

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

357



**FROM:** TLMA-Department of Environmental Programs

**SUBMITTAL DATE:**  
November 7, 2006

**SUBJECT:** Amending Ordinance Nos. 457 and 460 to Adjust the Amount of the Fringe-toed Lizard Mitigation Fee

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Introduce the attached ordinance amendments and set for Public Hearing on November 28 2006, said documents; and
2. At the close of the public hearing, adopt the attached amendments to Ordinance Nos. 457 and 460.

**BACKGROUND:** Recently, the County of Riverside and the Coachella Valley Association of Governments (CVAG), entered into a Memorandum of Understanding committing the County to pursue a revised Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP). Another provision in the MOU obligated the County and Cities to adopt a revised Fringe-toed Lizard (FTL) mitigation fee in accordance with a new nexus study in order to retain the Section 10(a) Permit and take authorization for the FTL.

Attached for your consideration are both amendments which increase the existing fee from \$600 per disturbed acre to \$2371 per disturbed acre.

CSL:kh

*Carolyn Syms Luna*

Carolyn Syms Luna  
Director Of Environmental Programs

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ N/A	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ N/A	For Fiscal Year:	N/A

<b>SOURCE OF FUNDS:</b> Fund.	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**  
**APPROVE**

**County Executive Office Signature** *[Signature]*

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Stone, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the above ordinance is approved as introduced with waiver of the reading and setting the matter for public hearing on Tuesday, November 28, 2006 at 9:30 a.m.

Ayes: Buster, Tavaglione, Stone, Wilson and Ashley  
Nays: None  
Absent: None  
Date: November 14, 2006  
xc: TLMA/Env. Hlth., COB(2)

Nancy Romero  
Clerk of the Board  
By: *[Signature]*  
Deputy

Dep't Recomm.:  Consent  Policy  Policy  
Per Exec. Ofc.:  Consent  Policy

Departmental Concurrence



1 Section 2. The provisions of this Ordinance shall take effect on February 1, 2007.

2  
3  
4 BOARD OF SUPERVISORS OF THE COUNTY  
OF RIVERSIDE, STATE OF CALIFORNIA

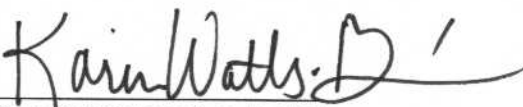
5  
6 By: \_\_\_\_\_  
7 Chairman, Board of Supervisors

8 ATTEST:  
9 NANCY ROMERO  
10 Clerk of the Board

11 By: \_\_\_\_\_  
12 Deputy

13  
14 (SEAL)

15 APPROVED AS TO FORM

16  
17 By:   
18 KARIN WATTS-BAZAN  
19 Deputy County Counsel



# CVAG

## COACHELLA VALLEY ASSOCIATION of GOVERNMENTS

Blythe • Cathedral City • Coachella • Desert Hot Springs • Indian Wells • Indio • La Quinta • Palm Desert • Palm Springs • Rancho Mirage  
County of Riverside • Agua Caliente Band of Cahuilla Indians • Cabazon Band of Mission Indians • Torres Martinez Desert Cahuilla Indians

October 9, 2006

City Manager/ County Executive Officer and  
City Attorney/ County Counsel

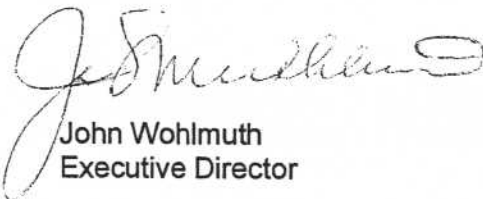
Subject: Need to Consider Revised Fee for Fringe-toed Lizard

Dear Sir or Madam:

On July 31, 2006, the CVAG Executive Committee approved a Memorandum of Understanding (MOU) that protects the permit for the Coachella Valley Fringe-toed Lizard Habitat Conservation Plan (CVFTL HCP) while we complete the Revised Multiple Species Plan. Your jurisdiction approved this MOU in August or September 2006. One of the requirements of the MOU is that participating jurisdictions consider a revised fee for the CVFTL HCP based on a Nexus Study prepared by CVAG. The CVAG Executive Committee approved the enclosed Nexus Study on September 25, 2006.

