payment = Gross Project Acres x Per Gross Acre Fee

Notes:

1. Gross Project Acres include all project acres including non-residential development areas and all associated project acreage (i.e. including all parking, landscaping, public improvements etc.)
-

Mixed-Use Project - Type I

Horizontally mixed-use project with residential and non-residential private development

Fee Calculation:

Fee Payment = Number of Residential Units x Per Unit Mitigation Fee for Appropriate Density Category
plus Gross Acres of Community-serving Public Improvements x Per Gross Acre Fee
plus Gross Acres of Non-Residential Development x Per Gross Acre Fee

Notes:

1. Density Category = Total Number of Residential Units/Gross Residential Project Acres
2. All gross project acres outside of the Gross Residential Project Acres contribute through the per gross acre fee

Mixed-Use Project - Type II

Vertically mixed-use project with residential and non-residential private development

Fee Payment is the higher of two (2) calculations:

Calculation 1: Fee Payment = Gross Project Acres x Per Gross Acre Fee

Calculation 2:

Fee Payment = Number of Residential Units x Per Unit Mitigation Fee for Appropriate Density Category

plus Gross Acres of Community-serving Public Improvements x Per Gross Acre Fee

Notes:

1. Density Category = Total Number of Residential Units/Gross Project Residential Acres
(Gross Residential Acres = Gross Project Acres minus Community-serving Public Improvements Acres)

*The term "Public Improvements" is used as a collective term for all Public Infrastructure, Improvement, and Amenities.

Key definitions associated with the above mitigation formula table include:

- **Gross Project Area/Acres.** This is the total or gross acres of the project. This overall acreage can only be reduced under unique circumstances.⁶
- **Gross Residential Area/Acres.** This is the total area of the project dedicated to residential land uses and includes residential buildings as well as “Project Resident-Serving” Infrastructure/Improvements/Amenities.
- **Project Resident-Serving Infrastructure/Improvements/Amenities.** Infrastructure/improvements, and amenities that only serve project residents and include, but are not limited to, roads, parks, and non-residential buildings that only serve project residents.
- **Gross Community-Serving Area/Acres.** This is the area of residential projects that provide infrastructure, improvements, and amenities that go beyond only serving project residents and hence are “community-serving”. This includes, but is not limited to, roads that serve multiple projects, parks that serve more than one residential project, parking that serves other uses/developments etc. The acreage associated with these improvements/amenities are part of the gross project acreage but distinct from project resident-serving improvements/amenities and the gross residential area.

For further clarification, mitigation fee payment calculations for illustrative Private Projects are provided in **Chapter IV**.

C. Public Projects

This section categorizes the different types of Public Projects and the associated mitigation payment requirements. The MSHCP, IA, and other documents established the mitigation system for Public Projects that includes a mix of approaches typically tied to a percent of capital cost or the adopted per gross acre mitigation fee for non-residential uses. The mitigation payments for road projects are more complex as certain funding sources (Measure A and TUMF) provide direct mitigation payments for the portions of transportation projects they fund. **Chapter IV** provides illustrative examples of selected Public Projects to further clarify and support the calculation of the appropriate mitigation payment.

1. Public Project Types

Public Projects include the full range of projects that provide public infrastructure, improvements, or amenities. This includes, but is not limited to, public roads, parks, libraries, administrative facilities, jails, courts, and flood control projects among others. As

⁶Specifically, the MSHCP exempts flood control areas that cannot be developed from mitigation fee calculations. (See Chapter II.E.3 of this manual).

described in the following section, certain public/quasi-public improvements are covered as PSE projects (the third major project category type). These include public (and private) utility districts/companies, School Districts, Special Districts, and other quasi-public entities.

Per the MSHCP, IA, and other documents, the mitigation payment requirement/obligation varies between the following Public Project types.

- **City/County Road Projects.** Includes all City and County road projects.
- **City/County Linear Projects (Infrastructure).** Includes all City and County infrastructure projects (excluding roads). These projects are more linear in design and include such projects as water and wastewater, electricity, gas, sewer, etc. Riverside County Flood Control District Projects are a separate Public Project type as defined below.
- **City/County Civic Projects.** Includes all non-road City and County projects, including City/County administrative facilities, jails, courts, juvenile facilities, parks, libraries, and all other facilities that serve the public. Civic projects also include public transit facilities built by transportation agencies. These projects will be charged on a per acre basis and will be able to reduce the fee due by the percentage of Measure A or TUMF funds programed on the project. Please contact the RCA if you have this type of project in your jurisdiction.
- **Riverside County Flood Control District Projects.** Includes all Riverside County Flood Control District projects.

As noted in the MSHCP and the IA, mitigation contributions for Caltrans Projects are intended to be covered through a combination of Measure A funds, 3,000 acres of land dedication, and support for the endowment and ongoing positions. Mitigation for federal projects (e.g., development of a federal building) occurs through the Section 7 consultation process of the Federal Endangered Species Act; in some cases, these projects might be required to provide mitigation similar to those of other Public Projects under the MSHCP.

2. Mitigation Requirements and Transportation Funding Sources

For transportation projects, the mitigation payment calculations are more complicated due to the distinct mitigation payments/contributions directly incorporated into certain types of transportation funding, as described below:

- **TUMF Funding.** The TUMF includes a small component tied to the mitigation of the portions of projects funded by TUMF revenues. This portion of the TUMF is passed directly from WRCOG to the RCA. As a result, the proportion of transportation projects that are funded by TUMF revenues are netted out from transportation project mitigation payments (described in more detail below).

- **Measure A Funding.** A portion of the Measure A sales tax revenues was collected and provided to the RCA to support MSHCP implementation. This contribution represented the mitigation payment for the portions of projects funded with Measure A dollars. As a result, the proportion of transportation projects that are funded by Measure A funds are netted out from transportation project mitigation payments (described in more detail below).
- **Federal Funding.** Unlike TUMF and Measure A funding, direct mitigation funding has not been provided for the portions of transportation projects that are federally funded. As a result, federal funding is not excluded from the mitigation payment calculation. It is recommended that Local Permittees incorporate the mitigation payment associated with federally funded portions of their transportation projects into any grant applications for federal transportation funding.

3. **Public Project Mitigation Payment Approaches**

There are two primary approaches that underlie the calculation of Public Project mitigation payments, including:

- **Per Gross Acre Fee Payments.** For some Public Projects, the required mitigation payment is based on the application of the per gross acre fee to the gross project acres. The per gross acre fee is the same fee that applies to Private Projects. The fee will vary each year/periodically and is calculated at \$16,358 per Gross Project Acre in the 2020 Nexus Study.
- **Percent of Construction Costs.** For some Public Projects, the mitigation payment requirement is three (3) percent or five (5) percent of total construction costs (described in more detail below).

4. Public Project Mitigation Fee Calculations by Project Type

The table below shows fee calculations for different Public Project types.

Table 3-4: Mitigation Payment Approach for Public Projects

MITIGATION PAYMENT FORMULA FOR DIFFERENT TYPES OF PUBLIC PROJECTS

City/County Road and Infrastructure Projects

All City and County Road and Infrastructure Projects

Fee Calculation:

Fee Payment = 5% x Total Construction Costs

Notes:

1. Applies to all new road projects, all road widening projects, other road investments that are not maintenance efforts, and linear infrastructure projects.
2. The proportion of total project costs covered by TUMF funding and Measure A funding is discounted from the total construction costs (where applicable) prior to fee payment calculation.
3. Total construction costs are a portion of total project costs. Total construction costs include all direct/ hard costs, including contingencies and change orders. ROW acquisition costs and soft costs are not included in total construction costs.

City/County Civic Projects

All City and County (non-road and non-linear) public projects, including City/County administrative facilities, jails, courts, juvenile facilities, parks, libraries, or other facilities that serve the public.

Fee Calculation:

Fee Payment = Gross Project Acres x Per Gross Acre Fee

Notes:

1. No exceptions unless specifically noted in the Ordinance.
2. School District, Special District, and certain other public projects are covered as PSE's.

Riverside County Flood Control District Projects

All Riverside County Flood Control District projects

Fee Calculation

Fee Payment = 3% x Total Construction Costs

Notes

1. Total construction costs are a portion of total project costs. Total construction costs include all direct/hard costs, including contingencies and change orders. ROW acquisition costs and soft costs are not included in total construction costs.
-

D. Participating Special Entity Projects

PSEs are entities that are not formally covered under the MSHCP but are allowed to obtain the same MSHCP streamlined permitting by making the appropriate mitigation payments. This section categorizes the different types of PSE projects and the associated mitigation payment requirements. The mitigation payment system for PSE projects is similar to the one for public projects and includes a mix of approaches typically tied to the percent of construction costs or the adopted per gross acre mitigation fee for non-residential uses.

1. PSE Project Types

PSEs includes entities/agencies such as public and private utility districts/companies, School Districts, Special Districts, and Quasi-Public entities, among others. Public water districts, private water companies, telecommunication companies, Investor-Owned Utilities, Schools, Colleges, and Universities would all fall in this project category.

The mitigation payment requirement/obligation varies between the following Public Project types.

- **Non-Linear Projects.** Includes all projects that are non-linear in form. Examples would be a facility or a water tank.
- **Linear Projects.** Includes all linear projects with differentiation in payment amount between permanent and temporary impacts. Examples would be a gas line or linear transmission line.

2. PSE Mitigation Payment Approaches

There are two primary approaches that underlie the calculation of PSE mitigation payments, including:

- **Per Gross Acre Fee Payments.** For non-linear PSE, the required mitigation payment is based on the application of the per gross acre fee to the gross project acres. The per gross acre fee is the same fee that applies to PSE. The fee will vary each year/periodically and is calculated at \$16,358 per Gross Project Acre in the 2020 Nexus Study.
- **Percent of Construction Costs.** For linear projects, the mitigation payment requirement is five (5) percent of total construction costs for permanent impacts and three (3) percent of total construction costs for temporary impacts.

3. PSE Project Mitigation Fee Calculations by Project Type

The table below shows fee calculations for different PSE project types.

Table 3-5: Mitigation Payment Approach for PSE Projects

MITIGATION PAYMENT FORMULA FOR DIFFERENT TYPES OF PSE PROJECTS

Non-Linear Projects

All PSE projects/impacts that are not linear in form

Fee Calculation:

Fee Payment = Gross Project Acres x Per Gross Acre Fee

Linear Projects - Permanent Impacts

All PSE impacts that are linear in form and permanent

Fee Calculation

Fee Payment = 5% x Total Construction Costs related to Permanent Impacts

Linear Projects - Temporary Impacts

All PSE impacts that are linear in form and temporary

Fee Calculation

Fee Payment = 3% x Total Construction Costs related to Temporary Impacts

Notes

1. Total construction costs are a portion of total project costs. Total construction costs include all direct/hard costs, including contingencies and change orders. ROW acquisition costs and soft costs are not included in total construction costs.



IV. MITIGATION PAYMENT EXAMPLES



CHAPTER IV. MITIGATION PAYMENT EXAMPLES

This chapter provides illustrative fee calculations for examples of Private and Public Projects. Building off the comprehensive description of mitigation requirements and formulae by project type in **Chapter III**, this chapter provides fee calculations for an illustrative set of projects. Illustrative examples were developed for a range of circumstances and are designed to help Local Permittees identify the appropriate approach for estimating mitigation payments. The examples included in this chapter are for illustration purposes only. In the event of a conflict between these examples and the Fee Ordinance of the applicable City/County, the Fee Ordinance shall control the administration of the LDMF. Please contact RCA staff if you are unclear on how to conduct the mitigation payment calculation for a particular project.

A. Private Projects: Residential/Mixed Use Examples

This section contains six (6) examples of private development projects, including four (4) residential projects and two (2) mixed-use projects. More specifically, they include:

- Example 1: All Residential – Low Density
- Example 2: All Residential – Low Density – including Backbone Road Construction
- Example 3: All Residential – High Density - including Backbone Road Construction
- Example 4: All Residential – Combination of Densities
- Example 5: Horizontal Mixed Use – Residential/Commercial – including Backbone Road Construction
- Example 6: Vertical Mixed Use – Residential/Commercial

These examples are not intended to be all inclusive but rather give permittees guidance on calculating the mitigation fee payment given different project types and characteristics. Included in each example is a narrative of the example project, a figure representation of the project layout, the development program description, and the mitigation fee calculation. No stand-alone commercial project examples are included as the application of the per gross acre mitigation fee to the gross project acres is universal for all non-residential Private Projects.

Example 1 - All Residential – Low Density

Residential project to be developed on a total of ten acres (area inside red boundary). The project will include residential units, a community building/area for the residents of the development (project residents only), and streets within the development (in-tract streets). All roads leading to the development have already been built and do not require investments by the developer. A total of 50 residential units are planned within the ten gross acres, resulting in an average residential density of five units per acre. This represents a low-density residential project for the purpose of the fee program. Please

see the visual representation of the project layout (Figure 4.1-1), the development program data (Table 4.1-1), and mitigation payment calculation (Table 4.1-2) below.

Figure 4.1-1: Illustrative Project Layout

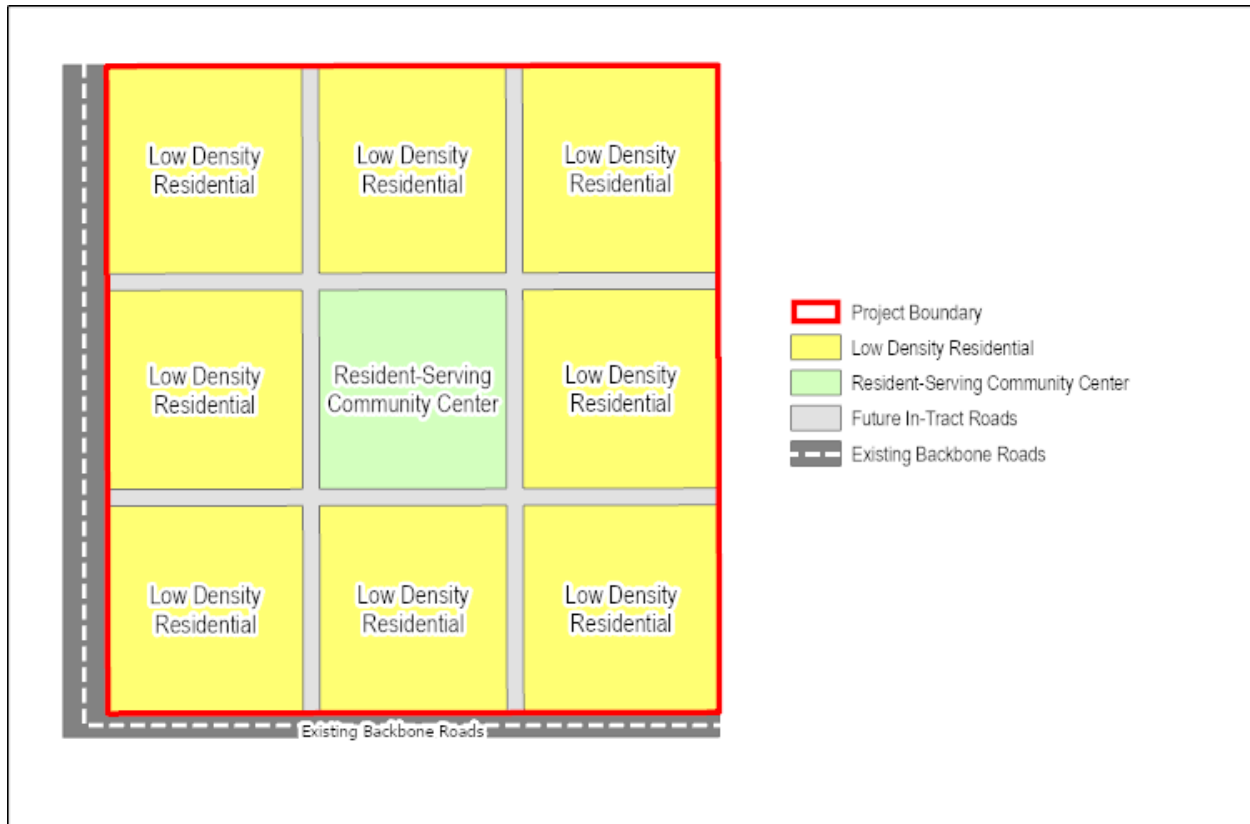


Table 4.1-1: Illustrative Development Program

Item	Amount
Gross Project Area	10 acres
<u>Residential Development Area</u>	
Residential Development Area	8.25
In-Tract/Project Resident Serving (Residential)	<u>1.75</u>
Total/Gross Residential Acres	10.00
<u>All Other Development</u>	
Non-Residential Development Area	0
Backbone/Area-Serving	<u>0</u>
Total Non-Residential Development	0
Residential Development	
Low Density (1)	50
Medium Density (1)	0
High Density (1)	<u>0</u>
Total Units	50 units
Residential Project Density	
Residential Project Density	5 units/acre
Residential Fee Density Category (1)	LOW

(1) Residential density categories as follows:

- Low Density - less than or equal to 8 residential units/gross residential acre.
- Medium Density - greater than 8 and less than 14 residential units/gross residential acre.
- High Density - greater than 14 residential units/gross residential acre.

