

CLARK COUNTY IN-LIEU FEE PROGRAM ENABLING INSTRUMENT

PREPARED FOR:

Clark County
Desert Conservation Program
4701 West Russell Rd.
Las Vegas, Nevada 89118
Contact: Kimberley Goodwin
kimberley.goodwin@clarkcountynv.gov
(702) 455-5529

PREPARED BY:

ICF
525 B Street, Suite 1700
San Diego, CA 92101
Contact: Meris Guerrero
meris.guerrero@icf.com
(858) 444-3953

July 2026



ICF. 2026. *Clark County In-Lieu Fee Program Enabling Instrument*. July. (ICF 103621.0.001.) San Diego, CA. Prepared for Clark County Desert Conservation Program.

Table of Contents

RECITALS	1
AGREEMENT	2
SECTION I PURPOSE, FRAMEWORK, AND AUTHORITIES	2
A. Purpose	2
B. Framework	3
C. Authorities	3
SECTION II DEFINITIONS	4
SECTION III STIPULATIONS	8
A. Disclaimer	8
B. Signatory Agency Participation	8
C. Exhibits	8
SECTION IV PROGRAM STRUCTURE AND IMPLEMENTATION	9
A. Program Establishment Date	9
B. Service Area	9
C. Compensation Planning Framework	9
D. Program Fund	10
SECTION V ILF PROJECT ESTABLISHMENT AND OPERATION	11
A. Establishment of ILF Projects	11
B. ILF Project Permits	11
C. Operation of ILF Projects	12
D. Financial Assurances	14
SECTION VI CREDIT ACCOUNTING	15
A. Advance Credits	15
B. Program Sponsor's Obligation to Fulfill Advance Credits	15
C. Determination of Credits	16
D. Generation of Released Credits	16
E. Credit Release	16
F. Fee Schedule	20
G. Balance of Credits	20
H. Transfer of Credits	21
I. Limitation of Liability	21
SECTION VII PROGRAM REPORTING	22
A. Annual Report	22
B. GIS Data	23
C. Credit Transfer Reporting	24
D. Other Information Deemed Necessary by the IRT	24
SECTION VIII TERMINATION OF PARTICIPATION AND PROGRAM CLOSURE	24
A. Termination/Program Closure	24
SECTION IX OTHER PROVISIONS	25

A.	Extraordinary Circumstances.....	25
B.	Force Majeure	27
C.	Default.....	27
D.	Dispute Resolution	28
E.	Modification and Amendment of Instrument	28
F.	Controlling Language	28
G.	Entire Agreement	29
H.	Reasonableness and Good Faith	29
I.	Partial Invalidity	29
J.	Notices	29
K.	Counterparts	30
L.	No Third-Party Beneficiaries	31
M.	Availability of Funds	31
N.	No Partnerships	31
O.	Governing Law	31
P.	Headings and Captions.....	31
Q.	No Contract.....	31
SECTION X	EXECUTION	33

PROGRAM INSTRUMENT CLARK COUNTY IN-LIEU FEE PROGRAM COOPERATIVE AGREEMENT

This In-Lieu Fee Program Enabling Instrument (“Instrument”) for the Clark County In-Lieu Fee Program (“ILF Program” or “Program”), dated ____ day of _____, 2026, is made by and among the County of Clark, Nevada (“Program Sponsor”), the Sacramento District of the U.S. Army Corps of Engineers (“USACE”), U.S. Environmental Protection Agency (“USEPA”), and Nevada Division of Environmental Protection (“NDEP”) (collectively, the “Parties,” and each individually, a “Party”). The USACE, USEPA, and NDEP comprise and are referred to jointly as the “Signatory Agencies” or individually “Signatory Agency.” This Instrument sets forth the agreement of the Parties regarding the establishment, use, operation, and maintenance of the ILF Program.

RECITALS

- A. Program Sponsor is responsible for establishing and operating the Program in accordance with this Instrument.
- B. USACE and USEPA have jurisdiction over Waters of the U.S. pursuant to the Clean Water Act (“CWA”), 33 United States Code (“U.S.C”) § 1251 et seq. Waters of the U.S. include jurisdictional wetlands.
- C. USEPA is responsible for protecting and regulating the quality of Waters of the U.S., as hereinafter defined, under the CWA, 33 U.S.C. § 1251 et seq.
- D. NDEP has jurisdiction over Waters of the State pursuant to the Nevada Water Pollution Control Law (Nevada Revised Statutes [NRS] 445A.300 to 445A.730) and authority delegated by the Director of the State Department of Conservation and Natural Resources. (NRS 445A.450). "Waters of the State" means all waters situated wholly or partly within or bordering upon this State, including but not limited to: 1. All streams, lakes, ponds, impounding reservoirs, marshes, water courses, waterways, wells, springs, irrigation systems, and drainage systems; and 2. All bodies or accumulations of water, surface and underground, natural or artificial. (NRS 445A.415).
- E. Pursuant to NRS 244.388, the State of Nevada grants authority for the board of county commissioners to establish, use and operate a wetlands mitigation bank in accordance with 33 Code of Federal Regulations (“C.F.R.”) Parts 325 and 332; 40 C.F.R. Part 230 (“Mitigation Rule”).
- F. Clark County grants the use and operation of an in-lieu fee program in accordance with the aforementioned State statute (Recital E) under the Clark County Code of Ordinances (CCC) Chapter 19.07.

- G. The Interagency Review Team (“IRT”) is the interagency group which oversees the establishment, use, operation, and maintenance of the ILF Program. The IRT is comprised of the Signatory Agencies and U.S. Fish and Wildlife Service (“USFWS”). The non-signatory IRT agencies advise the Signatory Agencies in assessing monitoring reports, Development and Interim Management Plan implementation, recommending remedial actions or adaptive management measures, approving credit releases, and approving modifications to the Instrument, and may raise concerns with the use of Credits.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, the Parties hereby agree as follows:

SECTION I PURPOSE, FRAMEWORK, AND AUTHORITIES

A. Purpose

The purpose of this Instrument is to establish guidelines, responsibilities, and standards for the establishment, use, operation, and maintenance of the Program. The primary goal of the Program is to provide an in-lieu fee option for effective Compensatory Mitigation for Impacts on Waters of the U.S. authorized by the Signatory Agencies in Clark County.