We request that you place consideration of a revised CVFTL HCP fee of \$2371 per disturbed acre with an effective date of February 1, 2007, on your next agenda. Five copies of the Nexus Study, a sample resolution, sample staff report and letter from the Building Industry Association, Desert Chapter are enclosed from your convenience. If you would like paper or electronic copies of any of these or have any other questions please contact Jim Sullivan, Director of Environmental Resources.

Very truly yours,



John Wohlmuth  
Executive Director

cc: Jim Sullivan, Director of Environmental Resources  
Toni Eggebraaten, CVAG Counsel

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF \_\_\_\_\_ INCREASING  
THE FRINGE-TOED LIZARD MITIGATION FEE FOR  
DEVELOPMENT WITHIN HISTORICAL HABITAT AS  
IDENTIFIED IN THE COACHELLA VALLEY FRINGE-  
TOED LIZARD HABITAT CONSERVATION PLAN

WHEREAS, the Cities of the Coachella Valley, County of Riverside, Coachella Valley Association of Governments, California Department of Fish and Game, U.S. Fish and Wildlife Service and The Nature Conservancy cooperated in the preparation of the Coachella Valley Fringe-Toed Lizard ("CVFTL") Habitat Conservation Plan ("HCP"), which was implemented through agreements and other documents signed by the parties (collectively the "HCP Agreement");

WHEREAS, all new development projects within certain designated historical habitat areas of the CVFTL as identified in the HCP Agreement ("designated mitigation fee area") will have direct and cumulative impacts on the CVFTL, its potential habitat or the ecological processes necessary to sustain that habitat such that mitigation is necessary in order to preserve the species;

WHEREAS, all new development within the designated mitigation fee area will directly or indirectly benefit by funding a comprehensive approach to habitat mitigation;

WHEREAS, the HCP Agreement has identified, as a priority, critical sand source area that must be purchased for conservation in order to adequately protect the CVFTL and its habitat;

WHEREAS, each newly developed acre within the designated mitigation fee area has approximately the same proportionate impact on the loss of habitat so that each proposed acre to be disturbed is proportionate to the total cost of acquiring the priority sand source areas identified in the HCP Agreement;

WHEREAS, the HCP Agreement provides for the acquisition and protection of designated priority sand source areas and provides that acquisition be funded primarily through a mitigation fee last established at \$600 per disturbed acre, to be collected from land owners who obtain grading or building permits from the Cities or County for projects within the designated mitigation fee area;

WHEREAS, substantial evidence exists that the current \$600/acre fee is insufficient to acquire all priority sand source areas previously identified as necessary to insure viable preserves capable of perpetuating the species;

WHEREAS, an increase in the fee is needed to insure acquisition of the priority sand source area needed to adequately conserve the CVFTL;

WHEREAS, an updated Nexus Study has now been completed, a copy of which has been available for public review for more than ten (10) days;

WHEREAS, the Nexus Study has considered the remaining acreage of priority sand source areas to be purchased for conservation, the projected cost of acquisition, and the anticipated amount of acreage within the designated mitigation fee area to be developed, which data demonstrates that the mitigation fee must be increased to \$2,371 per disturbed acre in order to meet the above-referenced goals of the HCP;

WHEREAS, the formula for determining the increase in the mitigation fee is calculated on a per acre basis relative to each proposed project as its size is measured in acres such that there is a reasonable relationship between the increased fee to be charged for each proposed project and the corresponding impact of that project on the proportionate cost of conservation of priority sand source area necessary for habitat protection;

WHEREAS, notice of the public hearing on the adoption of this Resolution has been given as required by law;

NOW, THEREFORE, be it resolved by \_\_\_\_\_ that the fringe-toed lizard mitigation fee imposed through the HCP Agreement shall be raised to \$2,371/acre effective February 1, 2007.

PASSED, APPROVED and ADOPTED at a regular meeting of the

\_\_\_\_\_, held this \_\_\_ day of \_\_\_\_\_, 2006, by the following vote, to

wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

DATE:

TO:

FROM:

RE:

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**STAFF RECOMMENDED MOTION:** That the City Council approve Resolution \_\_\_\_\_ increasing the fee for coverage under the Coachella Valley Fringe-toed Lizard habitat Conservation Plan to \$2371 per disturbed acre.