Table 4.1-2: Mitigation Fee Payment Calculation

Item	Units/Acres	Per Unit/Per Acre Mitigation Fee (1)	Mitigation Fee Payment
Residential Development (2)	50 units	\$3,635 (low density)	\$181,750
Non-Residential Development (3)	0 acres	16,358	0
Backbone/Community-Serving (4)	0 acres	16,358	0
Total Mitigation Fee Payment (5)			\$181,750

(1) Fee schedule will be updated periodically. Fee schedule used for Example Calculations as follows:

Residential Development

Low Density (on average) \$3,635 per unit

Medium Density (on average) 1,515 per unit

High Density (on average) 670 per unit

All Other Development 16,358 per gross acre

(2) Residential mitigation fee payment covers residential units and associated in-tract infrastructure/improvements and project resident-serving amenities. All infrastructure, improvements, and amenities that serve beyond the project residents is covered in separate component of the fee calculation.

(3) Includes land area associated with non-residential development, such as commercial/industrial buildings, parking, and landscaping, among other components.

(4) All infrastructure/improvements/amenities that serve beyond the project/project residents and that are not included in the non-residential development fee payment calculation included here.

(5) Mitigation fee payment calculation does not include any additional member jurisdiction administrative charges.

Example 2 – All Residential – Low Density – Including Backbone Road Construction

Residential project to be developed on a total of 12.5 acres (inside red boundary). The project will include residential units, a community building/area for the residents of the development (project residents only), streets within the development (in-tract streets), and new streets leading to the project (backbone/community-serving streets). The Member Agency has required the builder to construct backbone roads as a condition of the permit. The backbone roads will be built on an additional 2.5 acres of land distinct from the 10 acres that will incorporate the residential development and project resident-serving improvements/amenities. A total of 50 residential units are planned within the 10 gross acres (gross residential acres) that exclude the backbone/community-serving infrastructure. This results in an average residential density of five units per acre and represents a low-density residential project for the purpose of the fee program. Please see the visual representation of the project layout (Figure 4.2-1), the development program data (Table 4.2-1), and the mitigation payment calculation (Table 4.2-2) below.

Figure 4.2-1: Illustrative Project Layout

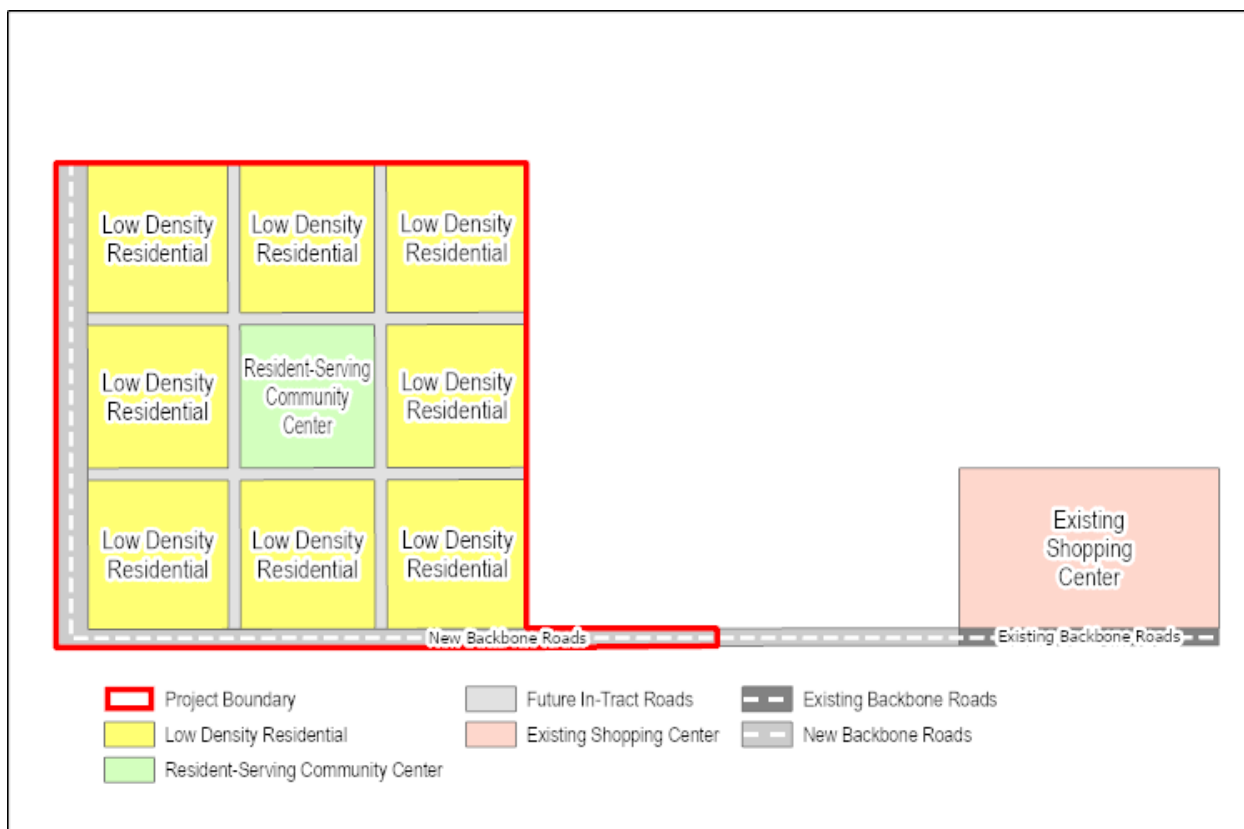


Table 4.2-1: Illustrative Development Program

Item	Amount
Gross Project Area	12.5 acres
<u>Residential Development Area</u>	
Residential Development Area	8.25
In-Tract/Project Resident Serving (Residential)	<u>1.75</u>
Total/Gross Residential Acres	10.00
<u>All Other Development</u>	
Non-Residential Development Area	0
Backbone/Area-Serving	<u>2.5</u>
Total Non-Residential Development	2.5
Residential Development	
Low Density (1)	50
Medium Density (1)	0
High Density (1)	<u>0</u>
Total Units	50 units
Residential Project Density	
Residential Project Density	5 units/acre
Residential Fee Density Category (1)	LOW

(1) Residential density categories as follows:

- Low Density - less than or equal to 8 residential units/gross residential acre.
- Medium Density - greater than 8 and less than 14 residential units/gross residential acre.
- High Density - greater than 14 residential units/gross residential acre.

Table 4.2-2: Mitigation Payment Calculation

Item	Units/Acres	Per Unit/Per Acre Mitigation Fee (1)	Mitigation Fee Payment
Residential Development (2)	50 units	\$3,635 (low density)	\$181,750
Non-Residential Development (3)	0 acres	16,358	0
Backbone/Community-Serving (4)	2.5 acres	16,358	40,895
Total Mitigation Fee Payment (5)			\$222,645

(1) Fee schedule will be updated periodically. Fee schedule used for Example Calculations as follows:

Residential Development

Low Density (on average)	\$3,635	per unit
Medium Density (on average)	1,515	per unit
High Density (on average)	670	per unit
<u>All Other Development</u>	16,358	per gross acre

(2) Residential mitigation fee payment covers residential units and associated in-tract infrastructure/ improvements and project resident-serving amenities. All infrastructure, improvements, and amenities that serve beyond the project residents is covered in separate component of the fee calculation.

(3) Includes land area associated with non-residential development, such as commercial/industrial buildings, parking, and landscaping, among other components.

(4) All infrastructure/improvements/amenities that serve beyond the project/project residents and that are not included in the non-residential development fee payment calculation included here.

(5) Mitigation fee payment calculation does not include any additional member jurisdiction administrative charges.

Example 3 – All Residential – High Density – Including Backbone Road Construction

Residential project to be developed on a total of 12.5 acres (inside red boundary). The project will include residential units, a community building/area for the residents of the development (project residents only), streets within the development (in-tract streets), and new streets leading to the project (backbone/community-serving streets). The Member Agency has required the builder to construct backbone roads as a condition of the permit. The backbone roads will be built on an additional 2.5 acres of land distinct from the 10 acres that will incorporate the residential development and project resident-serving improvements/amenities. A total of 200 residential units are planned within the 10 gross acres that exclude the backbone/community-serving infrastructure. This results in an average residential density of 20 units per acre and represents a high-density residential project for the purpose of the fee program. Please see the visual representation of the project layout (Figure 4.3-1), the illustrative development program data (Table 4.3-1), and the mitigation payment calculation (Table 4.3-2) below.

Figure 4.3-1: Project Layout



Table 4.3-1: Illustrative Development Program

Item	Amount
Gross Project Area	12.5 acres
<u>Residential Development Area</u>	
Residential Development Area	8.00
In-Tract/Project Resident Serving (Residential)	<u>2.00</u>
Total/Gross Residential Acres	10.00
<u>All Other Development</u>	
Non-Residential Development Area	0
Backbone/Area-Serving	<u>2.5</u>
Total Non-Residential Development	2.5
Residential Development	
Low Density (1)	0
Medium Density (1)	0
High Density (1)	<u>200</u>
Total Units	200 units
Residential Project Density	
Residential Project Density	20 units/acre
Residential Fee Density Category (1)	HIGH

(1) Residential density categories as follows:

- Low Density - less than or equal to 8 residential units/gross residential acre.
- Medium Density - greater than 8 and less than 14 residential units/gross residential acre.
- High Density - greater than 14 residential units/gross residential acre.

Table 4.3-2: Mitigation Payment Calculation

Item	Units/ Acres	Per Unit/ Per Acre Mitigation Fee (1)	Mitigation Fee Payment
Residential Development (2)	200 units	\$670 (high density)	\$134,000
Non-Residential Development (3)	0 acres	16,358	0
Backbone/Community-Serving (4)	2.5 acres	16,358	40,895
Total Mitigation Fee Payment (5)			\$174,895

(1) Fee schedule will be updated periodically. Fee schedule used for Example Calculations as follows:

Residential Development

Low Density (on average)	\$3,635	per unit
Medium Density (on average)	1,515	per unit
High Density (on average)	670	per unit
<u>All Other Development</u>	16,358	per gross acre

(2) Residential mitigation fee payment covers residential units and associated in-tract infrastructure/improvements and project resident-serving amenities. All infrastructure, improvements, and amenities that serve beyond the project residents is covered in separate component of the fee calculation.

(3) Includes land area associated with non-residential development, such as commercial/industrial buildings, parking, and landscaping, among other components.

(4) All infrastructure/improvements/amenities that serve beyond the project/project residents and that are not included in the non-residential development fee payment calculation included here.

(5) Mitigation fee payment calculation does not include any additional member jurisdiction administrative charges.

Example 4 – All Residential – Combination of Densities

Residential project to be developed on a total of 7.25 acres (area inside red boundary). The project will include residential units, a community building/area for the residents of the development (project residents only), and streets within the development (in-tract streets). All roads leading to the development have already been built and do not require investments by the developer. A total of 50 residential units are planned within the 7.25 gross acres, including a mix of low- and high-density development. The 50 residential units planned on 7.25 gross acres result in an average residential density of 6.9 units per acre. This represents a low-density residential project for the purpose of the fee program. Please see the visual representation of the project layout (Figure 4.4-1), the illustrative development program data (Table 4.4-1), and the mitigation payment calculation (Table 4.4-2) below.

Figure 4.4-1: Illustrative Project Layout

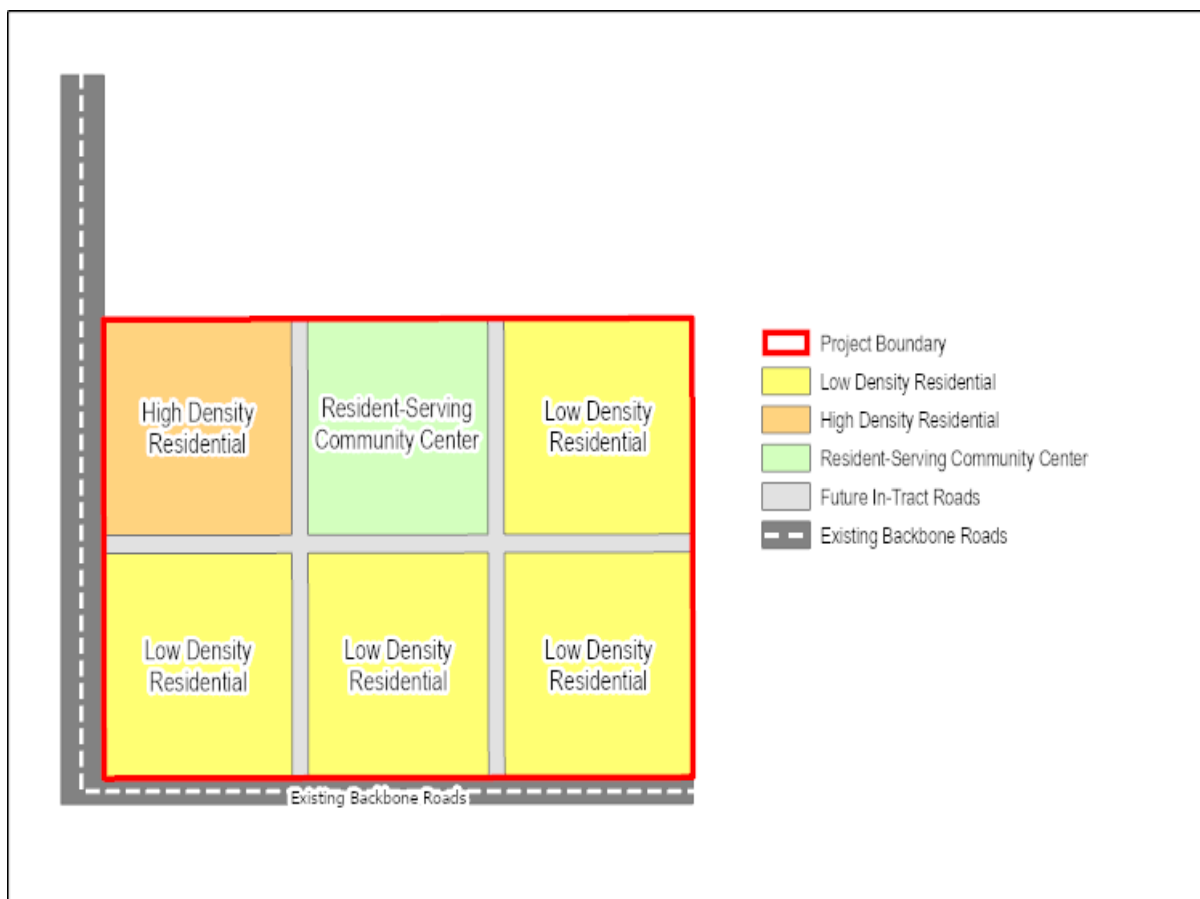


Table 4.4-1: Illustrative Development Program

Item	Amount
Gross Project Area	7.25 acres
<u>Residential Development Area</u>	
Residential Development Area	5.75
In-Tract/Project Resident Serving (Residential)	<u>1.50</u>
Total/Gross Residential Acres	7.25
<u>All Other Development</u>	
Non-Residential Development Area	0
Backbone/Area-Serving	<u>0</u>
Total Non-Residential Development	0
Residential Development	
Low Density (1)	25
Medium Density (1)	0
High Density (1)	<u>25</u>
Total Units	50 units
Residential Project Density	
Residential Project Density	6.9 units/acre
Residential Fee Density Category (1)	LOW

(1) Residential density categories as follows:

- Low Density - less than or equal to 8 residential units/gross residential acre.
- Medium Density - greater than 8 and less than 14 residential units/gross residential acre.
- High Density - greater than 14 residential units/gross residential acre.

Table 4.4-2: Mitigation Payment Calculation

Item	Units/Acres	Per Unit/ Per Acre Mitigation Fee (1)	Mitigation Fee Payment
Residential Development (2)	50 units	\$3,635 (low density)	\$181,750
Non-Residential Development (3)	0 acres	16,358	0
Backbone/Community-Serving (4)	0 acres	16,358	0
Total Mitigation Fee Payment (5)			\$181,750

(1) Fee schedule will be updated periodically. Fee schedule used for Example Calculations as follows:

Residential Development

Low Density (on average)	\$3,635	per unit
Medium Density (on average)	1,515	per unit
High Density (on average)	670	per unit
<u>All Other Development</u>	16,358	per gross acre

(2) Residential mitigation fee payment covers residential units and associated in-tract infrastructure/ improvements and project resident-serving amenities. All infrastructure, improvements, and amenities that serve beyond the project residents is covered in separate component of the fee calculation.