Specifically, the Program will be used for Compensatory Mitigation for Impacts on aquatic resources, including unavoidable Impacts on Waters of the U.S. that result from activities authorized under Sections 401 and 404 of the CWA.

The objectives of the Program are as follows:

1. Provide an in-lieu fee option for Compensatory Mitigation for Impacts on aquatic resources authorized under individual or general permits, certifications, and other approvals or authorizations from flood control, linear transportation, and renewable energy projects and other large- and small-scale development projects.
2. Apply fee revenues with economies of scale and flexibility to serve the greatest aquatic resource needs of the Program Area and track with sufficient detail the types of aquatic resources impacted and mitigated to enable assessment of Program effectiveness.
3. Achieve ecological success on a watershed basis by:
 - a. Siting ILF Projects, as hereinafter defined, using the best available decision support tools; and

- b. Aligning Compensatory Mitigation with Program conservation priorities and the Clark County Multiple Species Habitat Conservation Plan (“MSHCP”) conservation goals and objectives, as applicable.
4. Coordinate implementation of Compensatory Mitigation under the Program with the implementation of the MSHCP to take advantage of program synergies while ensuring there is no double counting of mitigation by the two separate programs.
5. Engage various partners, such as non-profit conservation organizations; private entities; Federal, State, tribal, and local aquatic resource management and regulatory authorities; and others with knowledge of aquatic resource needs within the Program Area.
6. Operate a technically, operationally, and financially feasible and accountable Program that meets the requirements of the Mitigation Rule.

B. Framework

This Instrument establishes the Program Area for Clark County, which is further divided into three geographic Service Areas. The Service Areas are based on the Hydrologic Unit Code (HUC) 6 watersheds (See **Exhibit A, Program Area and Service Areas**). The Program establishes multiple types of aquatic resources credits, including riverine/stream (ephemeral, intermittent, and perennial), and wetland credits. Program Credits are described in greater detail in **Exhibit B, Credit Release, Transfer, and Tracking**.

For each ILF Project, the Program Sponsor will submit a site-specific Mitigation Plan, as defined and further described below, for review and approval as amendments to this Instrument through the process outlined in **Exhibit F, Mitigation Plan Review Process**. Upon approval of each Mitigation Plan, the Program Sponsor may implement the ILF Project and generate Credits in accordance with the Mitigation Plan and, upon Release of such Credits, sell or otherwise use the Credits, as set forth in this Instrument.

C. Authorities

1. Federal Authorities

The establishment, use, operation, and maintenance of the Program will be carried out in accordance with the following federal laws, regulations, programs, and guidance, as applicable:

- a. Clean Water Act (33 U.S.C. § 1251 et seq.);
- b. National Environmental Policy Act (42 U.S.C. § 4321 et seq.);
- c. Endangered Species Act (16 U.S.C. § 1531 et seq.);
- d. Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.);
- e. National Historic Preservation Act (16 U.S.C. § 470);

- f. Regulatory Program of the USACE (33 C.F.R. Parts 320-332);
- g. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 C.F.R. Part 230);
- h. Compensatory Mitigation for Losses of Aquatic Resources (33 C.F.R. Parts 325 and 332; 40 C.F.R. Part 230);
- i. Executive Order 11990 - Protection of Wetlands;
- j. Executive Order 11988 - Floodplain Management;
- k. Memorandum of Agreement between the U.S. Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under the Clean Water Act, § 404(b)(1) Guidelines (February 6, 1990), as amended; and
- l. Interagency Cooperation – Endangered Species Act of 1973 (50 C.F.R. Part 402).

2. Nevada and Local Authorities

The establishment, use, operation, and maintenance of the Program will be carried out in accordance with the following State statutes and local ordinance, as applicable:

- a. NRS Chapter 445A, Water Controls (NRS 445A);
- b. NRS Chapter 244, Counties: Government (NRS 244.388);
- c. NRS Chapter 501, Wildlife Administration and Enforcement;
- d. NRS Chapter 527, Protection and Preservation of Timbered Lands, Trees and Flora; and
- e. CCC Chapter 19.07, Mitigation bank and in-lieu fee program.

SECTION II DEFINITIONS

The initially capitalized terms used and not defined elsewhere in this Instrument are defined as set forth below. Any capitalized term not defined in this Instrument shall have the meaning assigned to it in 33 C.F.R. § 332.2.

- 1. “Adaptive Management” means an approach to natural resource management that incorporates changes to management practices, including corrective actions as determined to be appropriate by the IRT in discussion with the Program Sponsor, based upon Annual Report or Interim Management Report results and IRT review of overall Program performance and compliance.
- 2. “Advance Credits” are any Program Credits that are available for Transfer by the Program Sponsor prior to being Fulfilled in accordance with an approved Mitigation Plan.

3. "Annual Report" means the annual report provided by the Program Sponsor pursuant to Section VII.A of this Instrument.
4. "Buffer" means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with the "Credit".
5. "Catastrophic Event" means an event that has a detrimental effect or impact on an ILF Project or on the ability of the Program Sponsor to attain Performance Standards and: (1) was not foreseeable by the Program Sponsor or IRT; (2) was not caused or could not be prevented by the Program Sponsor or property owner (or anyone acting on behalf or under the control of either of them); and (3) prevents the Program Sponsor or property owner from achieving an objective or undertaking an action required of it under this Instrument.
6. "Closure" means termination of the Program as provided in Section VIII.A.
7. "Compensation Planning Framework" means the document established in Section IV.C and attached as Exhibit D, Compensation Planning Framework.
8. "Compensatory Mitigation" means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse Impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.
9. "Conservation Easement" is an agreement consistent with the Uniform Conservation Easement Act of 1981 and implemented in NRS 111.390 et seq. to limit the use of the lands to protect the aquatic resource ecosystem conditions and values and is substantially in the form presented in Exhibit C, Deed of Conservation Easement Template.
10. "Credit" is a unit of measure representing the accrual, attainment, or protection of aquatic functions on an ILF Project site in accordance with this Instrument. One Credit is equivalent to 1 acre, or as otherwise defined in Exhibit D, Compensation Planning Framework.
11. "Credit Release" means an action by the USACE to make specified Credits available for Sale and/or Transfer pursuant to this Instrument.
12. "Earmarked Funds" are funds that are set aside for a specific project or purpose.
13. "Force Majeure" means war, insurrection, riot or other civil disorder, flood, earthquake, fire, disease, governmental restriction or the failure by any governmental agency to issue any requisite permit or authority, or any injunction or other enforceable order of any court of competent jurisdiction, which has a material and detrimental impact on the ILF Program or the ILF Project and over which the Program Sponsor/Property Owner has no control; provided, however, that (i) a riot or other civil disorder shall constitute an event of Force Majeure only if the event has broad regional impacts and is not endemic to the ILF Project and its immediate locale; (ii) a flood shall be considered an event of Force Majeure only if it is greater than a presently projected 100-year flood, where "flood" refers to a runoff event; (iii) disease shall constitute an event of Force Majeure only if such event has broad regional impact and is not endemic to the ILF Project and its immediate locale; and (iv) governmental