**BACKGROUND:** In 1986, a Coachella Valley Fringe-toed Lizard (CVFTL) Habitat Conservation Plan (HCP) was approved and resulted in the issuance of an ESA Section 10(a) incidental take permit ("Permit") by the U.S. Fish and Wildlife Service (USFWS) to the Cities and County to authorize take of CVFTL resulting from land development and other activities covered by the HCP. The California Department of Fish and Game (CDFG) did not sign the HCP or authorize incidental take of CVFTL associated with the HCP because a permitting process had not been established under CESA at the time the HCP was developed, but CDFG nonetheless participated in implementation of the HCP. The Cities and the County entered a Memorandum of Understanding with USFWS and CDFG on March 21, 2001 (2001 MOU) whereby CDFG made a Consistency Determination pursuant to Section 2080.1 of the Fish and Game Code finding that the FWS permit in combination with the mitigation provided in the Memorandum of Understanding is consistent with CESA. The Parties to the 2001 MOU agreed that the CVFTL can best be protected by inclusion of the species in the MSHCP, and included in the MOU certain measures to be implemented on an interim basis to protect the CVFTL until the MSHCP is in place. The 2001 MOU, as subsequently amended, expired June 30, 2006; however, the MSHCP has not been implemented because the City of Desert Hot Springs did not approve it. The Cities and the County desire to maintain the Permit for the CVFTL in effect until the revised MSHCP and related documents can be prepared and incidental take permits issued by the FWS and CDFG.

Loss of the Consistency Determination would have several ramifications:

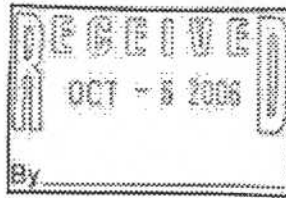
- 1) **California Endangered Species Act-** Projects that may "take" the lizard will be required to obtain individual permits from DFG
- 2) **Litigation on the federal permit -** The federal lizard permit is vulnerable to litigation as the federal permit only permits "take" that is "incidental to an otherwise lawful activity". The Center for Biological Diversity in a letter to FWS dated May 30, 2006, threatened litigation on the CVFTL HCP.
- 3) **California Environmental Quality Act (CEQA) -** Projects in potential lizard habitat may now be required to do full environmental impact reports because of the CEQA "mandatory findings of significance" provision for endangered species. As the CVFTL HCP fee mitigation area is quite large, the CEQA ramifications are potentially significant.

CDFG informed the Cities and the County through the Coachella Valley Association of Governments (CVAG) that it would extend the Consistency Determination for the CVFTL Permit

under certain conditions, including that the Cities and the County consider a revised CVFTL mitigation fee based on a Nexus Study. A revised fee is appropriate because USFWS and CDFG have previously expressed concern relative to the adequacy of the original CVFTL HCP. The MSHCP is intended to address those concerns. To maintain the CVFTL Permit in effect until completion of the MSHCP, a new fee is needed to ensure acquisition of the lands needed to adequately conserve the CVFTL until the MSHCP can be completed and implemented. This report documents the legal and policy basis to support adoption of the revised CVFTL mitigation fee by the Cities and the County of Riverside.

A Nexus Study intended to satisfy the requirements of California Government Code 66000 *et seq.* with respect to the establishment of a new fee or increase in the amount of an existing fee was performed by MuniFinancial under contract to CVAG. This Nexus Study determined the new fee to be \$2371 per disturbed acre.

**FISCAL ANALYSIS:** The current CVFTL HCP fee is \$600 per disturbed acre. The revised fee determined by the Nexus Study is \$2371 per disturbed acre. It is estimated that 1331 acres would develop and pay the fee each year, making the annual revenue from the revised fee \$3,155,801. While the City incurs staff time in determining and collecting the CVFTL HCP fee, loss of the Consistency Determination would require staff to review individual projects with regard to impacts to the CVFTL.



*cc Jim Sullivan*



***Desert Chapter***

**Building Industry Association  
of Southern California**

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760.360.2476  
fax 760.772.3372  
www.DesertChapter.com  
E Mail: BIA@DesertChapter.com

John Wohlmuth, Executive Director  
Coachella Valley Association of Governments  
73-710 Fred Waring Drive, Suite 200  
Palm Desert, CA 92260

October 4, 2006

Dear Mr. Wohlmuth,

We have had the opportunity to review the 'Fringe-Toed Lizard Habitat Mitigation Fee Administrative Draft', dated September 8, 2006. We appreciate the time Jim Sullivan has taken to better explain the process for mitigating this endangered species. Based on the drafted fee study and the additional materials and explanations provided, the BIA accepts the conclusions for mitigation of the Fringe-Toed Lizard for this following year as a revised Multiple Species Habitat Conservation Plan is re-circulated.