(3) Includes land area associated with non-residential development, such as commercial/industrial buildings, parking, and landscaping, among other components.

(4) All infrastructure/improvements/amenities that serve beyond the project/project residents and that are not included in the non-residential development fee payment calculation included here.

(5) Mitigation fee payment calculation does not include any additional member jurisdiction administrative charges.

Example 5 – Horizontal Mixed Use – Residential and Commercial – Including Backbone Road Construction

Mixed use project to be developed on a total of 22.5 acres (inside red boundary). Residential project to be developed on 10 gross acres. The project will include three components: (1) residential units, a community building/area for the residents of the development (project residents only), and streets within the residential development (in-tract streets); (2) a commercial development (e.g. shopping center) and project-serving improvements (e.g. parking, landscaping, and any other component that is not restricted to use by the residents only); and, (3) backbone/community serving roads on 2.5 acres of land that the Member Agency has required the builder to construct as a condition of the permit. A total of 50 residential units are planned within the 10 gross residential acres that exclude the backbone/community-serving infrastructure and the commercial development. This results in an average residential density of five units per acre, meaning that the residential component of the project is low density for the purpose of the fee program. Please see the visual representation of the project layout (Figure 4.5-1), the illustrative development program data (Table 4.5-1), and the mitigation payment calculation (Table 4.5-2) below.

Figure 4.5-1: Illustrative Project Layout

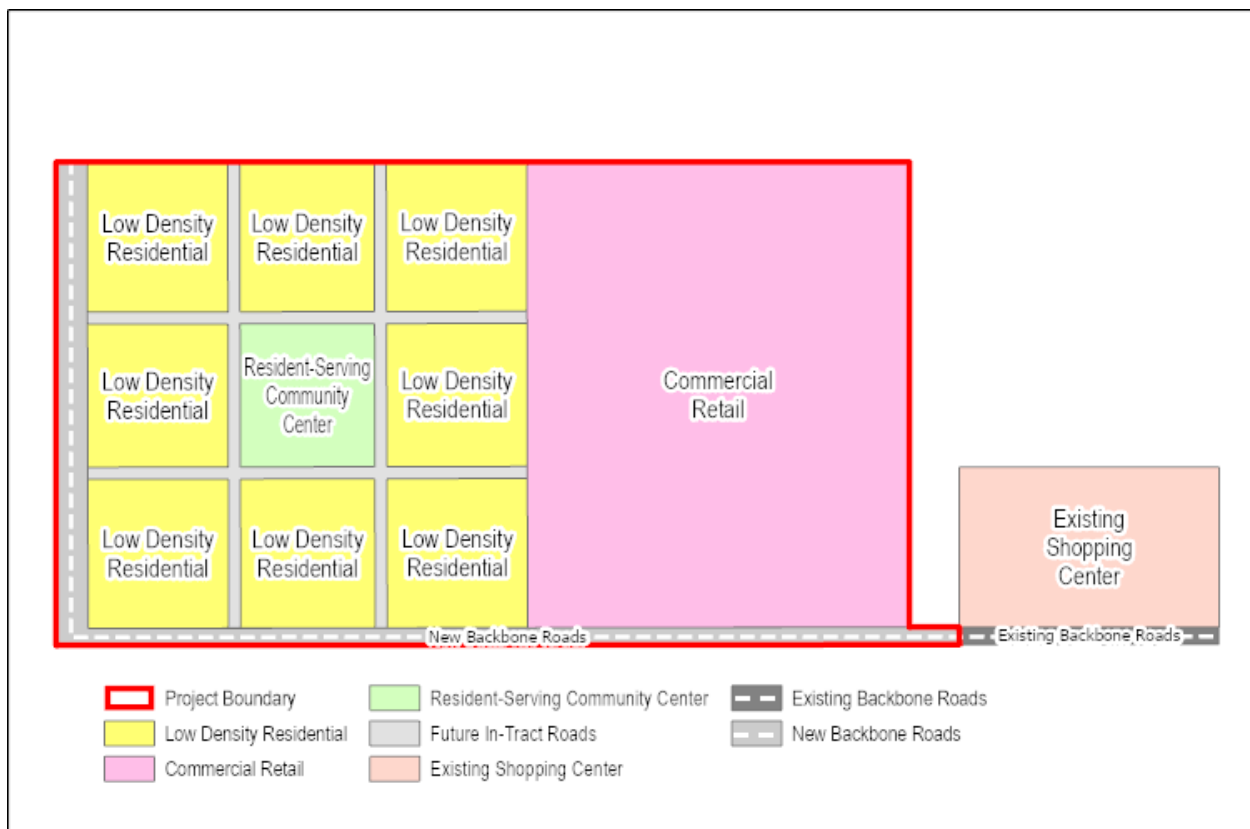


Table 4.5-1: Illustrative Development Program

Item	Amount
Gross Project Area	22.5 acres
<u>Residential Development Area</u>	
Residential Development Area	8.25
In-Tract/Project Resident Serving (Residential)	<u>1.75</u>
Total/Gross Residential Acres	10.00
<u>All Other Development</u>	
Non-Residential Development Area	10.0
Backbone/Area-Serving	<u>2.5</u>
Total Non-Residential Development	12.5
Residential Development	
Low Density (1)	50
Medium Density (1)	0
High Density (1)	<u>0</u>
Total Units	50 units
Residential Project Density	
Residential Project Density	5.0 units/acre
Residential Fee Density Category (1)	LOW

(1) Residential density categories as follows:

- Low Density - less than or equal to 8 residential units/gross residential acre.
- Medium Density - greater than 8 and less than 14 residential units/gross residential acre.
- High Density - greater than 14 residential units/gross residential acre.

Table 4.5-2: Mitigation Fee Payment Calculation

Item	Units/Acres	Per Unit/ Per Acre Mitigation Fee (1)	Mitigation Fee Payment
Residential Development (2)	50 units	\$3,635 (low density)	\$181,750
Non-Residential Development (3)	10 acres	16,358	163,580
Backbone/Community-Serving (4)	2.5 acres	16,358	40,895
Total Mitigation Fee Payment (5)			\$386,225

(1) Fee schedule will be updated periodically. Fee schedule used for Example Calculations as follows:

Residential Development

Low Density (on average) \$3,635 per unit

Medium Density (on average) 1,515 per unit

High Density (on average) 670 per unit

All Other Development 16,358 per gross acre

(2) Residential mitigation fee payment covers residential units and associated in-tract infrastructure/ improvements and project resident-serving amenities. All infrastructure, improvements, and amenities that serve beyond the project residents is covered in separate component of the fee calculation.

(3) Includes land area associated with non-residential development, such as commercial/industrial buildings, parking, and landscaping, among other components.

(4) All infrastructure/improvements/amenities that serve beyond the project/project residents and that are not included in the non-residential development fee payment calculation included here.

(5) Mitigation fee payment calculation does not include any additional member jurisdiction administrative charges.

Example 6 – Vertical Mixed Use – Residential and Commercial

Mixed use project to be developed on a total of 3 acres (inside red boundary). The project will include a podium at street level that will include commercial/retail as well as parking, residential units in the stories above the podium, as well as streets within the project area (in-tract streets). A total of 90 residential units are planned within the 3-acre project area. This results in an average residential density of 30 units per acre, meaning that the residential component of the project is high density for the purpose of the fee program. Please see the visual representations of the project layout (Figures 4.6-1 and 4.6-2), the illustrative development program data (Table 4.6-1), and the mitigation payment calculations (Tables 4.6-2 and 4.6-3) below. Two calculations must be conducted for mixed-use vertical projects and the higher of the two calculations must be used. One calculation treats the project like a residential project and the other calculation treats it like a commercial project. In the example below, the mitigation payment is \$60,300 under the first method and \$49,074 under the second method, so the \$60,300 payment applies.

Figure 4.6-1: Illustrative Project Layout – Residential and Commercial Vertical View



Figure 4.6-2: Illustrative Project Layout – Residential and Commercial Horizontal View

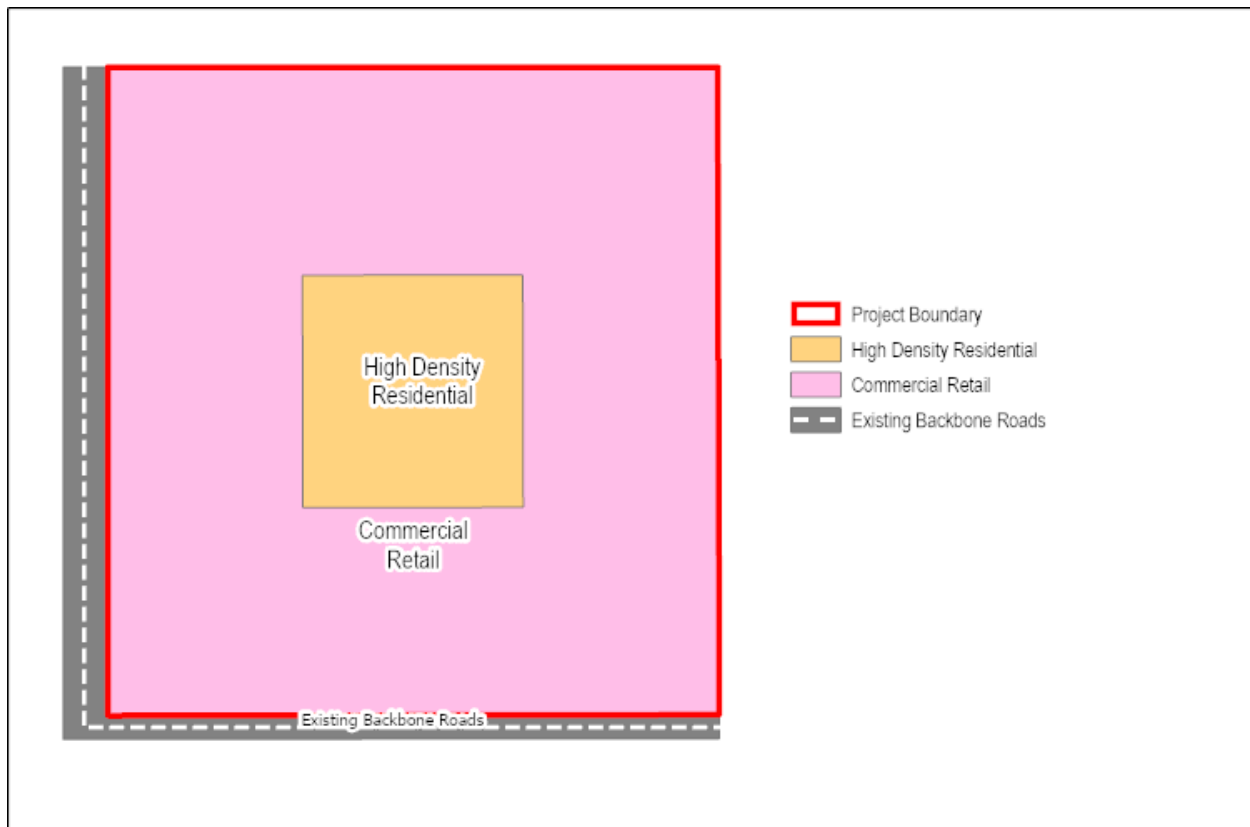


Table 4.6-1: Illustrative Development Program

Item	Amount
Gross Project Area	3 acres
<u>Residential Development Area</u>	
Residential Development Area	2.75
In-Tract/ Project Resident Serving (Residential)	<u>0.25</u>
Total/ Gross Residential Acres	3.00
<u>All Other Development</u>	
Non-Residential Development Area	0.0
Backbone/ Area-Serving	<u>0</u>
Total Non-Residential Development	0
Residential Development	
Low Density (1)	0
Medium Density (1)	0
High Density (1)	<u>90</u>
Total Units	90 units
Residential Project Density	
Residential Project Density	30.0 units/acre
Residential Fee Density Category (1)	HIGH

(1) Residential density categories as follows:

- Low Density - less than or equal to 8 residential units/gross residential acre.
- Medium Density - greater than 8 and less than 14 residential units/gross residential acre.
- High Density - greater than 14 residential units/gross residential acre.

Table 4.6-2: Mitigation Fee Payment Calculation – Method 1 (Residential Focus)

Item	Units/Acres	Per Unit/ Per Acre Mitigation Fee (1)	Mitigation Fee Payment
Residential Development (2)	90 units	\$670 (high density)	\$60,300
Non-Residential Development (3)	0 acres	16,358	0
Backbone/Community-Serving (4)	0 acres	16,358	0
Total Mitigation Fee Payment (5)			\$60,300

(1) Fee schedule will be updated periodically. Fee schedule used for Example Calculations as follows:

Residential Development

Low Density (on average) \$3,635 per unit

Medium Density (on average) 1,515 per unit

High Density (on average) 670 per unit

All Other Development 16,358 per gross acre

(2) Residential mitigation fee payment covers residential units and associated in-tract infrastructure/ improvements and project resident-serving amenities. All infrastructure, improvements, and amenities that serve beyond the project residents is covered in separate component of the fee calculation.

(3) Includes land area associated with non-residential development, such as commercial/industrial buildings, parking, and landscaping, among other components.

(4) All infrastructure/improvements/amenities that serve beyond the project/project residents and that are not included in the non-residential development fee payment calculation included here.

(5) Mitigation fee payment calculation does not include any additional member jurisdiction administrative charges.

Table 4.6-3: Mitigation Fee Payment Calculation – Method 2 (Commercial/Project Area Focus)

Item	Units/Acres	Per Unit/ Per Acre Mitigation Fee (1)	Mitigation Fee Payment
Residential Development (2)	0 units	\$670 (high density)	\$0
Non-Residential Development (3)	3 acres	16,358	49,074
Backbone/Community-Serving (4)	0 acres	16,358	0
Total Mitigation Fee Payment (5)			\$49,074

(1) Fee schedule will be updated periodically. Fee schedule used for Example Calculations as follows:

Residential Development

Low Density (on average) \$3,635 per unit

Medium Density (on average) 1,515 per unit

High Density (on average) 670 per unit

All Other Development 16,358 per gross acre

(2) Residential mitigation fee payment covers residential units and associated in-tract infrastructure/ improvements and project resident-serving amenities. All infrastructure, improvements, and amenities that serve beyond the project residents is covered in separate component of the fee calculation.

(3) Includes land area associated with non-residential development, such as commercial/industrial buildings, parking, and landscaping, among other components.

(4) All infrastructure/improvements/amenities that serve beyond the project/project residents and that are not included in the non-residential development fee payment calculation included here.

(5) Mitigation fee payment calculation does not include any additional member jurisdiction administrative charges.

B. Public Project Examples

This section contains four (4) examples of public development projects, including one (1) Member Agency Civic Project and three (3) transportation/road projects. These examples are not intended to be all inclusive but rather give permittees guidance on calculating the mitigation fee payment given different project types, characteristics, and, in the case of road/transportation projects, different sources of funding. The Member Agency Civic Project example provides a brief narrative, a representation of the project layout, the development program description, and the mitigation payment calculation. The road/transportation examples provide a brief narrative of the project, cost estimates, key funding source information, and the mitigation payment calculation. Graphic layouts for the public road projects are not provided as the mitigation payment calculation is tied to costs and funding sources (not the specific layout of the project.)

As described in Chapter III and illustrated in the private project examples provided above in this chapter, mitigation payments for road and Member Agency Civic Projects that are developed by a private developer as part of a Private Project are calculated and made as part of the Private Project development mitigation payment.

Example 7 – Member Agency Civic Project

Member Agency Civic Projects includes the development of a library and park with adjacent parking lot. The parking lot will also serve as a park and ride location. The total acreage of the project is 6 acres (area inside red boundary). Please see the visual representation of the project layout (Figure 4.7-1), the development program data (Table 4.7-1), and mitigation payment calculations (Table 4.7-2) below.