restriction or the failure by any governmental agency to issue any requisite permit or authority, or any injunction or other enforceable order of any court of competent jurisdiction.

14. “Funded Program” is a project tracking mechanism in the financial reporting system to account for all revenue and expenditure activities related to a specific Project.
15. “Fulfill”, “Fulfilled”, and “Fulfillment” mean application of Released Credits in accordance with a Credit Release schedule in an approved Mitigation Plan to satisfy the Compensatory Mitigation requirements represented by the Advance Credits. Only after any Advance Credit Transfers have been Fulfilled through the application of Released Credits from an ILF Project (in accordance with the Credit Release schedule in an approved Mitigation Plan) may additional Released Credits from that ILF Project be Transferred.
16. “Functions” are the physical, chemical, or biological processes that occur in ecosystems.
17. “MSHCP” means the Clark County Multiple Species Habitat Conservation Plan.
18. “Impacts” means adverse effects.
19. “ILF Project” or “Project” means Compensatory Mitigation funded or implemented by the Program Sponsor, its designee, consultants, or contractors in accordance with this Instrument.
20. “Instrument” means the legal document for the establishment, operation, and use of an in-lieu fee program.
21. “Interim Management” means the management, monitoring, Adaptive Management, reporting, and other activities to be implemented by the Program Sponsor during the Interim Management Period.
22. “Interim Management Period” means the period from the date of Mitigation Plan approval and Instrument Amendment until all the Performance Standards in an approved Mitigation Plan have been met and the final Credit Release has occurred in accordance with Section VI.E.
23. “Interim Management Plan” means the document that describes the Interim Management to be implemented by the Program Sponsor during the Interim Management Period. Interim Management Plans are a component of Mitigation Plans.
24. “Long-Term Management Period” means the period beginning upon conclusion of the Interim Management Period for an ILF Project, and continuing in perpetuity, during which the ILF Project site is to be managed, monitored, and maintained pursuant to a Long-Term Management Plan.
25. “Long-Term Management Plan” means the document substantially in the form of Exhibit L, Long-Term Management Plan Outline/Table of Contents that provides measures intended to ensure the ILF Project is managed, monitored, and maintained in perpetuity to conserve and protect its Waters of the U.S. and/or Waters of the State. Each Mitigation Plan will include a Long-Term Management Plan.

26. “Mitigation Plan” means the document that formally establishes an ILF Project and stipulates the terms and conditions of its construction and habitat establishment activities required to be conducted on the ILF Project site to establish Credits. Each approved Mitigation Plan will be bound by the terms and conditions of the Instrument by reference.
27. “Performance Standards” are the minimum standards set forth in the Mitigation Plan to define the successful development of Waters of the U.S.
28. “Permittee” means a person or entity seeking a Transfer.
29. “Program Area” means the geographical boundary of the Program as depicted in Exhibit A, Program Area.
30. “Program Establishment Date” is the date determined pursuant to Section IV.A, on which the Program is established and after which the Transfer of Credits may begin.
31. “Program Fund” means a special revenue or capital project fund or account used by the Program Sponsor for the purposes of administering, and managing funds received from the Transfer of Credits to provide Compensatory Mitigation pursuant to the ILF Program. Each ILF Project will be tracked via a Funded Program within the Program Fund.
32. “Program Sponsor” means Clark County and the various County departments supporting the Clark County ILF Program. The Program Sponsor is responsible for enacting all functions of the Program.
33. “Property Assessment” means the written summary and explanation of each recorded or unrecorded lien or encumbrance on, or interest in, ILF Project site signed by the Program Sponsor, substantially in the form attached in Exhibit I, Property Assessment and Warranty.
34. “Released Credits” are the Credits that have been generated by the Program Sponsor’s successful implementation of an ILF Project and have been authorized for Transfer by the IRT, in accordance with an IRT-approved Credit Release schedule.
35. “Remedial Action” means any measures needed to remedy any failure to achieve Performance Standards or any injury or adverse Impact on an ILF Project site, as provided in Section V.C.2.a.
36. “Regulatory In-Lieu Fee and Bank Information Tracking System (RIBITS)” is a web- based application that provides information to the IRT, mitigation bank and ILF sponsors, agencies, and the general public on mitigation banks and in-lieu fee programs, associated documents, Credit availability, service areas, and information on policies and procedures that affect mitigation bank and in-lieu fee development and operation.
37. “Service Area” means the geographic area within which Impacts on aquatic resources that occur may be mitigated or compensated through Transfer of Program Credits. The Program Area is divided into three Service Areas based on the Hydrologic Unit Code (HUC 6) watershed boundaries.

38. “Transfer” means the use or application of Credits to mitigate for a particular project’s impacts. Program Sponsor assumes all legal responsibility for fulfilling Compensatory Mitigation requirements upon Transfer.
39. “Unlawful Acts” means the unlawful act of any person or entity and shall include an event or series of events, such as the intentional release within the ILF Project, or any connected watercourse, of any Hazardous Substance, or the discharge of such a substance in violation of a statute, ordinance, regulation or permit, which event or series of events has a material and detrimental impact on the ILF Project.
40. “Waters of the U.S.” means all waters and wetlands over which the USACE and/or the USEPA are granted jurisdiction in the Clean Water Act, 33 U.S.C. § 1251, et seq., and the Rivers and Harbor Act of 1899, 33 U.S.C. § 401, et seq. This definition encompasses both the term “Waters of the United States” as defined in 33 C.F.R. Part 328 and “Navigable Waters of the United States” as defined in 33 C.F.R. Part 329.