Respectfully,

Fred Bell  
Executive Director

# FRINGE-TOED LIZARD HABITAT MITIGATION FEE

## FINAL

AS APPROVED BY THE CVAG EXECUTIVE  
COMMITTEE  
SEPTEMBER 25, 2006

# COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS



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San Diego, CA  
Phoenix, AZ  
Bellevue, WA  
Lake Alfred, FL

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## INTRODUCTION

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This study develops a nexus between new development and the need for a fee to purchase undeveloped land in the Coachella Valley for the purposes of protecting the habitat of the Coachella Valley Fringe-toed Lizard (CVFTL).

In 1986, a Coachella Valley Fringe-toed Lizard Habitat Conservation Plan (HCP) was approved and resulted in the issuance of a federal Endangered Species Act Section 10(a) incidental take permit ("Permit") by the U.S. Fish and Wildlife Service (USFWS). The Permit enabled the participating cities and Riverside County to authorize take of CVFTL habitat resulting from land development and other activities covered by the HCP.<sup>1</sup> The California Department of Fish and Game (CDFG) did not sign the HCP or authorize incidental take of CVFTL associated with the HCP because a permitting process had not been established under California Endangered Species Act (CESA) at the time the HCP was developed. Regardless, CDFG participated in implementation of the HCP.

The cities and the County entered a Memorandum of Understanding with USFWS and CDFG on March 21, 2001 (2001 MOU) whereby CDFG made a determination finding that the FWS permit in combination with the mitigation provided in the Memorandum of Understanding is consistent with CESA.<sup>2</sup> The parties to the 2001 MOU agreed that the CVFTL can best be protected by inclusion of the species in a Multiple Species Habitat Conservation Plan (MSHCP). The MOU included certain measures to be implemented on an interim basis to protect the CVFTL until an MSHCP is in place. The MOU, as subsequently amended, expired June 30, 2006.

The Coachella Valley Association of Governments (CVAG) prepared an MSHCP but it was not completed because the City of Desert Hot Springs did not approve it. The cities and the County desire to maintain the Permit for the CVFTL in effect until the revised MSHCP excluding Desert Hot Springs can be prepared and incidental take permits issued by the FWS and CDFG.

CDFG informed the cities and the County through CVAG that it would extend its consistency finding for the CVFTL Permit under certain conditions. One such condition was that the cities and the County adopt a revised CVFTL mitigation fee based on a nexus study. A revised fee is appropriate because USFWS and CDFG have previously expressed concern with the adequacy of funding for the original CVFTL HCP. The MSHCP is intended to address those concerns.

To maintain the Permit in effect until completion of the MSHCP, a new fee is needed to ensure acquisition of the lands needed to adequately conserve CVFTL habitat. This report documents the legal and policy basis to support adoption of the revised CVFTL habitat mitigation fee by the cities and the County of Riverside. The report is intended to satisfy the

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<sup>1</sup> Participating cities: Palm Springs, Cathedral City, Rancho Mirage, Palm Desert, Indian Wells, La Quinta, Indio and Coachella.

<sup>2</sup> Determination pursuant to Section 2080.1 of the Fish and Game Code.

requirements of *Mitigation Fee Act* (California Government Code 66000 *et seq.*), the statutory authority that governs the development and implementation of impact fees in California.

## COACHELLA VALLEY FRINGE-TOED LIZARD MITIGATION FEE AREA

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The CVFTL mitigation fee area was delineated in the 1986 HCP as the blowsand ecosystem in the historic range of the CVFTL. As stated in the HCP, "Because the CVFTL depends on continuance of the natural blowsand process, conservation of the lizard requires that its blowsand habitat be conserved: not only the sandy areas actually occupied by the lizard, but sand source areas as well." The HCP stated that as of 1986, "about 81,500 acres of the Valley are undisturbed occupiable habitat". Of this, "the fee assessment area will apply to about 70,000 acres of historic CVFTL habitat, of which 51,000 acres will be developable without any restriction." Since 1986, a significant portion of this area, approximately 39,260 acres, has developed and paid the fee established in conjunction with the HCP. The entire mitigation fee area is shown in **Figure 1**.