Figure 4.7-1: Project Layout

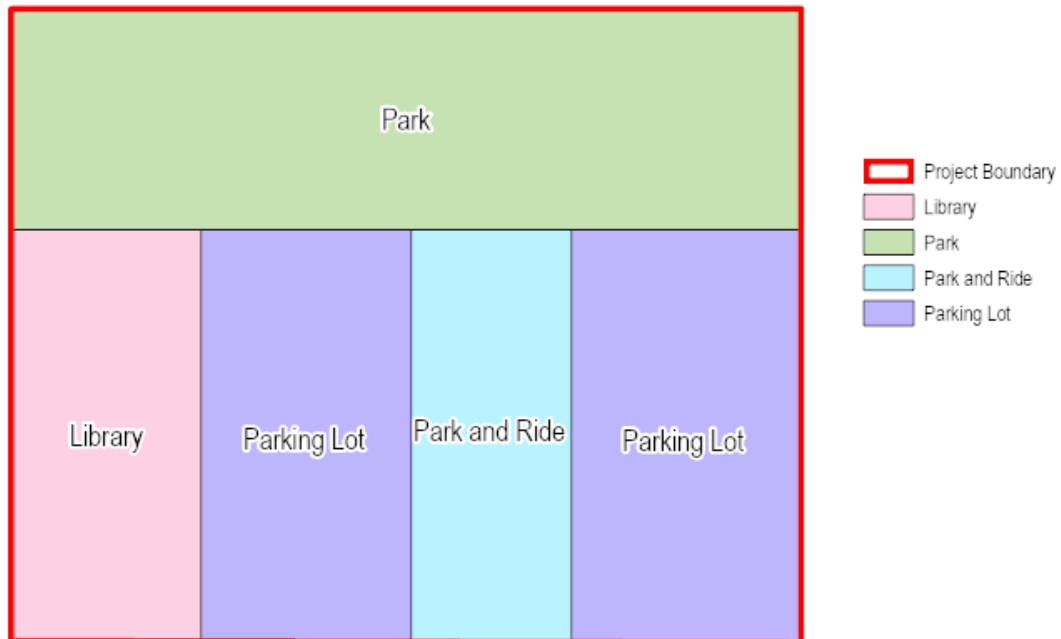


Table 4.7-1: Illustrative Development Program

Item	Amount
Library Area	1.0 acre
Park	2.0 acres
<u>Parking Area</u>	
Park and Ride Area	1.0 acre
General Parking Lot	<u>2.0</u> acres
Subtotal-Parking	3.0 acres
Gross Project Area	6.0 acres

Table 4.7-2: Mitigation Payment Calculation

Item	Amount
Gross Project Acres	6.0 acres
Mitigation Fee per Gross Acre (1)	\$16,358
<u>Total Mitigation Payment</u>	\$98,148

(1) Fee schedule will be updated periodically. Fee schedule used for example calculations is as follows:
Commercial/Industrial*

* Per gross acre fee for Local Public Capital Program is the same as for commercial/industrial development.

Example 8 – Road Widening with No Measure A or TUMF Funding

Road widening project with no Measure A or TUMF funding. Whole project is required to mitigate as project falls into the “new road, road widening, and other non-maintenance road projects” category that are required to mitigate (only maintenance projects costs such as road rehabilitation, restriping, and resealing are not required to mitigate). Total project cost is estimated at \$5.5 million, including total direct construction costs of \$4.4 million (including the construction cost contingency), \$1.1 million in soft costs, and no land/right of way (ROW) acquisition costs. Please see the example road project cost estimates data (Table 4.8-1), the funding source information (Table 4.8-2), and the mitigation payment calculations (Table 4.8-3) below.

Table 4.8-1: Illustrative Project Costs

Cost Item	Cost
NEW ROAD, ROAD WIDENING,-OTHER NON-MAINTENANCE PROJECTS, OR OTHER LINEAR INFRASTRUCTURE PROJECTS (1)	
Construction Costs	
Base Construction Costs	\$4,000,000 (3)
<u>Change Orders/Contingency</u>	400,000 (4)
Total Construction Costs	4,400,000
Soft Costs	1,100,000 (5)
Land Acquisition/ROW Costs	0
Total Capacity-Increasing Cost	5,500,000
MAINTENANCE PROJECTS (2)	
Total Construction Costs	0
Total Soft Costs	0
Total Non-Capacity-Increasing Cost	0
TOTAL PROJECT COSTS/USES	\$5,500,000

(1) Total Construction costs for new roads, road widening, other non-maintenance and other linear infrastructure projects are included in the mitigation fee payment calculation (see Table 4.8-3).

(2) Examples of maintenance projects include road rehabilitation, re-striping, and resealing. See Chapter 7, Definitions for full list of maintenance projects that are not required to mitigate.

(3) Initial fee payment calculations made on construction cost and construction contingency cost estimates. Additional fee payments also due on any change orders that add net costs above-and-beyond the initial construction cost contingency estimates.

(4) For illustrative purposes shown as 10% of base construction cost. Contingency (and future Change Orders) will vary by project.

(5) For illustrative purposes shown as 25% of total construction costs.

Table 4.8-2: Illustrative Funding Sources

Cost Item	Amount	% of Total
TUMF/Measure A Funding		
TUMF Fee Revenues	\$0	0%
Measure A Funding	<u>0</u>	<u>0%</u>
Subtotal	0	0%
Other Funding	5,500,000	100%
TOTAL PROJECT FUNDING/SOURCES	\$5,500,000	100%

Table 4.8-3: Mitigation Payment Calculation

Cost Item	Amount	Source/ Calculation
TOTAL PROJECT COSTS	\$5,500,000	a See Table 4.8-1
TOTAL CAPACITY-INCREASING CONSTRUCTION COST	4,400,000	b See Table 4.8-1
% of FUNDING FROM OTHER FUNDING SOURCES (1)	100%	c See Table 4.8-2
ELIGIBLE COST BASIS FOR MITIGATION PAYMENT CALCULATION	4,400,000	d = b * c Calculation
MITIGATION FEE PAYMENT DUE FROM LOCAL JURISDICTION (2)	\$220,000	e = d * 5% Calculation

(1) Other funding sources includes all costs not funded by TUMF or Measure A revenues as calculated in Table 4.8-2.

(2) Mitigation fee payment by permitting agency is 5% of eligible construction cost.

Example 9 – Road Widening Project with 20% Measure A/TUMF Funding

Road widening project with 20 percent of funding from Measure A and TUMF funding. Whole project is required to mitigate as project - new road, road widening, and other non-maintenance road projects are required to mitigate (only maintenance costs are not required to mitigate). However, 20 percent of the project will be mitigated separately through TUMF or Measure A funding. Total projects cost is estimated at \$5.5 million, including total direct construction costs of \$4.4 million (including the construction cost contingency), \$1.1 million in soft costs, and no land/ROW acquisition costs. Please see the example road project cost estimates data (Table 4.9-1), the funding source information (Table 4.9-2), and the mitigation payment calculations (Table 4.9-3) below.

Table 4.9-1: Illustrative Project Costs

Cost Item	Cost
NEW ROAD, ROAD WIDENING, OTHER NON-MAINTENANCE PROJECTS, OR OTHER LINEAR INFRASTRUCTURE PROJECTS (1)	
Construction Costs	
Base Construction Costs	\$4,000,000 (3)
<u>Change Orders/Contingency</u>	400,000 (4)
Total Construction Costs	4,400,000
Soft Costs	1,100,000 (5)
Land Acquisition/ROW Costs	0
Total Capacity-Increasing Cost	5,500,000
MAINTENANCE PROJECTS (2)	
Total Construction Costs	0
Total Soft Costs	0
Total Non-Capacity-Increasing Cost	0
TOTAL PROJECT COSTS/USES	\$5,500,000

(1) Total Construction costs for new roads, road widening, other non-maintenance and other linear infrastructure projects are included in the mitigation fee payment calculation (see Table 4.9-3).

(2) Examples of maintenance projects include road rehabilitation, re-striping, and resealing. See Chapter 7, Definitions for full list of maintenance projects that are not required to mitigate.

(3) Initial fee payment calculations made on construction cost and construction contingency cost estimates. Additional fee payments also due on any change orders that add net costs above-and-beyond the initial construction cost contingency estimates.

(4) For illustrative purposes shown as 10% of base construction cost. Contingency (and future Change Orders) will vary by project.

(5) For illustrative purposes shown as 25% of total construction costs.

Table 4.9-2: Funding Sources

Cost Item	Amount	% of Total
TUMF/Measure A Funding		
TUMF Fee Revenues	\$800,000	15%
Measure A Funding	<u>300,000</u>	<u>5%</u>
Subtotal	1,100,000	20%
Other Funding	4,400,000	80%
TOTAL PROJECT FUNDING/SOURCES	\$5,500,000	100%

Table 4.9-3: Mitigation Fee Payment Calculation

Cost Item	Amount	Source/ Calculation
TOTAL PROJECT COSTS	\$5,500,000	a See Table 4.9-1
TOTAL CAPACITY-INCREASING CONSTRUCTION COST	4,400,000	b See Table 4.9-1
% of FUNDING FROM OTHER FUNDING SOURCES (1)	80%	c See Table 4.9-2
ELIGIBLE COST BASIS FOR MITIGATION PAYMENT CALCULATION	3,520,000	d = b * c Calculation
MITIGATION FEE PAYMENT DUE FROM LOCAL JURISDICTION (2)	\$176,000	e = d * 5% Calculation

(1) Other funding sources includes all costs not funded by TUMF or Measure A revenues as calculated in Table 4.9-2. In cases where Measure A/TUMF funding is allocated for specific project cost categories, additional calculations and allocations may be appropriate. In these cases, please contact RCA staff and provide documentation of funding restrictions for support on the appropriate mitigation fee payment calculation.

(2) Mitigation fee payment by permitting agency is 5% of eligible construction cost.

Example 10 - Combined New Road/Road Rehabilitation Project with 50% Measure A/TUMF Funding

Road project that includes the development of a new segment of road along with rehabilitation of a segment of existing roadway. Road project is 50 percent funded through Measure A or TUMF funds. Total project costs are \$8 million. About \$6 million is associated with the new road, including \$4.4 million in direct construction costs (including the construction cost contingency), \$1.1 million in soft costs, and \$500,000 in land acquisition costs. About \$2 million (25 percent of overall project cost) is associated with rehabilitation of the existing roadway, including \$1.6 million in direct construction costs (including the construction cost contingency) and \$400,000 in soft costs. Please see the example road project cost estimates data (Table 4.10-1), the funding source information (Table 4.10-2), and the mitigation payment calculations (Table 4.10-3) below.

Table 4.10-1: Cost Estimates

Cost Item	Cost
NEW ROAD, ROAD WIDENING, OTHER NON-MAINTENANCE PROJECTS, OR OTHER LINEAR INFRASTRUCTURE PROJECTS (1)	
Construction Costs	
Base Construction Costs	\$4,000,000 (3)
<u>Change Orders/Contingency</u>	400,000 (4)
Total Construction Costs	4,400,000
Soft Costs	1,100,000 (5)
Land Acquisition/ROW Costs	500,000
Total Capacity-Increasing Cost	6,000,000
NON-CAPACITY INCREASING	
Total Construction Costs	1,600,000
Total Soft Costs	400,000 (5)
Total Non-Capacity-Increasing Cost	2,000,000
TOTAL PROJECT COSTS/USES	\$8,000,000

(1) Total Construction costs for new roads, road widening, other non-maintenance and other linear infrastructure projects are included in the mitigation fee payment calculation (see Table 4.10-3).

(2) Examples of maintenance projects include road rehabilitation, re-striping, and resealing. See Chapter 7, Definitions for full list of maintenance projects that are not required to mitigate.

(3) Initial fee payment calculations made on construction cost and construction contingency cost estimates. Additional fee payments also due on any change orders that add net costs above-and-beyond the initial construction cost contingency estimates.

(4) For illustrative purposes shown as 10% of base construction cost. Contingency (and future Change Orders) will vary by project.

(5) For illustrative purposes shown as 25% of total construction costs.

Table 4.10-2: Funding Sources

Cost Item	Amount	% of Total
TUMF/Measure A Funding		
TUMF Fee Revenues	\$2,000,000	25%
Measure A Funding	<u>2,000,000</u>	<u>25%</u>
Subtotal	4,000,000	50%
Other Funding	4,000,000	50%
TOTAL PROJECT FUNDING/SOURCES	\$8,000,000	100%

Table 4.10-3: Mitigation Payment Calculation

Cost Item	Amount	Source/ Calculation
TOTAL PROJECT COSTS	\$8,000,000	a See Table 4.10-1
TOTAL CAPACITY-INCREASING CONSTRUCTION COST	4,400,000	b See Table 4.10-1
% of FUNDING FROM OTHER FUNDING SOURCES (1)	50%	c See Table 4.10-2
ELIGIBLE COST BASIS FOR MITIGATION PAYMENT CALCULATION	2,200,000	d = b * c Calculation
MITIGATION FEE PAYMENT DUE FROM LOCAL JURISDICTION (2)	\$110,000	e = d * 5% Calculation

(1) Other funding sources includes all costs not funded by TUMF or Measure A revenues as calculated in Table 4.10-2. In cases where Measure A/TUMF funding is allocated for specific project cost categories, additional calculations and allocations may be appropriate. In these cases, please contact RCA staff and provide documentation of funding restrictions for support on the appropriate mitigation fee payment calculation.

(2) Mitigation fee payment by permitting agency is 5% of eligible construction cost.



Banded Gecko

V. MITIGATION FEE
FORMS



CHAPTER V. MITIGATION FEE FORMS

RCA has four fee submittal forms for Member Agencies to use in submitting information related to fee collection and payment including the Development Mitigation Fee Submittal Form, Qualified Infrastructure Fee Submittal Form, Flood Control Projects Fee Submittal Form, and Civic Projects Fee Submittal Form. The forms are updated before the beginning of each fiscal year by staff. Member Agencies must use the form related to the fiscal year of the payment. All forms can be found in the Document Library of the RCA website (www.wrc-rca.org) under Fees.

A. Development Mitigation Fee Submittal Form

The Development Mitigation Fee Submittal Form is used by Member Agencies to report LDMF fees collected related to residential, commercial, and industrial projects. The form is reviewed and updated annually with the current LDMF fees. Member Agencies should provide all requested information on the form.

The second tab is for reporting exemptions related to development agreements to the RCA.

The third tab is for reporting ADUs and additions. The fourth tab provides instructions on filling out the third tab.

Forms should be emailed to RCA monthly at ldmf-rca@rctc.org even if no fees are remitted for the month. Please remit the form by the 5th day of the following month.

B. Qualified Infrastructure Fee Submittal Form

The Qualified Infrastructure Fee Submittal Form is used by Member Agencies to report LDMF fees related to linear construction contracts. The form includes the report plus a worksheet. The worksheet (tab 2) and related instructions (tab 3) are intended to help Member Agencies determine if the Linear Project contract results in fees which must be remitted to the RCA, or if the contract and related project are exempt. The form is reviewed and updated annually. Member Agencies should provide all requested information on the form and the worksheet.

Forms should be emailed to RCA monthly at ldmf-rca@rctc.org even if no fees are remitted for the month. The worksheet should be remitted as well for all Linear Projects even if the project is determined to be exempt. Please remit the forms by the 5th day of the following month.

C. Flood Control Projects Fee Submittal Form

The Flood Control Projects Fee Submittal Form is used to report LDMF fees related to construction contracts for Riverside County Flood Control related projects. The form is reviewed and updated annually. Riverside County Flood Control should provide all requested information on the form.

Forms should be emailed to RCA monthly at ldmf-rca@rctc.org even if no fees are remitted for the month. Please remit the form by the 5th day of the following month.

D. Civic Projects Fee Submittal Form

The Civic Projects Fee Submittal Form is used by Member Agencies to report LDMF fees related to all other Member Agency construction contracts besides roadway and Flood Control Projects. The form is reviewed and updated annually with the current LDMF fees. Member Agencies should provide all requested information on the form.

Forms should be emailed to RCA monthly at ldmf-rca@rctc.org even if no fees are remitted for the month. Please remit the form by the 5th day of the following month.



Quino Checkerspot Butterfly

VI. OTHER ISSUES



Regional Conservation Authority

Western Riverside County

CHAPTER VI. OTHER ISSUES

Other situations which Member Agencies may rarely address are discussed in this chapter. These include the Silverado Conservation Bank, Agricultural Operations, and the Legacy Home Rebate Pilot Program.

A. Silverado Conservation Bank

The Silverado Conservation Bank is a private mitigation area consisting of lands subject to a recorded conservation easement resulting in conservation credits available to satisfy developer fee requirements set forth in the MSHCP.

In accordance with Section 4.6.1 of the MSHCP, RCA entered into a Settlement and Release Agreement with Silverado Conservation Bank (Silverado) dated July 17, 2017, which allows a developer to satisfy its LDMF fee requirements through a private transaction with Silverado wherein the developer and Silverado are free to negotiate an amount that would otherwise be paid to the Member Agency.

A transaction under this program can be used within the jurisdiction of any Member Agency for any project whether for industrial, commercial, or residential projects, provided that such project is required to pay the LDMF fee.