SECTION III STIPULATIONS

A. Disclaimer

This Instrument does not in any manner limit the legal authorities or responsibilities of any Party.

B. Signatory Agency Participation

Signatory Agency participation will be based on each Member’s statutory authority and responsibilities. Where the Instrument requires IRT approval, review, comment, advice, recommendations, proposals, or other input, it is referring to the Signatory Agencies who have applicable statutory authority and responsibilities, as determined by each Signatory Agency. If a Signatory Agency concludes based on its statutory authority and responsibilities that its approval and input are not required, it may so inform the other Signatory Agencies and the IRT may proceed without that Signatory Agency’s input or approval who have applicable statutory authority and responsibilities, as determined by each Signatory Agency.

C. Exhibits

The following Exhibits are attached to and incorporated by this reference into this Instrument:

1. “**Exhibit A**” – Service Areas
 - a. A-1 Program Area/Service Areas
 - b. A-2 Narrative Description and Explanation of Service Areas
2. “**Exhibit B**” – Credit Release, Transfer, and Tracking

- a. B-1 Credit Transfer Agreement Template
- b. B-2 Clark County ILF Credit Ledger Final
3. “**Exhibit C**” – Deed of Conservation Easement Template
4. “**Exhibit D**” – Compensation Planning Framework
5. “**Exhibit E**” – Program Fund
6. “**Exhibit F**” – ILF Project Approval Process
7. “**Exhibit G**” – Clark County In-Lieu Fee Program Mitigation Template
8. “**Exhibit H**” – Fee Schedule
9. “**Exhibit I**” – Property Assessment and Warranty
10. “**Exhibit J**” – Advance Credit Analysis
11. “**Exhibit K**” – Approved ILF Projects
12. “**Exhibit L**” – Long-Term Management Plan Outline/Table of Contents

SECTION IV PROGRAM STRUCTURE AND IMPLEMENTATION

A. Program Establishment Date

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

B. Service Area

In accordance with 33 C.F.R. 332.8(d)(6)(ii)(A), this Instrument establishes three Service Areas within the larger Program (see **Exhibit A, Program Area and Service Areas**). Credits are available within each Service Area for permitted Impacts on Waters of the U.S. The Service Areas for the ILF Program are consistent with the HUC-6 watershed boundaries occurring within Clark County, Nevada, including all incorporated and unincorporated areas (excluding tribal lands), covering approximately 5.2 million acres throughout Southern Nevada, and is primarily within the same Level III ecoregion (Mojave Basin and Range).

C. Compensation Planning Framework

In accordance with 33 CFR 332.8(d)(6)(iv)(A), the strategies identified in the Compensation Planning Framework will be used to select, secure, and implement aquatic resource restoration,

establishment, enhancement, and/or preservation activities under the Program. The Compensation Planning Framework for the Program is attached as **Exhibit D, Compensation Planning Framework**.

D. Program Fund

1. Before collecting any fees for the Transfer of Credits, the Program Sponsor will establish a dedicated Program Fund, in accordance with generally accepted accounting standards, as set forth in **Exhibit E, Program Fund**, as a condition of establishment of the Program. The Program Fund will be dedicated to the management and administration of funds received from the Transfer of Credits and disbursed to implement ILF Projects and generate Credits under the Program. Revenues from the Transfer of Credits will be used only for the comprehensive costs associated with site selection, design, acquisition, implementation, and management of ILF Projects, and administrative costs for the Program Sponsor. All interest and earnings of the Program Fund will also remain in the Program Fund and will be used only for such costs.

Upon request, the Program Sponsor will provide to any requesting Signatory Agency copies of any audited financial statements for any completed fiscal year. In accordance with 33 CFR 332.8(i)(4), the IRT may inspect, copy, and audit Program Fund records by giving thirty (30) calendar days advance written notice to the Program Sponsor. When so requested, the Program Sponsor will, within a reasonable time, make available for inspection all books, accounts, reports, files, and other records relating to the Program Fund.

Up to 10.4 percent of funds received from the Transfer of Credits will be used by the Program Sponsor to cover the cost of administering the Program. The percentage of funds to be used by the Program Sponsor to cover administrative costs is set forth in **Exhibit E, Program Fund**.

2. The Program Sponsor may disburse funds from the Program Fund to cover the costs of implementing ILF Projects. The Program Sponsor will implement each ILF Project in accordance with a Mitigation Plan approved by the IRT. Each Mitigation Plan will include a detailed budget, and Program Sponsor's disbursements from the Program Fund will be made in accordance with the budget. IRT approval will be required for any disbursement of funds in excess of 10 percent of the approved budget for an ILF Project, as further described in **Exhibit E, Program Fund**.

The Program Sponsor may enter into contracts with third parties for the development, implementation, and/or long-term stewardship of individual ILF Projects. The Program Sponsor will pay third parties performing work to implement an ILF Project in accordance with the budget included in the approved Mitigation Plan for the ILF Project.

Funds for Long-Term Management and Maintenance of ILF Project sites will be earmarked in the Program Fund. The Program Fund and each ILF Project will be reported separately

in each Annual Report. The Program Sponsor will disburse funds from the Program Fund to the land manager for its performance of land management activities on the ILF Project site in accordance with the Long-Term Management Plan for the site.

3. Annual Program Fund reports shall be uploaded to RIBITS and emailed to the IRT by March 1. Reports will include detailed summaries of Program Fund revenues and expenditures for each ILF Project made over the previous fiscal year, in accordance with Section VII.A.4.

NRS 354.624 requires the County to issue a complete set of financial statements presented in conformity with accounting principles generally accepted in the United States of America and audited in accordance with auditing standards generally accepted in the United States of America and by a firm of licensed certified public accountants.

SECTION V ILF PROJECT ESTABLISHMENT AND OPERATION

Program Sponsor will establish and operate ILF Projects as provided in this Section. All ILF Projects will require the approval of the IRT, and each ILF Project will be proposed by the Program Sponsor and reviewed by the IRT as provided in this Section. The steps that will be required for review of ILF Projects are illustrated in **Exhibit F, ILF Project Approval Process**.