The acreage to which the CVFTL Mitigation Fee would be applied is 13,477 acres. This was calculated as follows:

- ♦ CVAG identified all privately-owned vacant parcels in the CVFTL fee area outside the areas proposed for conservation under the MSHCP using aerial photo analysis. The date of the aerial photo is September 15, 2005.
- ♦ Based on GIS analysis, CVAG staff estimates that ten percent of private vacant land within MSHCP Conservation Areas, net of acreage to be acquired for habitat (see next section), will be developed.
- ♦ Where general plan designations limit development to one unit per five acres or a lesser density, it was assumed based on historical development patterns that the fee paid would be based on 0.5 acres of a parcel actually being disturbed. This was factored into the calculation of the acres on which the fee would be collected.
- ♦ The acreage was further adjusted to account for development/disturbance in the CVFTL fee area since the date of the aerial photo. This was derived from the fee payment records maintained by CNLM from the date of the aerial photo.

**Table 1** displays the calculation of the remaining acres to be developed within the mitigation fee area.

# Figure 1: Nexus Study - Fringe-toed Lizard HCP Fee Area



- Legend**
- Major Roads
  - City Boundaries
  - Fringe-toed Lizard Fee Area
  - Private Vacant Lands Subject to Fee



Map by  
Nexus Point,  
Contractor  
of Governments

Map Document: CVAG\pdx\2008\Nexus Study - 1/24/08.mxd  
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DISCLAIMER: CVAG and The County of Riverside assume no warranty or legal responsibility for the information contained on this map. Data used information represented on this map is subject to updates/specifics and may not be complete or appropriate for all purposes. CVAG and County GIS and other sources should be consulted for the most current information. (No warrant accuracy) Parcel data is not mapping grade (QA/QC) and does not represent reliable locations or legal boundaries. User assumes all risk of use of this product. Do not copy or reuse this map.

**Table 1: Vacant Land To Be Developed**

	<b>Acres</b>
Outside MSHCP Conservation Areas	
Residential (> 1 unit per 5 acres) and all nonresidential	12,617
Residential (<= 1 unit per 5 acres) <sup>1</sup>	1,012
Inside MSHCP Conservation Areas	<u>1,570</u>
Subtotal - Projected Development	15,199
Acres developed September 2005 to September 2006	<u>(1,722)</u>
Remaining Acres To Be Developed	13,477

Note: Development potential on vacant land based on General Plan designations and aerial photography as of September 15, 2005.

<sup>1</sup> Based on disturbance of 0.5 acres for each parcel.

<sup>2</sup> Based on 10 percent of vacant private land designated for development.