Once a developer has entered into a separate agreement with Silverado to satisfy its LDMF fee requirements through a private transaction with Silverado, Silverado will notify the U.S. Fish and Wildlife Service (Service), the California Department of Fish and Wildlife (CDFW), and the RCA requesting approval for the transaction from the Service and CDFW. The Service and CDFW shall give approval, if appropriate, within ten business days. Thereafter, the RCA will send notice to the local jurisdiction overseeing the project notifying them that the LDMF fee requirements are satisfied by the transaction with Silverado. Developers pay the agreed upon amount to Silverado directly.

B. Agricultural Operations

The MSHCP LDMF that is calculated on Agriculture Operations is governed by Section 6.2 (pages 6-56 through 6-61) of the MSHCP. However, this section is further modified by the 2004 Riverside County Farm Bureau Settlement Agreement (Settlement Agreement).

The MSHCP section 6.2(A) defines agricultural operations as “the production of all plants (horticulture), fish farms, animals and related production activities, including the planting, cultivation and tillage of the soil, dairying, and apiculture; and the production, plowing, seeding, cultivation, growing, harvesting, pasturing and fallowing for the purpose of crop rotation or any agricultural commodity, including viticulture, apiculture, horticulture, and the breeding, feeding and raising of livestock, horses, fur-bearing animals, fish, or poultry, the operation, management, conservation, improvement or maintenance of a farm or ranch and its buildings, tool and equipment; the construction, operation and maintenance of ditches, canals, reservoirs, wells and/or waterways used for farming or ranching

purposes and all uses conducted as a normal part of such Agricultural Operations; provided such actions are in compliance with all applicable laws and regulations.”

The MSHCP provides take authorization by the Service and CDFW for current and a limited amount of future Agricultural Operations, as defined by the MSHCP, throughout the western County and cities and mitigation for biological impacts to Covered Species under the California Environmental Quality Act and National Environmental Policy Act without the need to comply with MSHCP survey, mitigation, and adjacency requirements; Criteria; the Habitat Evaluation and Negotiation Strategy (HANS) process; and MSHCP Mitigation Fee. However, the MSHCP and Settlement Agreement only exempt the expansion of “Existing Agricultural Operations” from the payment of fees that require a discretionary permit when the expansion is (a) less than 50 percent of (1) the existing developed building square footage or (2) the area subject to existing permitted uses on the entire landholding (plus the area subject to uses similar to the proposed use if a discretionary permit was not previously required for the proposed use), or (b) less than two acres in size. “Existing Agricultural Operations” are those lands within MSHCP boundaries actively being used for ongoing Agricultural Operations for at least one of the last five years preceding the Effective Date of the IA. Except for this fee exemption there is no fee exemption for the expansion of Existing Agricultural Operations. The Agriculture Compliance Process Flowchart (Ag Flowchart) provided in the appendices illustrates these processes.

For reference, the Farm Bureau Settlement is also provided in the appendices. Exhibit A to the Farm Bureau Settlement discusses new agricultural operations among other important topics. Please also see the RCA website at www.wrc-rca.org for the Ag Flowchart and all related attachments.

C. Legacy Home Rebate Pilot Program

On March 1, 2021, the RCA Board of Directors adopted Resolution 2021-007, Resolution of the Board of Directors of the Western Riverside County Regional Conservation Authority Adopting an RCA Home Legacy Rebate Pilot Program. For reference the resolution is provided in the appendices.

1. **Rebate** Eligible homeowners may apply to the RCA for a rebate in the amount of the difference between the LDMF at the time of payment and the LDMF as of June 30, 2021, adjusted according to changes in the Consumer Price Index (CPI) for the Riverside-San Bernardino-Ontario metropolitan area.
2. **Eligibility** Eligibility is determined based on ownership of the land, construction of the primary residence, payment made in full, occupancy, and limited to one rebate per applicant. Resolution 2021-007 Exhibit A should be reviewed for eligibility specifics.
3. **Budget** Annually \$70,500 will be set aside in FY 2023 to provide up to 50 rebates. If the funds are exhausted, the RCA Board of Directors

may approve a mid-year budget adjustment or begin a queue for the following fiscal year until the sunset date.

4. **Sunset Date** The pilot program will sunset on June 30, 2025.



Long-Tailed Weasel

VII. DEFINITIONS



DEFINITIONS

(Including Definitions defined in the Fee Ordinances):

“Accessory Dwelling Unit” means an accessory dwelling unit as defined by California Government Code section 65852.2(j)(1), or as defined in any successor statute. (see Chapter III, Section B.1.b.). Per California Government Code section 65852.2(j)(1) an “accessory dwelling unit means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated.”

“Agriculture Operations” The MSHCP section 6.2(A) defines agricultural operations as “the production of all plants (horticulture), fish farms, animals and related production activities, including the planting, cultivation and tillage of the soil, dairying, and apiculture; and the production, plowing, seeding, cultivation, growing, harvesting, pasturing and fallowing for the purpose of crop rotation or any agricultural commodity, including viticulture, apiculture, horticulture, and the breeding, feeding and raising of livestock, horses, fur-bearing animals, fish, or poultry, the operation, management, conservation, improvement or maintenance of a farm or ranch and its buildings, tool and equipment; the construction, operation and maintenance of ditches, canals, reservoirs, wells and/or waterways used for farming or ranching purposes and all uses conducted as a normal part of such Agricultural Operations; provided such actions are in compliance with all applicable laws and regulations.”

“City/County Civic Projects” means all non-linear City and County projects, including City/County administrative facilities, jails, courts, juvenile facilities, parks, libraries, and all other facilities that serve the public.

“City/County Road Projects” means all City and County road projects.

“Construction Cost” means and includes the cost of the entire construction of the roadway project, including all supervision, materials, supplies, labor, tools, equipment, transportation and/or other facilities furnished, used or consumed, without deduction on account of penalties, liquidated damages or other amounts withheld from payment to the contractor or contractors, but such cost shall not include the Consulting Engineer/Architect’s fee, or other payments to the Consulting Engineer/Architect and shall not include cost of land or ROW and Easement acquisition.

“Credit” means a credit allowed pursuant to the Fee Ordinances, which may be applied against the development impact fee paid.

“Development” means a human-created change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavating, and drilling.

“Development Project” or **“Project”** means any project undertaken for the purpose of development pursuant to the issuance of a building permit by the City/County pursuant to all applicable ordinances, regulations, and rules of the City/County and state law.

“Fuel modification area” means an area established adjacent to structures or roads in which highly combustible native plants, invasive introduced, or ornamental plants are modified and/or totally replaced with fire resistant or drought resistant alternatives, or areas subject to hazardous abatement orders.

“Gross Community-Serving Area/Acres” means the area of residential projects that provide infrastructure, improvements, and amenities that go beyond only serving project residents and hence are “community-serving”. This includes, but is not limited to, roads that serve multiple projects, parks that serve more than one residential project, parking that serves other uses/developments etc. The acreage associated with these improvements/amenities are part of the gross project acreage but distinct from project resident-serving improvements/amenities and the gross residential area.

“Gross Project Area/Acres” means is the total or gross areas of the project. This overall acreage can only be reduced under unique circumstances.

“Gross Residential Area/Acres” means the total area of the project dedicated to residential land uses and includes residential buildings as well as “Project Resident-Serving” Infrastructure/Improvements/Amenities.

“Hazardous vegetation” means vegetation that is flammable and endangers the public safety by creating a fire hazard, including, but not limited to, seasonal and recurrent weeds, stubble, brush, dry leaves, and tumbleweeds.

“Junior Accessory Dwelling Unit” means a junior accessory dwelling unit as defined by California Government Code section 65852.22(h)(1), or as defined in any successor statute. (see Chapter III, Section B.1.b.).

“Linear Projects” means all infrastructure projects of a linear nature constructed by Member Agencies, such as pipelines. Linear projects for participating special entities means regional utility projects that will be constructed to serve Development, such as major trunk lines.

“Local Development Mitigation Fee” or **“Fee”** means the development impact fee imposed by the Fee Ordinances.

“Maintenance Projects” means projects that include, but are not limited to, pavement repairs, tree trimming, bridge maintenance, and pavement restriping and roadway reconstruction which do not add new lanes.

“Manufactured slope” means a slope created by natural landform alteration (grading), by cutting or filling a natural slope, or importing fill material to create a slope.

“Member Agency” or “Member Agencies” means those Cities and the County that are signatories to the RCA Joint Powers Agreement.

“Multiple Species Habitat Conservation Plan” or “MSHCP” means the Western Riverside County Multiple Species Habitat Conservation Plan

“MSHCP Conservation Area” has the same meaning and intent as such term is defined and utilized in the MSHCP.

“Non-Linear Projects” means all PSE projects that are non-linear in form.

“Ordinance” means the Fee Ordinance adopted by the Cities and the County to implement the MSHCP Local Development Mitigation Fee.

“Private Projects” means those projects where the primary project purpose is for use by households, business, or other private entities (i.e. not accessible to the public except where allowed by private owner/renter). This category also includes Private Projects that receive public support (e.g., support through direct public investments in infrastructure, ground leases of publicly owned land, or direct investment of public dollars in projects such as affordable housing).

“Project Area” means the total area, measured in acres, within the Development Project including, without limitation, any areas to be developed as a condition of the Development Project (e.g. fuel modification areas and temporary impacts (excluding staging areas)). Except as otherwise provided herein, the Project Area is the area upon which the project will be assessed the LDMF. See Chapter 2.E. of this Manual for additional guidance for calculating the Project Area.

“Project Resident-Serving Infrastructure/Improvements/Amenities” means Infrastructure/improvements, and amenities that only serve project residents and include, but are not limited to, roads, parks, and non-residential buildings that only serve project residents.

“Public Projects” means all City/County Civic Projects and all City/County Road Projects. These Public Projects include infrastructure (roads and linear) projects, civic projects, and Riverside County Flood Control District projects.

“Revenue” or “Revenues” means any funds received by the City/County pursuant to the provisions of the Fee Ordinances for the purpose of defraying all or a portion of the cost of acquiring and preserving vegetation communities and natural areas within the City/County and the region which are known to support threatened, endangered, or key sensitive populations of plant and wildlife species.

“Riverside County Flood Control District Projects” means all Riverside County Flood Control and Water Conservation District projects.

“Second Units and Guest Quarters” shall be treated the same as Additional Dwelling Units for the purposes of calculation of the Local Development Mitigation Fee and shall follow all guidance in this manual related to Additional Dwelling Units.

“Usable Square Footage” means habitable (conditioned) space.

“Western Riverside County Regional Conservation Authority” or **“RCA”** means the governing body established pursuant to the MSHCP that is delegated the authority to oversee and implement the provisions of the MSHCP.

Any capitalized term not otherwise defined herein shall carry the same meaning and definition as that term is used and defined in the MSHCP.



2019 Poppy Superbloom

VIII. APPENDICES



CHAPTER VIII. APPENDICES

The following items are included as appendices to add clarity to items discussed herein.

1. Pages 41 through 46 of the Implementing Agreement which refer to the Member Agencies obligations of the western Riverside County cities and the County of Riverside;
2. The Agriculture Compliance Process Flowchart;
3. The 2004 Riverside County Farm Bureau Settlement Agreement; and
4. Resolution 2021-007 – Adopting an RCA Legacy Home Rebate Pilot Program.

IMPLEMENTING AGREEMENT

for the

WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES
HABITAT CONSERVATION PLAN/NATURAL
COMMUNITY CONSERVATION PLAN

by and between

WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY,
COUNTY OF RIVERSIDE, RIVERSIDE COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT, RIVERSIDE COUNTY REGIONAL PARKS AND OPEN
SPACE DISTRICT, RIVERSIDE COUNTY WASTE MANAGEMENT DISTRICT,
RIVERSIDE COUNTY TRANSPORTATION COMMISSION, CITY OF BANNING, CITY OF
BEAUMONT, CITY OF CALIMESA, CITY OF CANYON LAKE, CITY OF CORONA, CITY
OF HEMET, CITY OF LAKE ELSINORE, CITY OF MORENO VALLEY, CITY OF
MURRIETA, CITY OF NORCO, CITY OF PERRIS, CITY OF RIVERSIDE, CITY OF SAN
JACINTO, CITY OF TEMECULA, CALIFORNIA DEPARTMENT OF TRANSPORTATION,
CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, UNITED STATES FISH
AND WILDLIFE SERVICE AND CALIFORNIA DEPARTMENT OF FISH AND GAME

12.4 State Permittee Obligations. The State Permittees are responsible for the acquisition costs for 6,000 acres of Additional Reserve Lands as their contribution towards Reserve Assembly. These responsibilities are set forth in Sections 13.8 and 13.9 of this Agreement and Section 8.0 of the MSHCP.

13.0 PERMITTEES' TAKE AUTHORIZATION AND OBLIGATIONS

13.1 Permittees' Take Authorization. Each Permittee may engage in, and receive Take Authorization for, Covered Activities as set forth in Section 7.0 of the MSHCP. Additionally, the RCA may confer Take Authorization for Covered Activities as set forth in Section 6.6 of the MSHCP. The County and Cities may also confer Take Authorization and approve projects proposed within their respective jurisdictions, as set forth in Sections 7.1 and 7.3.1 of the MSHCP. The RCA, County and Cities may also confer Take Authorization through the issuance of a Certificate of Inclusion or other written mechanism as set forth in Sections 11.3 and 11.8 of this 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 Development projects. Such requirements and policies include: 1) the collection of Local Development Mitigation Fees and other relevant fees as set forth in Section 8.5 of the MSHCP; 2) compliance with the HANS process or equivalent process to ensure application of the Criteria and thus, satisfaction of the local acquisition obligation; 3) compliance with the policies for the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools, set forth in Section 6.1.2 of the MSHCP; 4) compliance with the policies for the Protection of Narrow Endemic Plant Species set forth in Section 6.1.3 of the MSHCP; 5) require surveys as set forth in Section 6.3.2 of the MSHCP; 6) compliance with the Urban/Wildlands Interface Guidelines as set forth in Section 6.1.4 of the MSHCP; and 7) compliance with the Best Management Practices and the siting and design criteria as set forth in Section 7.0 and Appendix C of the MSHCP. The County and the Cities shall transmit to the RCA and the Wildlife Agencies relevant documents showing adoption and/or execution of the Implementation Mechanisms and any subsequent amendments thereto.
- B. Transmit any collected Local Development Mitigation Fees, other appropriate fees and associated interest as described in Section 8.5 of the MSHCP to the RCA at least quarterly.

- C. Contribute to Plan implementation and Reserve Assembly as determined appropriate by the affected Permittee for County and City public projects, including, but not limited to, any one or any combination of the following: 1) acquisition of replacement habitat at a 1:1 ratio that is biologically equivalent or superior to the property being disturbed; or 2) payment of the Local Development Mitigation Fees as established for commercial and industrial Development. Such contribution shall occur prior to impacts to Covered Species and their habitats.
- D. Participate as a member agency in the RCA as set forth in Section 6.6.2 of the MSHCP.
- E. Notify the RCA, through the Joint Project/Acquisition Review Process set forth in Section 6.6.2 of the MSHCP, of proposed discretionary projects within the Criteria Area and participate in any further requirements imposed by that section.
- F. Take all necessary and appropriate actions, following its applicable land use permit enforcement procedures and practices, to enforce the terms of project approvals for public and private projects, including compliance with the MSHCP, the Permits and this Agreement.
- G. Carry out all other applicable requirements of the MSHCP, this Agreement and the Permits. Notwithstanding the foregoing, nothing within this Agreement shall be construed to require any local government to provide funding, or any other form of compensation, beyond the fees collected, dedicated lands required pursuant to this Agreement and the MSHCP or other mitigation agreed to by the appropriate Parties, consistent with the terms and conditions of the MSHCP.
- H. Manage MSHCP Conservation Area property or conservation easements owned or leased by the County or respective City pursuant to Sections 5.0 and 8.0 of the MSHCP.
- I. Participate as a member of the RMOC as set forth in Section 6.6.4 of the MSHCP.

13.3 Regional Conservation Authority Obligations. The RCA has the following obligations under the MSHCP and this Agreement:

- A. Adopt and maintain resolutions as necessary to implement the requirements and to fulfill the purposes of the Permits, the MSHCP and this Agreement for its public projects, if any and for issuance of Take Authorization for

Participating Special Entities. Such requirements include: 1) collection of Local Development Mitigation Fees; 2) compliance with the policies for the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools as set forth in Section 6.1.2 of the MSHCP; 3) compliance with the policies for the Protection of Narrow Endemic Plant Species as set forth in Section 6.1.3 of the MSHCP; 4) require surveys as set forth in Section 6.3.2 of the MSHCP; 5) compliance with the Urban/Wildlands Interface Guidelines as set forth in Section 6.1.4 of the MSHCP; and 6) compliance with the Best Management Practices and the siting and design criteria as set forth in Section 7.0 and Appendix C of the MSHCP.