A. Establishment of ILF Projects

The Program Sponsor will evaluate potential ILF Project sites using the prioritization criteria set forth in Section D.6, Prioritization Strategy for Selecting, Implementing Compensatory Mitigation, of the Compensation Planning Framework (**Exhibit D, Compensation Planning Framework**). If Advance Credits have been Transferred, and Program Sponsor has not yet satisfied its obligation to Fulfill such Advance Credits in accordance with Section VI.B, ILF Project sites that would help to satisfy that responsibility will be prioritized. The Program Sponsor will submit a proposed Instrument amendment to the IRT, consistent with 33 CFR 332.8(d)(6)(i), along with a Mitigation Plan, for each proposed ILF Project. The Parties shall follow the ILF Project evaluation and approval process as described in 33 CFR 332.8(d)(6)(i), 33 CFR 332.8(d)(7), 33 CFR 332.8(d)(8) and **Exhibit F, ILF Project Approval Process**.

B. ILF Project Permits

The Program Sponsor will obtain all permits and authorizations required to construct, operate, and maintain an approved ILF Project or will require that third parties under contract or agreement with the Program Sponsor obtain such permits and authorizations. This Instrument

does not constitute a permit or authorization that may be required from any of the Signatory Agencies for an ILF Project.

C. Operation of ILF Projects

Upon approval of a Mitigation Plan for an ILF Project, the Program Sponsor will be responsible for implementing the Mitigation Plan in accordance with this Section.

1. Interim Management and Monitoring

Program Sponsor will include a description of Interim Management activities in each Mitigation Plan for an ILF Project. Upon approval of the Mitigation Plan by the IRT, the Program Sponsor will be responsible for conducting management and monitoring activities according to the Mitigation Plan until the end of the Interim Management Period.

2. Remedial Action Plan

- a. If, prior to ILF Program closure, any Party discovers any failure to achieve the Performance Standards or any injury or adverse Impact on the ILF Project site, the Party making the discovery will notify the other Parties. The IRT may require, by written notice, the Program Sponsor to develop and implement a Remedial Action Plan to remedy such condition, as described below. The Annual Report required under Section VII.A will identify and describe any Remedial Action proposed, approved, or performed and, if any Remedial Action has been completed, evaluate its effectiveness.
- b. Within sixty (60) business days of the date of written notice from the IRT, the Program Sponsor must develop a Remedial Action Plan and submit it to each Signatory Agency for review and comment. The IRT Chair will coordinate with the Signatory Agencies and provide final approval of the Remedial Action Plan. The Remedial Action Plan must describe proposed actions to achieve the Performance Standards or to remedy the injury or adverse Impact on the ILF Project site and set forth a schedule within which the Program Sponsor will implement those actions. The Program Sponsor will implement the Remedial Action Plan approved by the IRT. During the Interim Management Period, the cost to complete any Remedial Action will be limited to ILF Project contingency funds and the financial assurances established for that ILF Project. During the Long-Term Management Period, the cost to complete any Remedial Action will be limited to the funds in the Program Fund for the Long-Term Management and Maintenance of the ILF Project site pursuant to Section IV.D.2. Under no circumstances will Clark County general funds or other funds not specifically related to the ILF Program be utilized to complete any Remedial Action.
- c. Should the Program Sponsor and IRT agree that it is impracticable or infeasible to complete Remedial Actions on the ILF Project site, the Program Sponsor must propose an appropriate reduction in Credits to be generated by the ILF Project, or propose an alternative site or mechanism to replace any acreage or Waters of the U.S. functions

and services that were impacted or did not achieve the described Performance Standards. Limitations on the cost of Remedial Actions do not affect Program Sponsor's obligation to Fulfill Advance Credits that have been Transferred in accordance with Section VI.B.

- d. The Program Sponsor will implement the necessary and appropriate Remedial Action in accordance with the Remedial Action Plan approved by the IRT, subject to the limitations of this Section. In the event the Program Sponsor fails to submit a Remedial Action Plan to the IRT or fails to implement a Remedial Action Plan in accordance with this Section, the IRT may notify the Program Sponsor of a potential default in accordance with Section IX.C and pursue remedies for such default, such as Program suspension or make claims upon a financial assurance.

3. Long-Term Management and Monitoring

- a. The Program Sponsor will be responsible for preparing Long-Term Management Plans for ILF Projects in accordance with 33 CFR 332.4(c)(11). ILF Projects will be designed, to the maximum extent practicable, to be self-sustaining once Performance Standards have been achieved. Once the Interim Management Period is completed, Program Sponsor will provide long-term management and monitoring of the ILF Project site to preserve its habitat and conservation values in accordance with this Instrument, the Conservation Easement (or other approved site protection mechanism), the Long-Term Management Plan, and other applicable authorizations and approvals, including related take permits.
- b. Each Long-Term Management Plan will include a description of long-term management needs and annual cost estimates for these needs. Under the ILF, long-term funding will be earmarked in the Program Fund. Funds necessary to provide perpetual management of ILF Projects will be provided through Earmarked Funds at a rate of 5.3% of the separate fees collected and transferred to a separate fund and invested with a minimum capitalization target rate of 3.25%.
- c. Each Long-Term Management Plan will also provide for the implementation, in consultation with the IRT, of remedial actions to address any injury or direct or indirect Impact on natural resources on the ILF Project site using funds for the Long-Term Management and Maintenance of the site in the Program Fund.
- d. The Program Sponsor will perform long-term management activities on each ILF Project site or may enter into a contractual arrangement to transfer the long-term management responsibilities of the ILF Project site to a land stewardship entity, such as a public agency, non-governmental organization, or private land manager, after review and written approval by the IRT.
- e. The IRT and the Program Sponsor, or the designated long-term land manager(s), will meet and confer upon the request of any one of them to consider mutually agreeable

revisions to the Long-Term Management Plan that would better conserve the habitat and conservation values of the ILF Project site.

4. Long-Term Ownership and Protection

- a. The Program Sponsor or transferee (refer to Section V.C.3. above) will be responsible for ensuring long-term protection of each ILF Project, in accordance with 33 C.F.R. 332.7(a) and 332.8(t)(2), the details of which will be provided in the Mitigation Plan for each ILF Project. Long-term land stewards could include non-profit organizations, private entities, governmental entities, and others with knowledge of the Program Area willing to own the ILF Project site(s) and/or hold Conservation Easements on them.
- b. The Program Sponsor will ensure that a Conservation Easement is in place prior to the first release of Released Credits. The Program Sponsor shall submit a draft Conservation Easement to the IRT for review and approval (see **Exhibit C, Deed of Conservation Easement Template**). The draft Conservation Easement will be submitted with the Mitigation Plan. A copy of the recorded Conservation Easement will be furnished to the IRT prior to Credit Release 1 in accordance with Section VI.E below and the recorded Conservation Easement will become part of the official Program record. If any action is taken to void or modify an ILF Project Conservation Easement, Program Sponsor must notify the IRT in writing.