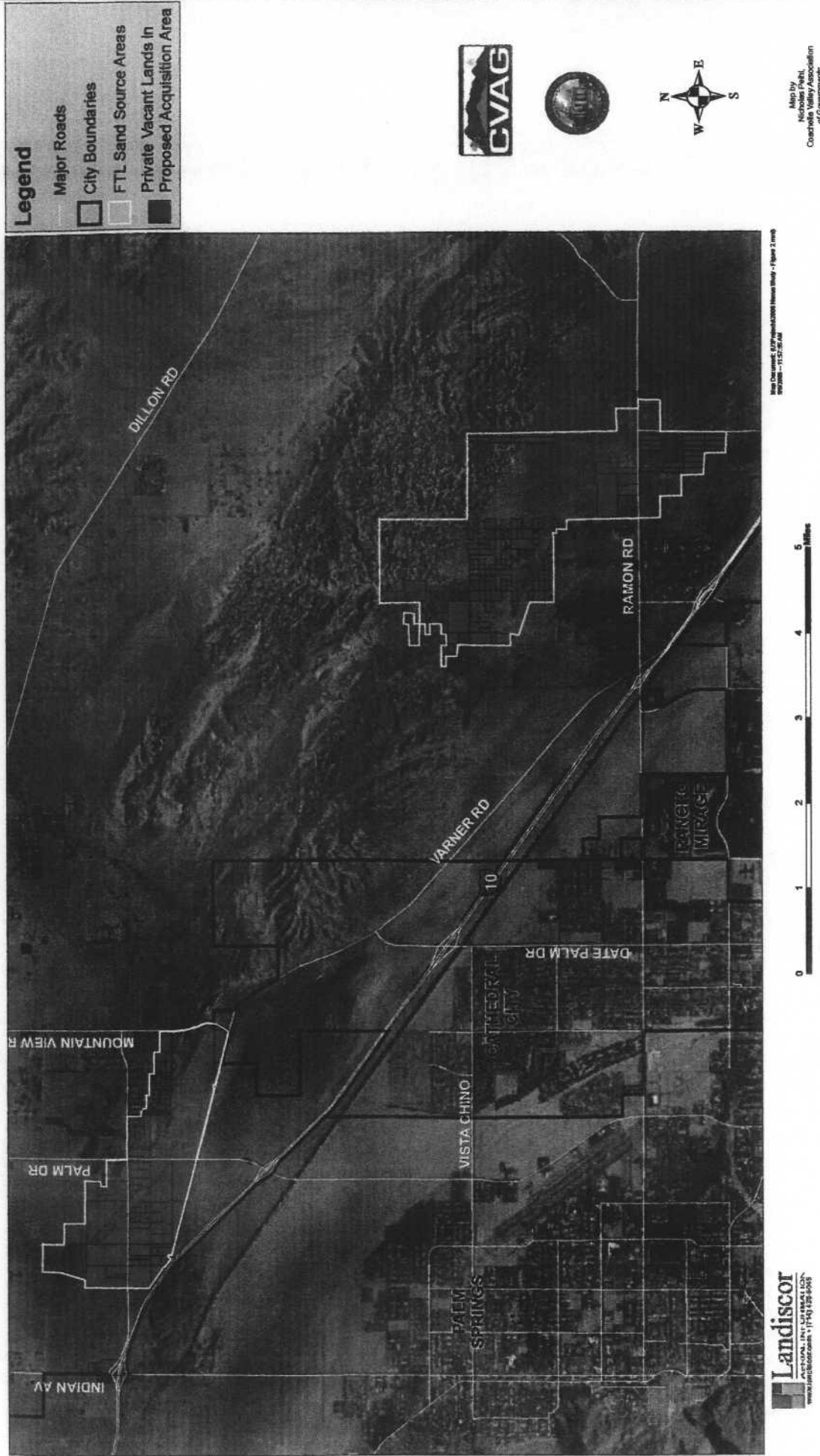
Sources: Coachella Valley Association of Governments; MuniFinancial.

## NEED FOR HABITAT CONSERVATION

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The HCP noted that nearly half of the 81,500 acres of habitat that could be occupied by the CVFTL "is already undergoing irreversible degradation due to man's interference with the wind blown sand transport system." In the late 1990s, USFWS and CDFG noted concerns regarding the adequacy of the HCP preserves for the preservation of the CVFTL. Certain sand source and sand transport areas had either not been adequately delineated in the 1986 HCP or were being threatened with more intense development than anticipated. As a result, the 2001 MOU identified additional sand source areas in the Willow Hole, and Thousand Palms areas to be conserved through an interim acquisition program and, in the long-term, through inclusion of the CVFTL in the MSHCP. At the same time, the CVFTL HCP was amended to remove these high priority acquisition areas from the area covered by the CVFTL Permit. **Figure 2** shows these two high priority acquisition areas. The total of undeveloped private land in these areas is approximately 2,260 acres, comprised of 930 acres in the Thousand Palms area and 1,330 acres in the Willow Hole area (acres rounded to the nearest ten).

# Figure 2: Nexus Study - Proposed Acquisitions in Sand Source Areas



## **COST OF HABITAT ACQUISITION**

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The cost to acquire the high priority acquisition areas in the Willow Hole and Thousand Palms areas is based on the following factors:

- ♦ Land values (purchase price for these acres) are based on the 2005 Market Study prepared for the MSHCP (*A Market Study of Land Values, Related to Several Areas of Prospective Acquisition, Associated with the Coachella Valley Multiple Species Habitat Conservation Plan*, Scarcella, July 2005). The 2005 values have been increased by a 3% inflation factor to provide 2006 values. The total land value is \$31,170,100.
- ♦ Implementation costs which include improvements, appraisals, site inspections, escrow fees, and other costs incurred in the acquisition of the land, maintenance of habitat, and implementation of the fee. The implementation costs are estimated to be 2.5 percent of the total land costs based on experience with the CVFTL mitigation fee program to date. Should the actual costs differ from 2.5 percent the total land costs, the fee should be revised.