- B. Administer and oversee implementation of the MSHCP as set forth in Section 6.0 of the MSHCP.
- C. Collect and expend Local Development Mitigation Fees and other applicable funds as described in Section 8.5 of the MSHCP.
- D. Transfer Take Authorization to Participating Special Entities pursuant to Section 11.8 of this Agreement.
- E. Accept and manage and monitor MSHCP Conservation Area property including conservation easements that have been conveyed to the RCA by the County, Cities or other entity, agency or individual, pursuant to Sections 5.0 and 8.0 of the MSHCP.
- F. Carry out all other applicable requirements of the MSHCP, this Agreement, and the Permits. Notwithstanding the foregoing, nothing within this Agreement shall be construed to require the RCA to provide funding, or any other form of compensation, beyond the fees collected or dedicated lands required pursuant to the Permits, this Agreement and the MSHCP, consistent with the terms and conditions of the MSHCP.
- G. Take all necessary and appropriate actions to enforce the terms of the Permits, the MSHCP and this Agreement.
- H. Participate as a member of the RMOC as set forth in Section 6.6.4 of the MSHCP.

13.4 County Flood Control Obligations. County Flood Control has the following obligations under the MSHCP and this Agreement:

- A. Adopt and maintain resolutions as necessary to implement the requirements and to fulfill the purposes of the Permits, the MSHCP and this Agreement for

its Covered Activities. Such requirements include: 1) compliance with the policies for the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools as set forth in Section 6.1.2 of the MSHCP; 2) compliance with the policies for the Protection of Narrow Endemic Plant Species as set forth in Section 6.1.3 of the MSHCP; 3) conduct surveys as set forth in Section 6.3.2 of the MSHCP; 4) compliance with all requirements of Section 7.3.7 of the MSHCP; 5) compliance with the Urban/Wildlands Interface Guidelines as set forth in Section 6.1.4 of the MSHCP; and 6) compliance with the Best Management Practices and the siting and design criteria as set forth in Section 7.0 and Appendix C of the MSHCP.

- B. Contribute mitigation through payment of 3% of total capital costs for a Covered Activity. Such payment may be offset through acquisition of replacement habitat or creation of new habitat for the benefit of Covered Species, as appropriate. Such mitigation shall be implemented prior to impacts to Covered Species and their habitats.
- C. Manage land owned or leased within the MSHCP Conservation Area that has been set aside for conservation purposes pursuant to a management agreement to be executed between County Flood Control and CDFG.
- D. Carry out all other applicable requirements of the MSHCP, this Agreement and the Permits. Notwithstanding the foregoing, nothing in this Agreement shall be construed to require County Flood Control to provide funding, or any other form of compensation, beyond the fees collected or dedicated lands required pursuant to the Permits, this Agreement and the MSHCP, consistent with the terms and conditions of the MSHCP.
- E. Participate as a member of the RMOC as set forth in Section 6.6.4 of the MSHCP.

13.5 County Parks Obligations. County Parks has the following obligations under the MSHCP and this Agreement:

- A. Adopt and maintain resolutions as necessary to implement the requirements and to fulfill the purposes of the Permits, the MSHCP and this Agreement for its Covered Activities. Such requirements include: 1) compliance with the policies for the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools as set forth in Section 6.1.2 of the MSHCP; 2) compliance with the policies for the Protection of Narrow Endemic Plant Species as set forth in Section 6.1.3 of the MSHCP; 3) conduct surveys as set forth in Section 6.3.2 of the MSHCP; 4) compliance with the Urban/Wildlands Interface Guidelines as set forth in Section 6.1.4 of the

MSHCP; and 5) compliance with the Best Management Practices and all other requirements of Section 7.0 and Appendix C of the MSHCP.

- B. Contribute to Plan implementation and Reserve Assembly as determined appropriate by County Parks for its Covered Activities, including, but not limited to, any one or any combination of the following: 1) acquisition of replacement habitat at a 1:1 ratio that is biologically equivalent or superior to the property being disturbed; or 2) payment of Local Development Mitigation Fees as established by the County for commercial and industrial Development. Such contribution shall occur prior to impacts to Covered Species and their habitats.
- C. Manage and monitor land owned or leased within the MSHCP Conservation Area that has been set aside for conservation purposes pursuant to Section 5.0 of the MSHCP, and funding for such management and monitoring shall be provided pursuant to Section 8.0 of the MSHCP.
- D. Carry out all other applicable requirements of the MSHCP, this Agreement and the Permits. Notwithstanding the foregoing, nothing in this Agreement shall be construed to require County Parks to provide funding, or any other form of compensation, beyond the requirements of the Permits, this Agreement and the MSHCP, consistent with the terms and conditions of the MSHCP.
- E. Participate as a member of the RMOC as set forth in Section 6.6.4 of the MSHCP.

13.6 County Waste Obligations. County Waste has the following obligations under the MSHCP and this Agreement:

- A. Adopt and maintain resolutions as necessary to implement the requirements and to fulfill the purposes of the Permits, the MSHCP and this Agreement for its Covered Activities. Such requirements include: 1) contribution of landfill tipping fees as set forth in Section 8.5 of the MSHCP; 2) compliance with the policies for the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools as set forth in Section 6.1.2 of the MSHCP; 3) compliance with the policies for the Protection of Narrow Endemic Plant Species as set forth in Section 6.1.3 of the MSHCP; 4) conduct surveys as set forth in Section 6.3.2 of the MSHCP; 5) compliance with the Urban/Wildlands Interface Guidelines as set forth in Section 6.1.4 of the MSHCP; and 6) compliance with the Best Management Practices and all other requirements of Section 7.0 and Appendix C of the MSHCP.

- B. Manage land owned within the MSHCP Conservation Area that has been set aside for conservation purposes pursuant to Section 5.0 of the MSHCP and funding for such management shall be provided pursuant to Section 8.0 of the MSHCP.
- C. Carry out all other applicable requirements of the MSHCP, this Agreement, and the Permits. Notwithstanding the foregoing, nothing within this Agreement shall be construed to require County Waste to provide funding, or any other form of compensation, beyond the requirements of the Permits, this Agreement and the MSHCP, consistent with the terms and conditions of the MSHCP.

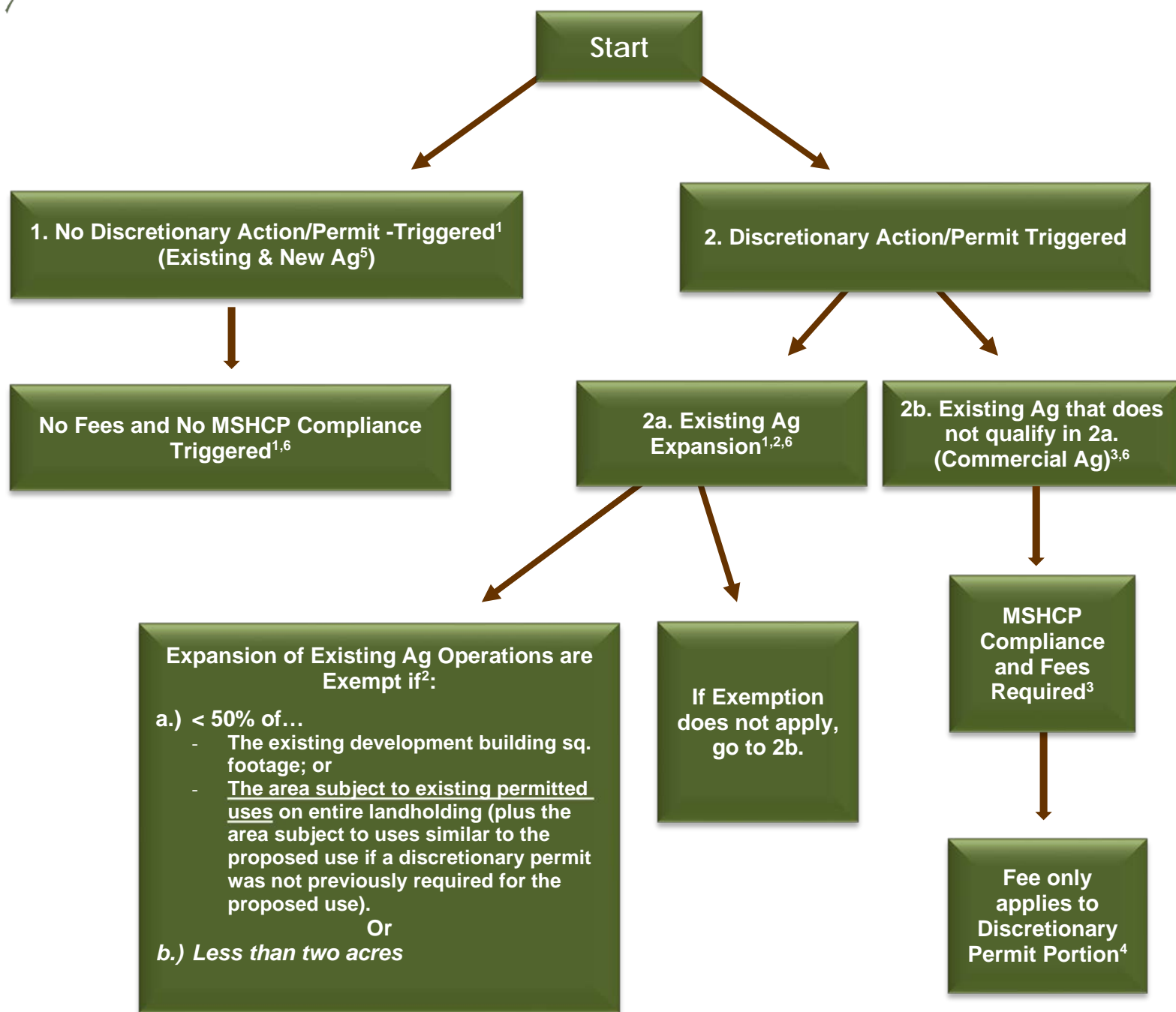
13.7 RCTC Obligations. RCTC has the following obligations under the MSHCP and this Agreement:

- A. Adopt and maintain ordinances or resolutions as necessary to implement the requirements and to fulfill the purposes of the Permits, the MSHCP and this Agreement, for its Covered Activities. Such requirements include: 1) compliance with the policies for the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools as set forth in Section 6.1.2 of the MSHCP; 2) compliance with the policies for the Protection of Narrow Endemic Plant Species as set forth in Section 6.1.3 of the MSHCP; 3) conduct surveys as set forth in Section 6.3.2 of the MSHCP; 4) compliance with the Urban/Wildlands Interface Guidelines as set forth in Section 6.1.4 of the MSHCP; and 5) compliance with the Best Management Practices and the siting and design criteria as set forth in Section 7.0 and Appendix C of the MSHCP.
- B. Contribute mitigation in the amount of \$153 million from Measure "A" funds for mitigation of its Covered Activities as described in Section 8.5.1. of the MSHCP. Such contribution shall occur proportionately prior to impacts to Covered Species or their habitats.
- C. Carry out all other applicable requirements of the MSHCP, this Agreement, and the Permits. Notwithstanding the foregoing, nothing within this Agreement shall be construed to require RCTC to provide funding, or any other form of compensation, beyond the requirements of the Permits, this Agreement and the MSHCP, consistent with the terms and conditions of the MSHCP.

13.8 Caltrans Obligations. Caltrans has the following obligations under the MSHCP and this Agreement:

AGRICULTURE COMPLIANCE PROCESS

Graphic summary of process described for agriculture compliance in the MSHCP and 2004 Settlement Agreement between RCA, County of Riverside, select Cities, and the Riverside County Farm Bureau. Please consult the source documents.



¹=2004 Settlement Agreement section 2.

²=2004 Settlement Agreement sections F.

³=2004 Settlement Agreement section G.

⁴=2004 Settlement Agreement exhibit A section F.

⁵=10,000-acre cap on Take Authorization of new Ag within Criteria Areas (MSHCP Section 6.2F, 6.2G; Implementation Agreement sections 11.3.6, 11.3.7); secondary ag uses on parcels of 5 ac. or less on single-family home lots will not count towards cap.

⁶=must be include in the Agricultural Database.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between the County of Riverside ("County"), the Western Riverside County Regional Conservation Authority ("RCA"), the City of Perris, City of Murrieta, City of San Jacinto, City of Hemet, City of Temecula, City of Beaumont ("Cities") and the Riverside County Farm Bureau ("Farm Bureau"). The parties to this Agreement are sometimes referred to herein individually as "Party" and collectively as the "Parties."

RECITALS

A. On June 17, 2003, the County approved the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP") and its associated Implementing Agreement, and certified the final MSHCP Environmental Impact Report/Environmental Impact Statement ("EIR/EIS"). All capitalized terms not otherwise defined herein shall have the meaning given such terms in the MSHCP.

B. On July 22, 2003, the County approved Ordinance No. 810.2 establishing the MSHCP Mitigation Fee.

C. The Cities have approved the MSHCP, Implementing Agreement and MSHCP Mitigation Fee and made responsible agency findings for the EIR/EIS.

D. The Farm Bureau is a nonprofit mutual benefit corporation whose purpose is to work toward the solution of the problems of the farm, farm home, and rural community, such as perceived adverse impacts to existing and future Agricultural Operations that may result from implementation of the MSHCP as it is currently worded. The Farm Bureau represents, protects and advances the social, economic, and educational interests of farmers within the County and State of California.

E. On July 17, 2003, Farm Bureau, along with Pacific Clay Products, Inc., Castle & Cooke Lake Elsinore Outlet Centers, Inc., Castle & Cooke Corona, Inc., Gateway Business Park, LLC, Murdock Alberhill Ranch Limited Partnership, and the Property Owners Association of Riverside County filed suit against the County and its Board of Supervisors in Riverside County Superior Court ("Court"), Case No. 396565 ("Action").

F. Implementation of the MSHCP by the County and Cities will avoid and/or mitigate the adverse environmental impacts to Covered Species under the MSHCP that could result from land use activities within their respective jurisdictions, including current and future Agricultural Operations, to comply with the National Environmental Policy Act ("NEPA"), California Environmental Quality Act, ("CEQA") and the federal and California Endangered Species Acts by conserving and managing land for Covered Species and habitat protection purposes. The MSHCP provides take authorization by the Service and DFG for current and future Agricultural Operations throughout the County and Cities pursuant to Section 10(a)(1)(B) of the federal Endangered Species Act (16 U.S.C. § 1531 *et seq.*), and Natural Community Conservation Planning Act (Cal. Fish and Game Code Section 2800, *et seq.*) and environmental impact mitigation for biological impacts to Covered Species under CEQA (Cal. Public Resources

Code section 21000, et seq.) and NEPA (42 U.S.C.A. section 4321, et seq.) without the need to comply with MSHCP survey, mitigation, adjacency requirements, Criteria, HANS process, and MSHCP Mitigation Fee, except that Expansion of Existing Agricultural Operations must comply with such MSHCP requirements in order to obtain take authorization and impact mitigation under the MSHCP unless the Expansion of Existing Agricultural Operations requiring a discretionary permit is a.) less than 50% of 1.) the existing developed building square footage or 2.) the area subject to existing permitted uses on the entire landholding (plus the area subject to uses similar to the proposed use if a discretionary permit was not previously required for the proposed use), or b.) less than two acres in size. Notwithstanding the foregoing, these exemptions do not apply to discretionary permits for projects on land that is not then included in the Agricultural Database and is being newly converted to Agricultural Operations. Expansion of Existing Agricultural Operations that do not qualify for these exemptions are defined as "Commercial Uses on Agricultural Properties."

The MSHCP provides take authorization under certain terms and conditions, as clarified by this Agreement, for Commercial Uses on Agricultural Properties.

G. As currently worded, the Farm Bureau believes the MSHCP may be misinterpreted as requiring current and all future Agricultural Operations to comply with MSHCP survey, mitigation, adjacency requirements, Criteria, HANS process, and MSHCP Mitigation Fee, as a condition of receiving take authorization for Covered Species under the MSHCP. One purpose of this Agreement is to clarify: that the MSHCP provides take authorization and environmental impact mitigation for biological impacts to Covered Species under CEQA and NEPA for all current and future Agricultural Operations without the need to comply with MSHCP survey, mitigation, adjacency requirements, Criteria, HANS process, and MSHCP Mitigation Fee, except, for Commercial Uses on Agricultural Properties; and the terms under which the MSHCP provides take authorization and environmental impact mitigation for Covered Species under the MSHCP for Commercial Uses on Agricultural Properties. The provisions contained within this Agreement are non-substantive corrections and clarifications of the EIR/EIS, MSHCP, Implementing Agreement, and MSHCP Mitigation Fee Ordinance. Moreover, the RCA shall ensure that participating cities apply the MSHCP and the Implementing Agreement as clarified by this Agreement.