5. Inspections

With a minimum of two business days of advance written notice provided to the Program Sponsor, at the request of the IRT, the Program Sponsor will provide for access to ILF Project sites to the IRT at reasonable times, as necessary to conduct inspections and compliance monitoring with respect to the requirements of this Instrument. In conducting inspections, Signatory Agencies will not unreasonably disrupt or disturb activities on the ILF Project site.

D. Financial Assurances

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

Funds outlined in approved ILF Project budgets will be earmarked, held in the Program Fund, and disbursed in accordance with **Exhibit E, Program Fund** to operate, maintain and monitor the individual ILF Projects.

Funds outlined in approved ILF Project budgets will be earmarked, held in the Program Fund, and disbursed to manage the individual ILF Project, including contingency and Remedial Actions.

A financial assurance for each ILF Project is required in accordance with 33 C.F.R. 332.3(n).

Each approved ILF Project will have an identified schedule for the Release of the financial assurance(s) as the ILF Project meets its approved Performance Standards.

SECTION VI CREDIT ACCOUNTING

In accordance with 33 CFR 332.8(d)(6)(iv)(B) and (C), Program Credits are available for Transfer by the Program Sponsor as provided in this Instrument to satisfy Compensatory Mitigation requirements set forth in permits issued by the Signatory Agencies. The IRT will determine the number of Credits necessary to Fulfill a Permittee's Compensatory Mitigation requirements and will also determine the number of Released Credits that each ILF Project will generate as it is completed, based on the achievement of applicable Performance Standards as reflected in the ILF Project's Credit Release schedule.

A. Advance Credits

On the Program Establishment Date, Program Sponsor may Transfer the following Advance Credits: 8 wetland and 12 stream/riverine. The number of Advance Credits that are approved for Transfer was developed in coordination with the USACE and other Signatory Agencies and is based on (1) the Service Areas as outlined in the Compensation Planning Framework in **Exhibit D, Compensation Planning Framework**, (2) the Program Sponsor's past performance for implementing Compensatory Mitigation activities within the Service Areas, and (3) the projected financing necessary to begin planning and implementation of ILF Projects. Based on the considerations set forth in **Exhibit J, Advance Credit Analysis**, this Instrument shall operate automatically to grant the Program Sponsor the Advance Credits identified in **Exhibit J**, upon compliance with the requirements of Section IV.A.

Once the Program Sponsor has Transferred all Advance Credits, no more Advance Credits may be Transferred until the Advance Credits have been Fulfilled. As the Program Sponsor Fulfills Advance Credits, it may request IRT approval of additional Advance Credits for Transfer.

B. Program Sponsor's Obligation to Fulfill Advance Credits

Program Sponsor will be obligated to Fulfill all Advance Credits that are Transferred. To Fulfill Advance Credits, Program Sponsor must do one of the following.

1. Generate Released Credits of the same type as, and in an amount equal to or greater than, the Transferred Advance Credits, in accordance with Section VI.D.
2. Assign the obligation to Fulfill the Transferred Advance Credits to an IRT-approved third party under terms and conditions approved by the IRT (i.e., purchase of Credits from a mitigation bank).

Unless otherwise agreed to by the IRT, Program Sponsor will complete land acquisition, if necessary, and initial physical and biological improvements with respect to an ILF Project needed to Fulfill Advance Credits by the end of the third full growing season (generally defined as the period between October 15 and May 15) after the Transfer of the Advance Credits. Completion of physical improvements will be achieved once the initial physical and biological improvements (e.g., grading or initial planting) as specified in the Mitigation Plan for such ILF Project are implemented, as verified by the IRT.

C. Determination of Credits

Each approved Mitigation Plan will include the method for determining the Credits generated by the individual ILF Project. Program Sponsor may only generate Credits from an ILF Project when there is a net benefit to aquatic resources at the site, as determined by the difference between pre- and post-ILF Project site conditions. Program Sponsor may also propose Credits for preservation or improvement of riparian areas, buffers, or any combination of the two if they are essential to maintain the ecological viability of aquatic resources. Buffers are defined as upland, wetland, and/or riparian areas that protect and/or enhance aquatic resource functions associated with wetlands, rivers, streams, and lakes from disturbances associated with adjacent land uses. The IRT will determine on a case-by-case basis whether Preservation Credits and Buffer Credits can be generated by an ILF Project.

D. Generation of Released Credits

Released Credits will be generated when an ILF Project achieves Performance Standards and other performance-based milestones according to the Credit Release schedule included in the Mitigation Plan for the ILF Project. Each Mitigation Plan approved by the IRT will include the specific method for determining the Released Credits to be generated by the individual ILF Project.

E. Credit Release

Each Mitigation Plan approved by the IRT will include a Credit Release schedule, linked to the achievement of Performance Standards, as described in Section VI.E. As milestones in a Credit Release schedule are reached, Advance Credits are converted to Released Credits, and Advance Credits are thereby Fulfilled. If the ILF Project does not achieve the performance-based milestones, the IRT may modify the Credit Release schedule, which may include reducing the number of Credits that will be released.

Credits will be released in accordance with this Instrument once all the following have occurred:

1. The IRT has approved the Mitigation Plan for the ILF Project.
2. Applicable milestone(s) in the Credit Release schedule have been achieved.

3. Program Sponsor has submitted a written request for Credit Release to the IRT, along with documentation substantiating that the relevant milestones have been achieved.
4. The IRT has provided written confirmation of Credit Release.