**Table 2** on the following page shows land costs based on the 2005 Market Study. Total costs for land acquisition are based on low medium and high values estimated for each area and the percent of total acres likely to be acquired at each cost level. Total costs are inflated three percent to estimate in today's (2006) dollars. **Table 3** shows the total costs to be funded by the mitigation fee including implementation costs..

**Table 2: Market Value of Habitat Conservation Land**

Acquisition Priority Area	Low-Range Per Acre	Mid-Range Per Acre	High-Range Per Acre	Total
<u>Willow Hole</u>				
Total Acres (A):	1,330	1,330	1,330	
Percent of Total Acres (B):	<u>10%</u>	<u>70%</u>	<u>20%</u>	
Acres (C = A x B):	133	931	266	
Average cost per acre (D):	\$ <u>2,500</u>	\$ <u>11,250</u>	\$ <u>20,000</u>	
Cost (E = C x D):	\$ 332,500	\$ 10,473,750	\$ 5,320,000	\$ 16,126,250
<u>Thousand Palms</u>				
Total Acres (A):	930	930	930	
Percent of Total Acres (B):	<u>50%</u>	<u>45%</u>	<u>5%</u>	
Acres (C = A x B):	465	418.5	46.5	
Average cost per acre (D):	\$ <u>2,000</u>	\$ <u>26,000</u>	\$ <u>50,000</u>	
Cost (E = C x D):	\$ 930,000	\$ 10,881,000	\$ 2,325,000	\$ 14,136,000
Market Value of Habitat Conservation Land (2005)				\$ 30,262,250
Inflation Factor (2005 to 2006)				<u>1.03</u>
Market Value of Habitat Conservation Land (2006)				\$ 31,170,100

Sources: A Market Study of Land Values, Related to Several Areas of Prospective Acquisition, Associated with the Coachella Valley Multiple Species Habitat Conservation Plan, Scarcella, July 2005; MuniFinancial.

**Table 3: Total Cost of Habitat Acquisition**

	Inventory	Average Unit Cost	Value
Land	2,260 acres	\$ 13,800	\$ 31,170,100
2.5% Implementation Costs <sup>1</sup>	NA	NA	<u>779,300</u>
Total			31,949,400

<sup>1</sup> Implementation costs include land acquisition costs and improvement costs.

Sources: Coachella Valley Association of Governments; Table 2; MuniFinancial.

## **COST ALLOCATION AND FEE SCHEDULE**

The cost of the acquisition program is allocated to all the potentially developable land in the CVFTL mitigation fee area as calculated in Table 1 and shown in Figure 2. As previously described, the total disturbed acreage on which the fee would be imposed is 13,477 acres. Spreading the total cost equally across this acreage results in a per acre fee of \$2,371. If this fee were to be in place for more than one year, it is recommended that it be adjusted annually for inflation. The CVFTL fee is expected to be replaced by the MSHCP fee when the MSHCP is implemented. The MSHCP fee would provide mitigation for the CVFTL and all other covered species and natural communities included in the MSHCP.

**Table 4: Fee Calculation**

Cost of habitat acquisition	\$ 31,949,400
Acreage to be developed	<u>13,477</u>
Fee per acre of new development	\$ 2,371

Sources: Tables 1 and 3; MuniFinancial.

## MITIGATION FEE ACT FINDINGS

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Fees are assessed and typically paid when a building permit is issued and imposed on new development projects by local agencies responsible for regulating land use (cities and counties). To guide the imposition of facilities fees, the California State Legislature adopted the *Mitigation Fee Act* with Assembly Bill 1600 in 1987 and subsequent amendments. The *Mitigation Fee Act*, contained in *California Government Code* §§66000 – 66025, establishes requirements on local agencies for the imposition and administration of fees. The *Act* requires local agencies to document five statutory findings when adopting fees.

The five findings in the *Act* required for adoption of the maximum justified fees documented in this report are: 1) Purpose of fee, 2) Use of fee Revenues, 3) Benefit Relationship, 4) Burden Relationship, and 5) Proportionality. They are each discussed below and are supported throughout the rest of this report.