H. The County and Farm Bureau will enter into a stipulated judgment on terms consistent with the provisions of this Agreement in order to resolve a portion of the Action.

NOW THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Clarifications/City Approval. The County, RCA, and the Cities agree to clarify through this Agreement the provisions of the MSHCP, Implementing Agreement, and MSHCP Mitigation Fee Ordinance raised by the Farm Bureau as set forth in this Agreement and Exhibit A. The County, RCA and the Cities shall implement the MSHCP and the Implementation Agreement consistent with the MSHCP as clarified by this Agreement. The County and Farm

Bureau shall use their best efforts to obtain the approval of this Agreement by the Cities within ninety days of execution by the County and Farm Bureau.

2. MSHCP Compliance and Consistency. In implementing the MSHCP, the County, RCA and the Cities will contribute to the preservation of the economic viability of Agricultural Operations as a means of preserving agricultural resources in Western Riverside County. Accordingly, except for the restricted circumstances of Commercial Uses on Agricultural Properties, Agricultural Operations are exempt from the MSHCP's mitigation requirements including, but not limited to, biological surveys, adjacency requirements, Criteria, Habitat Acquisition and Negotiation process, MSHCP Mitigation Fee, and any other MSHCP regulations which may be adopted by the County, Cities, Service or DFG. All Agricultural Operations are deemed to be consistent with the provisions of the MSHCP, as long as the landowner or agricultural operator complies with the terms of the MSHCP as clarified consistent with this Agreement.

3. Further Cooperation. The Parties agree to promptly execute and deliver any and all additional papers, documents, instruments, and other assurances, and to do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the Parties to this Agreement.

4. Authority to Sign. Each Party represents and warrants to each other Party that its signatory to this Agreement has the authority to bind the Party, and this Agreement does bind the Party.

5. Remedies. Any Party may institute legal action to cure, correct or remedy any uncured default, to enforce any covenants or agreements herein, or to obtain any remedies consistent with the purpose of this Agreement. In the case of breach or default by any party, any other party specifically reserves the right to invoke the Court's continuing jurisdiction pursuant to Section 7 below to enforce the terms of the Stipulated Judgment.

6. Attorneys' Fees. In addition to the remedies set forth in Section 5 above, in the event of any such legal action involving or arising out of this Agreement, the prevailing Party shall be entitled to recover from the losing Party, reasonable litigation expenses, attorneys' fees and costs incurred. The Parties shall bear their own costs of litigating the Action and negotiating this Agreement.

7. Settlement/Stipulated Judgment. The County, RCA and the Cities, respectively, have complied with applicable laws, regulations and policies prior to approving this Agreement. Prior to approving this Agreement, the County, Cities and the RCA, respectively, have determined that approval and implementation of this Agreement is exempt from CEQA and directed that, within five business days of their respective approvals of this Agreement, Notices of Exemption be filed and posted pursuant to State CEQA Guidelines section 15062. Within five days of execution of this Agreement by the County, the County and Farm Bureau agree to file a joint stay of proceedings or other equivalent document, to stay the Action. Within five days of the execution of this Agreement by the County and Farm Bureau, the County shall deliver a letter to Jim Bartel, Field Supervisor of the Carlsbad office of the United States Fish and Wildlife Service ("Service") and Ron Rempel, Deputy Director of the California Department of Fish and

Game ("DFG") in substantial conformance with the letter attached as Exhibit B requesting the Service and DFG to issue the permits and biological opinion on the MSHCP as clarified by Exhibit A and Attachment 1 to this Agreement. Within the later of forty five days after the County, RCA, and the Cities execute this Agreement, or forty five days after the Service and DFG provide written confirmation of their issuance of the permits and biological opinion based upon the MSHCP as clarified by Exhibit A and Attachment 1, in substantial conformance with the letter attached as Exhibit "C," neither of which is then the subject of legal challenge, County and Farm Bureau will petition the Court to enter an order in the Action containing the provisions of this Agreement, directing that the order will be included in the judgment entered in the Action, and maintaining continuing jurisdiction to enforce the provisions of this Agreement and the order and judgment thereon. The order and Stipulated Judgment shall be substantially in the form of Exhibit D. The Parties agree that the Court shall reserve and retain full jurisdiction, power, and authority to enable the Court upon noticed motion of either County or Farm Bureau, to make such further orders or directions to enforce, protect, or preserve the rights of the County and Farm Bureau consistent with the terms of this Agreement; to hear any legal challenge to the clarifications as a related case; and to issue such additional orders and/or injunctions to prevent injury to the interests of the County or Farm Bureau that might result from any change in the MSHCP or Implementing Agreement materially different from this Agreement adversely affecting Agricultural Operations within the County. The RCA agrees to be bound by the terms of the Stipulated Judgment. The County and the Farm Bureau agree to be bound by the terms of the Stipulated Judgment and to submit themselves to the continuing jurisdiction of the Court in the Action to specifically enforce the provisions of this Agreement and the order and judgment thereon. The County, RCA and Farm Bureau agree to fully cooperate in defending this Agreement and the order and judgment thereon from any and all legal or administrative actions instituted by any third party challenging the approval or validity of this Agreement or any of its provisions and any action taken or decision made hereunder. Each party retains the right to make all reasonable decisions with respect to its representation in any such legal or administrative proceeding.

8. No Effect on Other Petitioners and Plaintiffs. The Parties acknowledge that this Agreement and the stipulated judgment will not settle the Action with respect to, and will not affect, any of the petitioners and plaintiffs in the Action besides Farm Bureau.

9. Actions in Furtherance of the MSHCP. Providing that all Parties comply with this Agreement, and all Parties, the Service and DFG implement the MSHCP consistent with this Agreement, Farm Bureau agrees not to file any litigation, or sponsor or fund any initiative, preventing or challenging the County, Cities or RCA's approval of the MSHCP, or the Service's and DFG's issuance of the permits or biological opinion on the MSHCP, expected to occur within the next six months. This Section shall not be interpreted to bind any member of Farm Bureau or to prevent Farm Bureau from acting in any manner to support or defend any of its members or to protect Farm Bureau's interests in future proceedings related to the implementation of the MSHCP.

10. Prior Negotiations and Understandings. This Agreement supersedes all prior negotiations and understandings of any kind with respect to the subject matter hereof between the Parties and contains all the terms and provisions of the agreement between the Parties with respect to the subject matter hereof. The Parties acknowledge that there are no oral

understandings, statements or stipulations between any of them bearing upon the effect of this Agreement which have not been incorporated herein. No waiver, modification, amendment, discharge or change in the terms of this Agreement shall be valid unless the same is in writing signed by the Party against which the enforcement of such waiver, modification, amendment, discharge or change is sought.

11. Neutral Interpretation. Each Party and each Party's legal counsel has reviewed this Agreement, and the customary rule of construction to the effect that any ambiguities in this Agreement are to be resolved against the drafting Party shall not be employed in interpreting this Agreement.

12. Severability. The provisions of this Agreement are severable, and if one or more provisions should be determined to be judicially unenforceable, in whole or in part, the remaining provisions thereof shall nevertheless be binding and enforceable and the Parties will negotiate in good faith amendments to replace the unenforceable provisions and restore the original purpose and intent of this Agreement.

13. Recitals and Exhibits. Recitals A through H above and Exhibits A, B, C and D and Attachment 1 hereto are incorporated by reference and deemed to be a part of this Agreement.

14. Effective Date. This Agreement is effective upon its execution by all Parties ("Effective Date").

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of this _____ day of _____, 2004.

COUNTY OF RIVERSIDE
COUNTY BOARD OF SUPERVISORS

By: _____

Chair

Riverside County Board of Supervisors

Date: _____

5-11-04

GARY ORSO, COUNTY ASSESSOR

By: _____

Gary Orso, County Assessor

Date: _____

5-12-04

ATTEST:

Clerk of the Board

By: _____

Deputy

RIVERSIDE COUNTY FARM BUREAU

By: Cindy G. Domenigoni,
President

Date: 4-27-04

CITY OF PERRIS

By: _____

Date: _____

ATTEST:

City Clerk

By: _____

CITY OF HEMET

By: _____

Date: _____

ATTEST:

City Clerk

By: _____

WESTERN RIVERSIDE COUNTY
REGIONAL CONSERVATION
AUTHORITY

By: _____

Date: _____

CITY OF MURRIETA

By: _____

Date: _____

ATTEST:

City Clerk

By: _____

CITY OF TEMECULA

By: _____

Date: _____

ATTEST:

City Clerk

By: _____

CITY OF BEAUMONT

By: _____

Date: _____

ATTEST:

City Clerk

By: _____

APPROVED AS TO FORM:

Special Counsel to County of Riverside

CITY OF SAN JACINTO

By: _____

Date: _____

ATTEST:

City Clerk

By: _____



Michele Staples
Jackson DeMarco & Peckenpaugh
Attorneys for Riverside County
Farm Bureau

EXHIBIT A

CLARIFICATIONS TO MSHCP AND IMPLEMENTING AGREEMENT

The County, RCA, and the Cities agree to the following clarifications to the MSHCP, Implementing Agreement, and MSHCP Fee Ordinances as follows:

A. MSHCP Survey, Mitigation and adjacency requirements, Criteria and HANS process (MSHCP Sections 6.2B, 6.2E, 6.2F; Implementing Agreement Sections 11.3.2, 11.3.5, 11.3.6)

- ◇ The MSHCP survey, mitigation, adjacency requirements, Criteria, HANS process, and MSHCP Mitigation Fee shall apply only to extend Take Coverage those Agricultural Operations consisting of construction of Commercial Uses on Agricultural Properties, defined below.
- ◇ The MSHCP as clarified by this Agreement shall extend Take Coverage and environmental mitigation for impacts to and take of all Covered Species and habitat in connection with all other Agricultural Operations as defined in the MSHCP and Implementing Agreement on existing farms, ranches and dairies, including changes in Agricultural Operations and crop types, whether or not a discretionary permit or City Ministerial Permit is needed, without the need to comply with MSHCP mitigation requirements including, but not limited to, the Joint Project/Acquisition Review Process (as set forth in Section 6.6.2 of the MSHCP), policies for the Protection of Species Associated with Riparian/Rivarine Areas and Vernal Pools (as set forth in Section 6.1.2 of the MSHCP), policies for the Protection of Narrow Endemic Plant Species (as set forth in Section 6.1.3 of the MSHCP), additional Survey Needs and Procedures (as set forth in Section 6.3.2 of the MSHCP); Urban/Wildlands Interface Guidelines (as set forth in Section 6.1.4 of the MSHCP), Best Management Practices and the siting and design criteria (as set forth in Section 7 and Appendix C of the MSHCP), additional vegetation mapping (as set forth in Section 6.3.1 of the MSHCP), or MSHCP Local Development Mitigation Fee (as set forth in Section 8 of the MSHCP and in the MSHCP Fee Ordinance). The definition of Existing Agricultural Operations is clarified such that 1.) the Agricultural Database shall include all current agricultural landholdings that are part of Agricultural Operations, not just the tilled portion of the landholding; and 2.) all current and future actions taken to comply with federal and/or state environmental requirements and laws on Agricultural Operations are included within the definition of Existing Agricultural Operations.
- ◇ The County and the RCA, shall not release identifying information on Agricultural Operations from the Agricultural Database or applications to be included in the Agricultural Database, except as required by law. In order to protect landowner confidentiality, RCA shall, when compiling

reports concerning the MSHCP Agricultural Operations Database, format them alphanumerically. RCA shall protect the privacy of sensitive personal and business information made available for their review by agricultural landowners and operators while providing site-specific information for MSHCP evaluation purposes. Landowner identifying information shall not be submitted for the public record. RCA shall inform employees responsible for handling MSHCP Agricultural Operations Database records in writing of the requirements set forth above. Documents substantiating Agricultural Operations in connection with the Agricultural Operations Database shall be made available for RCA's review, but RCA shall not collect or maintain such documents as part of the RCA's files.

- ◇ The County Agricultural Commissioner will develop an outreach program to explain the provisions and benefits of the Certificate of Inclusion and the Farm Bureau will assist as deemed appropriate in Farm Bureau's sole judgment. As part of such a program, the County Agricultural Commissioner, in coordination with the RCA, shall prepare a pamphlet outlining the MSHCP's provisions regarding Agricultural Operations, including examples of how the abbreviated HANS process set forth in Section E below will be implemented.
- ◇ MSHCP requirements will not be applicable to an Expansion of Existing Agricultural Operations that is a.) less than 50% of: 1.) the existing developed building square footage; or 2.) the area subject to existing permitted uses on the entire landholding (plus the area subject to uses similar to the proposed use if a discretionary permit was not previously required for the proposed use) or b.) less than two acres in size. Notwithstanding the foregoing, these exemptions do not apply to discretionary permits for projects on land that is not then included in the Agricultural Database and is being newly converted to Agricultural Operations. "Commercial Uses on Agricultural Properties" are the Expansion of Existing Agricultural Operations that do not qualify for these exemptions.

B. The MSHCP provides Take Authorization and environmental impact mitigation for biological impacts to Covered Species under CEQA and NEPA for all current and future Agricultural Operations without the need to comply with MSHCP survey, mitigation, adjacency requirements, Criteria, HANS process, and MSHCP Mitigation Fee, except, for Commercial Uses on Agricultural Properties; and the terms under which the MSHCP provides take authorization and environmental impact mitigation for Covered Species under the MSHCP for Commercial Uses on Agricultural Properties. The provisions contained within this Agreement are non-substantive corrections and clarifications of the EIR/EIS, MSHCP, Implementing Agreement, and MSHCP Mitigation Fee Ordinance. Moreover, the RCA shall ensure that the Cities apply the MSHCP and the Implementing Agreement as clarified by this Agreement. Certificate of Inclusion (MSHCP Sections 6.2B, 6.2C, 6.2F; Implementing Agreement Sections 11.3.2, 11.3.3, 11.3.6; Appendix F)

- ◇ The County shall revise the proposed Certificate of Inclusion as depicted in Attachment 1.

C. Conditions for Take Authorization on New Agricultural Lands (MSHCP Section 6.2F; Implementing Agreement Section 11.3.6)

- ◇ The County shall provide for denials of Agricultural Grading/Clearing Exceptions to be communicated in writing to the applicant and an adequate opportunity shall be provided for appeal to a review panel. The County and Farm Bureau will develop a mutually agreeable appeals process for consideration by the Board of Supervisors at a noticed public hearing within ninety (90) days after entry of the stipulated judgment.
- ◇ A Williamson Act Contract or similar restriction on land is not required to obtain Take Authorization for Agricultural Operations as set forth in Section 11.3.4(a)-(e) of the Implementing Agreement; rather the list of information set forth in Section 11.3.4(a)-(e) describes the types of information adequate to establish Existing Agricultural Operations that may be submitted for review by the RCA at the election of the agricultural property owner or operator.
- ◇ The five-year requirement set forth in Section 6.2F of the MSHCP and Section 11.3.6 of the Implementing Agreement shall not be applicable to 1) projects currently within an agricultural zone established by Ordinance No. 348, 2) projects whose building footprint will be wholly within property previously tilled as part of the Existing Agricultural Operations, 3) new agricultural activities including agricultural leases on properties for which a Development project has been approved, or 4) agricultural leases on property that is not identified for conservation in the context of the MSHCP criteria.
- ◇ The definition of New Agricultural Lands is clarified to consist of Agricultural Operations on vacant lands within the Criteria Area that are converted to Agricultural Operations and have not either previously been included in agricultural landholdings or used for Agricultural Operations within the past five years, or included on the Agricultural Operations Database and further that they do not require a discretionary permit or other discretionary authorization.

D. 10,000 Acre Cap on Take Authorization for New Agricultural Lands Within Criteria Area (MSHCP Section 6.2F, 6.2G; Implementing Agreement sections 11.3.6, 11.3.7)

- ◇ Secondary agricultural uses on parcels of 5 acres or less on Single-family home lots will receive Take Authorization pursuant to the permit issued for the residential parcel or development and will not count toward the 10,000 acre New Agricultural Lands Cap (as allowed to increase pursuant to the Amendment Process set forth in MSHCP Section 6.10), and will not

trigger application of the MSHCP mitigation requirements including, not limited to, biological surveys, adjacency requirements, Criteria, HANS process, and MSHCP Mitigation Fee.

- ◇ Permit forms for small Agricultural Operations shall be amended to identify whether the operations are located on a single-family residential lot.
- ◇ When the RCA determines that approximately 50% of the New Agricultural Lands Cap within the Criteria Area has been converted to New Agricultural Lands, it shall seek approval of an amendment from the Wildlife Agencies to increase the New Agricultural Land Cap.