The IRT will provide written confirmation of Credit Release or will explain in writing why confirmation of Credit Release will not be provided, within thirty (30) calendar days of Program Sponsor's submittal of a request for Credit Release, unless Program Sponsor and the IRT mutually agree to a longer period of time. The IRT's failure to respond within thirty (30) calendar days in accordance with this Section does not obviate the requirement to obtain the IRT's written confirmation prior to the Transfer of Credits tied to a particular Release. If a Signatory Agency fails to respond in accordance with this Section, any Signatory Agency, or the Program Sponsor, may initiate the dispute resolution procedure in accordance with Section IX.D. Upon each Credit Release, USACE will enter the number of Credits Released into RIBITS.

Credit Release schedules may vary based on the details and circumstances of individual proposed ILF Projects. In general, Credits will be released as follows:

1. Credit Release 1

- a. Fifteen percent (15%) of an ILF Project's total proposed Credits will be released when all the following have occurred:
 - i. The IRT has approved the Mitigation Plan.
 - ii. A Conservation Easement or other approved site protection mechanism has been recorded and a copy uploaded to the Cyber Repository in RIBITS.

2. Credit Release 2

- a. Up to an additional twenty-five percent (25%) (forty percent [40%] cumulative total) of an ILF Project's total proposed Credits will be released when all the following have occurred:
 - i. Credit Release 1 has occurred.
 - ii. The Program Sponsor has provided, and the IRT has approved in writing, the ILF Project's as-built drawings. Unless otherwise specifically provided in the ILF Project's Mitigation Plan, as-built drawings must be submitted to the IRT no later than ninety (90) calendar days following completion of construction and must include full-size construction plans, with as-built conditions clearly shown, and accurate maps of the established, enhanced, and/or restored aquatic resources. The as-built drawings and any attachments must describe in detail any minor deviations from the approved Mitigation Plan.

- iii. Program Sponsor has deposited into the Program Fund a minimum of forty percent (40%) of the amount required to fund long-term management for the ILF Project into the Program Fund, in accordance with the Mitigation Plan.

3. Credit Release 3

- a. Up to an additional fifteen percent (15%) (fifty-five percent [55%] cumulative total) of an ILF Project's total proposed Credits will be released when all the following have occurred:
 - i. Credit Release 2 has occurred.
 - ii. Two years of monitoring have been conducted since all Credit Release 2 requirements were met.
 - iii. Program Sponsor has submitted all required monitoring reports in accordance with the Mitigation Plan.
 - iv. Program Sponsor has submitted the Annual Report for the most recent reporting period, in accordance with Section VII.A.
 - v. The IRT has been provided an opportunity to conduct a site inspection during the appropriate time of year, if requested.
 - vi. Year 2 Performance Standards have been achieved in accordance with the Mitigation Plan.
 - vii. Program Sponsor has deposited into the Program Fund a minimum of fifty-five percent (55%) of the amount required to fund long-term management for the ILF Project, in accordance with the Mitigation Plan.

4. Credit Release 4

- a. Up to an additional fifteen percent (15%) (seventy percent [70%] cumulative total) of an ILF Project's total proposed Credits will be released when all the following have occurred:
 - i. Credit Release 3 has occurred.
 - ii. One year of monitoring has been conducted since all Credit Release 3 requirements were met.
 - iii. Program Sponsor has submitted all required monitoring reports in accordance with the Mitigation Plan.
 - iv. Year 3 Performance Standards have been achieved in accordance with the Mitigation Plan.
 - v. Program Sponsor has submitted the Annual Report for the most recent reporting period, in accordance with Section VII.A.

- vi. The IRT has been provided an opportunity to conduct a site inspection during the appropriate time of year, if requested.
- vii. Program Sponsor has deposited into the Program Fund a minimum of seventy percent (70%) of the amount required to fund long-term management for the ILF Project, in accordance with the Mitigation Plan.

5. Credit Release 5

- a. Up to an additional fifteen percent (15%) (eighty-five percent [85%] cumulative total) of an ILF Project's total proposed Credits when all the following have occurred:
 - i. Credit Release 4 has occurred.
 - ii. One year of monitoring has been conducted since all Credit Release 4 requirements were met.
 - iii. Program Sponsor has submitted all required monitoring reports in accordance with the Mitigation Plan.
 - iv. Program Sponsor has submitted the Annual Report for the most recent reporting period, in accordance with Section VII.A.
 - v. The IRT has been provided an opportunity to conduct a site inspection during the appropriate time of year, if requested.
 - vi. Year 4 Performance Standards have been achieved in accordance with the Mitigation Plan.
 - vii. Program Sponsor has submitted a delineation of aquatic resources to the IRT in accordance with the Mitigation Plan.
 - viii. Program Sponsor has deposited in the Program Fund a minimum of eighty-five percent (85%) of the amount required to fund long-term management for the ILF Project, in accordance with the Mitigation Plan.

6. Final Credit Release

- a. Any and all remaining Credits will be Released when all the following have occurred:
 - i. Credit Release 5 has occurred.
 - ii. One year of monitoring has been conducted since all Credit Release 5 requirements were met.
 - iii. Program Sponsor has submitted all required monitoring reports in accordance with the Mitigation Plan.
 - iv. Program Sponsor has submitted the Annual Report for the most recent reporting period, in accordance with Section VII.A.

- v. The IRT has been provided an opportunity to conduct a site inspection during the appropriate time of year, if requested.
- vi. Final Performance Standards have been achieved in accordance with the Mitigation Plan.
- viii. Program Sponsor has deposited in the Program Fund all (100%) of the amount required to fund long-term management for the ILF Project, in accordance with the Mitigation Plan.

F. Fee Schedule

The Program Sponsor will establish Program fee amounts per unit of Advance Credit that reflect the estimated costs associated with the generation and Release of Credits. These cost estimates must be based on full cost accounting and include, as appropriate, expenses such as land acquisition (including, without limitation, options to purchase), ILF Project planning and design, construction, plant materials, labor, legal fees, monitoring, and remediation or Adaptive Management activities, a contingency amount that accounts for uncertainties in construction and real estate costs, as well as administration of the Program. The cost estimates must also take into account the funding necessary for interim and long-term management, and the cost of monitoring and enforcing the Conservation Easement. This list is not meant to be exhaustive and may include other categories, as appropriate, as determined by the Program Sponsor on a case-by-case basis. In addition, the estimated cost per unit of Advance Credit must include any costs of financial assurances necessary to ensure successful completion of ILF Projects.

For Credits that have been generated and released, the fee amount will be based on the full, actual costs of generating the Credits.