### PURPOSE OF FEE

- ♦ *Identify the purpose of the fee (§66001(a)(1) of the Act).*

The purpose of the CVFTL fee is to provide a funding source from new development for the acquisition of habitat and related implementation costs to mitigate development impacts to the CVFTL. The fee advances a legitimate public interest by funding habitat conservation necessary to keep the CVFTL Permit in effect until the MSHCP can be completed.

### USE OF FEE REVENUES

- ♦ *Identify the use to which the fees will be put. If the use is financing facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in §65403 or §66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the facilities for which the fees are charged (§66001(a)(2) of the Act).*

The revenue from the CVFTL fee will be used to fund the acquisition of land for the conservation of CVFTL habitat, and will facilitate public and private project compliance with federal and state endangered species laws.

The revenue would provide most of the funding necessary to acquire an estimated 2,260 acres of habitat, and pay for related program implementation costs. This habitat acquisition program mitigates the loss of CVFTL individuals and habitat caused by all development in the historic habitat of the species. The original CVFTL HCP, supplemented by the 2001 MOU among the cities, the County, USFWS, CDFG, and the Center for Natural Lands Management (CNLM) represents the public documents referenced in the statute that adequately identify the amount, type, and general location of land to be acquired with CVFTL fees.

The agencies responsible for implementing the CVFTL fee will restrict the use of fee revenues to one-time costs associated with the habitat acquisition program. These costs include:

- Purchase price of acquired land.
- Implementation costs including, but not limited to: acquisition-related costs, appraisals, escrow fees, hazardous materials site inspections and land improvements such as fencing to protect habitat from human impacts.

## BENEFIT RELATIONSHIP

- ♦ *Determine the reasonable relationship between the fees' use and the type of development project on which the fees are imposed (§66001(a)(3) of the Act).*

All new development within the CVFTL mitigation fee area will directly or indirectly benefit from the CVFTL fee by funding a comprehensive approach to habitat mitigation. The approximately 2,260 acres to be acquired in part with fee revenues were identified as high priority acquisition areas in the 2001 MOU to protect the CVFTL until the implementation of the MSHCP. The acquisition of these lands will mitigate for the impacts on CVFTL of all new development and associated public infrastructure projects within the CVFTL mitigation fee area during the term of the CVFTL Permit. Each type of project leads to the elimination of habitat. Thus, there is a reasonable relationship between the use of CVFTL fee revenue and all types of new residential and nonresidential development that will pay the fee.

The use of CVFTL fee revenues is described in the section of this report titled *Cost of Habitat Acquisition*.

## BURDEN RELATIONSHIP

- ♦ *Determine the reasonable relationship between the need for the public facilities and the types of development on which the fees are imposed (§66001(a)(4) of the Act).*

All vacant lands in the historic habitat of the CVFTL, as defined in the CVFTL HCP, including vacant lands or partially vacant lands in urban areas, represent current or potential habitat for the CVFTL. All new development projects on vacant or partially vacant lands regardless of location will have direct and cumulative impacts on the CVFTL, its potential habitat, or the ecological processes necessary to sustain that habitat. New development also causes a need for, and benefits from, the installation of public infrastructure. Without new development, no further habitat conservation to mitigate for development impacts would be needed. Therefore, there is a reasonable relationship between the need for habitat conservation and all types of residential and nonresidential development throughout the CVFTL historic habitat area that will pay the fee.

Habitat needs are described in the section of this report titled *Need for Habitat Conservation*.

## PROPORTIONALITY

- ♦ *Determine how there is a reasonable relationship between the fees amount and the cost of the facilities or portion of the facilities attributable to the development on which the fee is imposed (§66001(b) of the Act).*

Each newly developed acre has approximately the same proportionate impact by causing the direct, indirect, or cumulative, loss of an acre of potential habitat for CVFTL. For each developed acre, another acre must be acquired in the habitat conservation area to mitigate the effects of that development. The CVFTL fee is calculated on a per acre basis and the total fee for a specific project is based on its size as measured in acres. Thus there is a reasonable relationship between the fee for a specific development project and the direct, indirect, or cumulative impact of that project on the need for habitat protection.

See the Section of this report titled *Coachella Valley Fringe-Toed Lizard Mitigation Fee Area* for a description of the amount of new development that is projected. See the section of this report titled *Cost Allocation and Fee Schedule* for a presentation of the mitigation fee schedule.