E. HANS Process (MSHCP Section 6.2E, 6.2F; Implementing Agreement Sections 11.3.5, 11.3.6)

- ◇ Except for expansion of Existing Agricultural Operations for construction of Commercial Uses on Agricultural Properties, all other Agricultural Operations are exempt from the HANS Process unless property owner or operator requests HANS review. If there are insufficient funds to acquire the land for the Conservation Area through the HANS Process, then the proposed Agricultural Operations may proceed, with Take Coverage extended to them under the Permits without the application of any of the MSHCP mitigation requirements including, but not limited to, biological surveys, adjacency requirements, Criteria, HANS Process, and MSHCP Mitigation Fee, provided the proposed Agricultural Operations is not a Commercial Use on Agricultural Property.
- ◇ In conjunction with Farm Bureau, the County and Cities, with input from the RCA as appropriate shall identify property that may have the potential for use as tenant farming and dry land farming in the Criteria Area. As requested by a property owner, operator or tenant farmer, the County or Cities shall undertake a limited HANS analysis of property based upon existing information solely to determine if all or a portion of the property could be used for interim farming. The County or Cities as appropriate shall complete such a process within fifteen business days of submission of such a request. The County Planning Director or City Planning Director, respectively, shall be the designated contact for such requests. Upon completion of this process, the County or Cities shall indicate whether the subject property is desirable for conservation pursuant to the MSHCP. The County Planning Director or City Planning Director, respectively shall make this determination. If the property is not desirable for conservation, then the five year period set forth in Section 11.3.6 of the Implementing Agreement and Section 6.2F of the MSHCP shall not be applicable. If the property is desirable for conservation, then the five year period set forth in Section 11.3.6 of the Implementing Agreement and Section 6.2F of the MSHCP will be applicable.

F. MSHCP Fee (County and Cities MSHCP Fee Ordinance; Implementing Resolution)

The County and Cities shall implement or amend applicable County and City Fee Ordinances and Implementing Resolutions as necessary to accomplish the following:

- ◇ Agricultural Operations (including but not limited to grading, clearing and grubbing activities for agricultural crops, ponding areas, berms and other water quality protection structures) are exempt from the application of the MSHCP Mitigation Fee, except for new construction of Commercial Uses on Agricultural Properties.
- ◇ The County will prorate the MSHCP Fee for Commercial Uses on Agricultural Properties based upon the acreage or portion thereof impacted as defined and set forth in the Application submitted by the Property Owner or operator, not necessarily the entire acreage of the Applicant's property unless completely impacted. Residential homes in rural and agricultural zoning classifications will pay applicable residential MSHCP Mitigation Fee.
- ◇ Credit will be provided in the full amount for any fees assessed for new projects on property that has already paid MSHCP Mitigation Fee.

527932.1

SETTLEMENT AGREEMENT

Attachment 1

CERTIFICATE OF INCLUSION

The United States Fish and Wildlife Service and the California Department of Fish and Game have issued Permits pursuant to the federal Endangered Species Act and the California Natural Community Conservation Planning Act (collectively "Permits") authorizing "Take" of certain species in accordance with the terms and conditions of the Permits, the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP") and the associated Implementing Agreement. Under the Permits, certain activities by [appropriate part of entity] are authorized to "Take" certain species, provided all applicable terms and conditions of the Permits, the MSHCP and the associated Implementing Agreement are met.

As the owner/operator of the property depicted on Exhibit "1," attached hereto and incorporated herein by this reference, you are entitled to the protection of the Permits ~~for the proposed activities as set forth in Exhibit "2," with respect to any~~ to Take of species as identified in the MSHCP in connection with Agricultural Operations. In the event that the property depicted in Exhibit "1" is used for other purposes without the express consent of the [appropriate Permittee], Take Authorization under the Permits will automatically cease. Such authorization is provided as described in the Permits, the MSHCO and the Implementing Agreement. By signing this Certificate of Inclusion, you signify your election to receive Take Authorization under the Permits in accordance with the terms and conditions thereof. This Certificate of Inclusion does not give state and federal agencies additional regulatory control over the signatory nor require the signatory to provide additional information not called for in the Certificate of Inclusion, but instead ensures compliance with 50 Code of Federal Regulations, section 13.25(d).

Coverage under the Permits will become effective upon receipt of the executed Certificate of Inclusion by the Western Riverside County Regional Conservation Authority (RCA"). In the event that the subject property is sold or leased, the buyer or lessee must be informed of these provisions and execute a new Certificate of Inclusion.



COUNTY OF RIVERSIDE

BOARD OF SUPERVISORS**BOB BUSTER**
955-1010**JOHN F. TAVAGLIONE**
955-1020**JAMES A. VENABLE**
955-1020**ROY WILSON**
955-1040**MARION ASHLEY**
955-1050**EXHIBIT B**

April 19, 2004

VIA U.S. MAIL

Ron Rempel
Deputy Director
Department of Fish and Game
Habitat Conservation Division
1416 Ninth Street, Room 1342B
Sacramento, CA 95814

Jim Bartel
Field Supervisor
United States Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92009

Re: Clarification of Provisions for Agricultural Operations in the Western Riverside County
Multiple Species Habitat Conservation Plan

Gentlemen:

The County of Riverside has been in extensive settlement negotiations with the Riverside County Farm Bureau concerning litigation on the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"). As part of these negotiations, the Farm Bureau has asked the County to clarify various provisions concerning the MSHCP's application to agricultural operations. We request that you review the attached list of these clarifications and revised Certificate of Inclusion (Exhibit "A" and Attachment 1) and determine whether in your opinion they are consistent with the MSHCP. We also request that you consider the MSHCP as clarified by these documents when issuing the applicable permits and Biological Opinion.

Ron Rempel
Jim Bartel
Page 2
April 19, 2004

Please call me should you have any questions.

Sincerely,

Roy Wilson
Chair, Riverside County Board of Supervisors

cc: Riverside County Board of Supervisors
Mr. Richard Lashbrook, Transportation and Land Management Agency
Ms. Cindy Domenigoni, President, Riverside County Farm Bureau
Mr. William Katzenstein, Riverside County Counsel
Ms. Karin Watts Bazan, Riverside County Counsel
Ms. Michelle Ouellette, Best, Best & Krieger LLP

EXHIBIT C

[TO BE PLACED ON JOINT DFG AND SERVICE LETTERHEAD]

XX, 2004

VIA U.S. MAIL

Mr. Roy Wilson
Chair, Riverside County Board of Supervisors
4080 Lemon St., 5th Fl.
Riverside, CA 92502-1646

Re: Clarification of Provisions for Agricultural Operations in the Western
Riverside County Multiple Species Habitat Conservation Plan

Dear Supervisor Wilson:

This letter is in response to your correspondence dated April XX, 2004. As you know, the Wildlife Agencies have issued the appropriate permits and Biological Opinion for the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"). Pursuant to your request, when issuing the permits and Biological Opinion, the Wildlife Agencies considered the MSHCP as clarified by Exhibit "A" and Attachment 1 to your April XX, 2004 letter.

If you have any further comments or questions, please do not hesitate to call us.

Sincerely,

Jim Bartel, United States Fish and
Wildlife Service

Ron Rempel, California Department
of Fish and Game

cc: Riverside County Board of Supervisors
Mr. Richard Lashbrook, Transportation and Land Management Agency
Ms. Cindy Domenigoni, President, Riverside County Farm Bureau
Ms. Michelle Ouellette, Best, Best & Krieger LLP

EXHIBIT "D"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

RIVERSIDE COUNTY FARM BUREAU,
a nonprofit mutual benefit corporation,
CASTLE & COOKE LAKE ELSINORE
OUTLET CENTERS, INC., a California
corporation, PACIFIC CLAY
PRODUCTS, INCL., a Delaware
corporation, CASTLE & COOKE
CORONA, INC., a California corporation,
GATEWAY BUSINESS PARK, LLC, a
California limited liability company,
MURDOCK ALBERHILL RANCH
LIMITED PARTNERSHIP, a California
limited partnership, and PROPERTY
OWNERS ASSOCIATION OF
RIVERSIDE COUNTY, a nonprofit
mutual benefit association,

Petitioners and Plaintiffs,

vs.

COUNTY OF RIVERSIDE, a political
subdivision of the State of California;
RIVERSIDE COUNTY BOARD OF
SUPERVISORS, locally elected officials,
and DOES 1 through 100, inclusive,

Respondents and Defendants.

Case No. INCR 396565

[Assigned for all purposes to the
Hon. Lawrence W. Fry]

[PROPOSED] JUDGMENT PURSUANT TO
SETTLEMENT AGREEMENT

Complaint Filed: July 17, 2003

1 This Court having reviewed the Stipulation for Entry of Judgment executed and filed herein by
2 petitioners and plaintiffs Riverside County Farm Bureau ("Farm Bureau"), on the one hand, and
3 respondents and defendants County of Riverside and Riverside County Board of Supervisors
4 (collectively, "County"), on the other hand, and the Court further having reviewed the file in this
5 matter and GOOD CAUSE APPEARING,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

7 The Court hereby finds and determines that:

8 1. Background.

9 In April, 2004, Farm Bureau, County, the Western Riverside County Regional
10 Conservation Authority ("RCA") and the cities of Perris, Murrieta, San Jacinto, Hemet, Temecula
11 and Beaumont ("Cities") entered into a Settlement Agreement to resolve that portion of the
12 Action concerning Farm Bureau. The RCA and the Cities were not parties to the Action.
13 Nevertheless, the RCA agreed to be bound by the terms of this Stipulated Judgment.

14 2. Terms of the Judgment.

15 The terms of the Settlement Agreement attached hereto as Exhibit "A" are incorporated
16 into this Stipulated Judgment.

17 3. Past Attorneys' Fees, Costs and Litigation Expenses.

18 Each party shall bear all its own costs, attorneys' fees, and related expenses associated
19 with litigating the Action through the date of entry of this Stipulated Judgment.

20 ///

21 ///

1 4. Exercise of Police Power.

2 To the extent applicable in this Judgment, the parties acknowledge and agree that the
3 County is exercising its present police power in entering into this Judgment and in fulfilling its
4 obligations thereto. In addition, this Judgment and the provisions hereof are in the interests of the
5 parties in this action, the citizens of the County and Cities and the general public.

6
7 APPROVED AS TO FORM ONLY.

8
9 Dated: _____, 2004

JACKSON, DeMARCO & PECKENPAUGH

10
11 By: _____
12 Michele A. Staples, Esq.
13 Gregory P. Regier, Esq.
14 Attorneys for Petitioners and Plaintiffs
15 RIVERSIDE COUNTY FARM BUREAU,
16 et al.

17
18 Dated: _____, 2004

BEST BEST & KRIEGER, LLP

19 By: _____
20 Michelle Ouellette, Esq.
21 Attorneys for Respondents and Defendants
22 COUNTY OF RIVERSIDE;
23 COUNTY BOARD OF SUPERVISORS

24
25 THE CLERK IS ORDERED TO ENTER THE FOREGOING JUDGMENT

26 Dated: _____

27 _____
28 Lawrence W. Fry
 JUDGE, RIVERSIDE COUNTY
 SUPERIOR COURT

RESOLUTION NO. 2021-007

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY
ADOPTING AN RCA LEGACY HOME REBATE PILOT PROGRAM**

WHEREAS, the Western Riverside County Regional Conservation Authority (“RCA”) is a public agency of the State of California formed by a Joint Exercise of Powers Agreement (“JPA”); and

WHEREAS, pursuant to Section 17 of the JPA, the RCA has the power to adopt such rules and regulations as the Board may deem necessary for the conduct of the RCA and its members; and

WHEREAS, the Board adopted a Nexus Fee Study Update (2020 Nexus Study) on December 7, 2020 which increased the Local Development Mitigation Fee (LDMF) required by the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP); and

WHEREAS, the MSHCP acknowledges certain development projects and circumstances that predate the implementation of the MSHCP out of a principle of fairness; and

WHEREAS, some western Riverside County landowners have owned parcels since before the implementation of the MSHCP and have intended to eventually build their primary residence on such property; and

WHEREAS, the Board desires to mitigate fee increases upon landowners who have held a property for their future primary residence since prior to the implementation of the MSHCP; and


WHEREAS, a rebate pilot program provides an opportunity to provide such a targeted benefit with limited administrative burden and financial risk to the RCA and implementation of the MSHCP; and

WHEREAS, the Board intends for this pilot program to expire after June 30, 2025; and

WHEREAS, the RCA Legacy Home Rebate Pilot Program policy document attached to this Resolution in Exhibit “A” outlines the parameters of the pilot program.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED by the Western Riverside County Regional Conservation Authority Board of Directors to adopt the RCA Legacy Home Rebate Pilot Program as described in Exhibit “A” to this Resolution.

PASSED, APPROVED, AND ADOPTED by the Board of Directors of the Western Riverside County Regional Conservation Authority this 1st day of March 2021.

By: 
Natasha Johnson, Chair
Western Riverside County
Regional Conservation Authority

ATTEST:

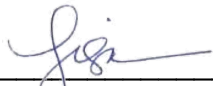
By: 
Lisa Mobley, Clerk
Western Riverside County
Regional Conservation Authority

EXHIBIT “A” TO RESOLUTION 2021-007

WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

RCA LEGACY HOME REBATE PILOT PROGRAM

1. Purpose. The purpose of this Policy is to establish a partial fee rebate pilot program for specified landowners in western Riverside County who owned land prior to the implementation of the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) and who build their primary residence upon such land after the increased Local Development Mitigation Fee (LDMF) goes into effect on July 1, 2021 pursuant to the 2020 Nexus Study.
2. Responsibilities.
 - 2.1. The Western Riverside County Regional Conservation Authority (RCA) is responsible for administration of the LDMF, specifically for receiving LDMF revenues from the cities and the County of Riverside (RCA Member Agencies) to invest, account for, and expend the LDMF in accordance with the MSHCP Implementing Agreement.
 - 2.2. RCA Member Agencies are land use authorities that are signatories to the MSHCP and are responsible for collecting the LDMF and remitting LDMF revenues to RCA.
3. Rebate. The rebate shall be the difference between the amount of the LDMF previously paid by the applicant to an RCA Member Agency (a city or the County of Riverside) and the applicable LDMF amount in effect as of June 30, 2021, adjusted for the percentage change in the Consumer Price Index for the Riverside-San Bernardino-Ontario metropolitan area. The RCA has sole discretion to determine the rebate amount.
4. Eligibility. Applicants eligible to receive a rebate shall demonstrate to the satisfaction of the RCA that they meet the following requirements:
 - 4.1. Ownership of land
 - 4.1.1. The residence is on a parcel of land within the boundaries of the MSHCP.

- 4.1.2. The applicant has continuously owned the parcel starting prior to June 30, 2004.
 - 4.1.2.1. If the parcel is owned by a Trust, the applicant must be an original Trustee.
 - 4.1.3. The parcel was legally created and recorded prior to June 30, 2004.
- 4.2. Construction of primary residence
 - 4.2.1. Received a building permit from an RCA Member Agency after June 30, 2021 for construction of a single family dwelling unit that is the applicant's primary residence.
 - 4.2.2. The residence may be a mobile home or any dwelling eligible for the expedited review process established within the MSHCP.
- 4.3. Fee payment in full
 - 4.3.1. The applicant paid the full LDMF in full to the RCA Member Agency.
- 4.4. Occupancy
 - 4.4.1. The applicant has occupied the dwelling as its primary residence for no less than one year following the issuance of the certificate of occupancy.
- 4.5. One rebate
 - 4.5.1. The applicant has not previously received a rebate through this program.
- 5. Application. The RCA staff shall create a rebate application and post it to the RCA website. The application shall reference this Policy, establish the information and documents necessary for the RCA to determine eligibility, and describe the method by which an application may be submitted. The RCA may amend the application from time to time, as appropriate. A complete application is required for the RCA to begin review and issue a rebate. The RCA shall inform applicants of deficiencies in an application.
 - 5.1. Timeline
 - 5.1.1. The RCA shall issue a determination of eligibility within 30 days of receipt of a complete application.
 - 5.2. Public record

5.2.1. Applications and related documents are considered public records and will be disclosed upon request pursuant to the California Public Records Act.

6. Limited Funding. Issuance of a rebate is contingent upon available funding. The RCA intends to budget sufficient funding for 50 rebates in FY 2023 to begin the pilot program. All budgeting decisions are the sole discretion of the RCA Board of Directors.

6.1. Queue.

6.1.1. In the event of insufficient funding for eligible applicants, a queue shall be established for when additional funding is available. As funding becomes available, applicants in the queue shall receive rebates in order based on the date on which their application was deemed eligible by the RCA. Placement in the queue is not a future guarantee of a rebate.

7. Sunset. This program shall expire after June 30, 2025.
8. Authority of the RCA Board. The RCA Board has the authority in its sole discretion to modify, extend, or terminate this program at any time for any reason.