The Program Sponsor may include other costs or charges in Program fee amounts, as it determines necessary or appropriate. Program Sponsor will review Program fee amounts at least annually and update them as appropriate. The Program's Fee Schedule is provided in **Exhibit H, Fee Schedule**. IRT review and approval will be required for any reductions in the minimum fee amounts reflected in **Exhibit H**. Any revisions to **Exhibit H** will require an amendment of this Instrument.

G. Balance of Credits

The Program will have available for Transfer the number of available Advance Credits, plus any Released Credits beyond those required to Fulfill Advance Credits that have been Transferred.

H. Transfer of Credits

Each Signatory Agency retains the discretion to determine whether Credits may be used to Fulfill Compensatory Mitigation requirements established by the Signatory Agency, in accordance with applicable laws and regulations. This Instrument does not guarantee that any Signatory Agency will accept the use of Credits for a proposed project.

The responsibility to provide Compensatory Mitigation remains with each Permittee unless and until Credits are Transferred from the Program. The Program Sponsor assumes all legal responsibility for fulfilling Compensatory Mitigation requirements for which Credits have been Transferred. The Transfer of liability is established by: a) the approval of this Instrument; b) receipt by the USACE of a Credit Transfer Agreement that is signed by the Program Sponsor and the Permittee and dated (see **Exhibit B-1, Credit Transfer Agreement Template**); and c) the transfer of fees from the Permittee to the Program Sponsor. A copy of each Credit Transfer Agreement will be retained in the administrative and accounting records for the Program. Other than what is described in this paragraph, no other legal responsibility for the permit will transfer to the Program Sponsor.

Program Sponsor shall notify all members of the IRT upon any Credit Transfer in accordance with Section VI.H of this Instrument. Upon Transfer of Credits, the Program Sponsor shall enter the Credit Transfer into RIBITS.

If an ILF Project site is injured or adversely impacted, and such injury or Impact materially impairs Waters of the U.S. or habitat values on the ILF Project site, the Program Sponsor shall comply with Section V.C.2.a. Failure to comply shall constitute default, and the IRT may take action in accordance with Section IX.C. of this Instrument.

Once a Credit is Transferred, Program Sponsor may cancel a Credit Transfer and allow a Permittee to relinquish or return such Credit, subject to an administrative fee, if the Permittee's project is not approved or implemented, or if the project is modified to avoid the Impacts for which such Credit was Transferred. Any such relinquishment or return will be subject to IRT reasonable approval and will be entered into RIBITS by the Program Sponsor.

Once Transferred, a Credit will not be available for future Transfers by the Program Sponsor unless the Credit has been relinquished or returned in accordance with this subsection.

I. Limitation of Liability

Notwithstanding any other provision of this Instrument Program Sponsor's maximum financial obligation and liability for the Program, including providing Compensatory Mitigation thereunder, is at all times limited to the funds in the Program Fund.

SECTION VII PROGRAM REPORTING

In accordance with 33 C.F.R. 332.8(d)(6)(ii)(E) and 33 C.F.R. 332.8(i)(3), this Instrument establishes the reporting protocols set forth in the subsections below.

A. Annual Report

Program Sponsor will submit an Annual Report summarizing the previous calendar year's Program implementation to each Signatory Agency, and will upload the report to RIBITS, on or about March 1 following the reporting year. The Annual Report will include all the information required in this Section.

1. ILF Project Development

The Annual Report will describe the status of each approved ILF Project and its progress toward meeting its Performance Standards. The Annual Report will identify any deficiencies in attaining and maintaining Performance Standards and any Remedial Action proposed, approved, or performed. If a Remedial Action Plan has been completed, the Annual Report will also evaluate the effectiveness of the plan.

2. Interim Management and Monitoring

The Annual Report will contain an itemized accounting of the management tasks conducted in accordance with the Interim Management or Long-term Management Plan for each ILF Project site, including the following:

- a. The time period covered, i.e., the dates “from” and “to;”
- b. A description of each management task conducted, the dollar amount expended, and time required;
- c. The total dollar amount expended for management tasks conducted during the reporting period; and
- d. A description of the overall condition of each ILF Project site during its Interim Management Period, including color photographs documenting the status of the ILF Project site and a map documenting the location and direction of the photo points.

3. Credit Ledger Report

The Annual Report will include a current Credit ledger (see **Exhibit B-2, Credit Ledger**), showing, for each ILF Project and for the Program as a whole, the beginning and end balance of available Advance Credits and Released Credits, all Credit Releases and Transfers, and any other changes in Credit availability (e.g., Credit Transfers cancelled, Credits relinquished).

4. Program Fund

The Annual Report will include a financial activity report for the Program Fund, which will include:

- a. All income received from Transfers of Released Credits and investment earnings accrued by the Program Fund;
- b. Any other deposits to the Program Fund during the reporting period;
- c. A description of disbursements and expenditures from the Program Fund, such as the costs of land acquisition, planning, construction, monitoring, maintenance, contingencies, Adaptive Management, and administration; and
- d. The balance of the Program Fund.

5. Compensatory Mitigation Tracking

The Annual Report will list and summarize:

- a. All permits for which Credits were Transferred (including applicable permit numbers);
- b. The amount of authorized Impacts giving rise to such Transfers of Credits;
- c. The amount of required Compensatory Mitigation;
- d. The amount paid to the Program for Transfers of Advance Credits and Released Credits;
- e. The date(s) the funds were received from applicable Permittees for such Credits;
- f. The amount of Compensatory Mitigation generated by the Release of Credits through ILF Projects; and
- g. A summary of new geographic information system (GIS) Data.

B. GIS Data

The Program Sponsor will maintain a database of relevant GIS data and will update the database on a regular basis, as determined by the Program Sponsor. The GIS database and updated data layers will be made available to RIBITS and to Signatory Agencies upon request. The GIS database will include, at a minimum, the following:

1. The location of each permitted project or activity for which a Credit was Transferred; and
2. Each ILF Project location, size, and aquatic resource acreages restored, established, enhanced, or preserved.

C. Credit Transfer Reporting

Upon the Transfer of each and every Credit, the Program Sponsor will provide the IRT with the applicable Credit Transfer Agreement (see **Exhibit B-1, Credit Transfer Agreement Template**) and will enter the applicable Credit Transfer information and executed Credit Transfer Agreement into RIBITS.

D. Other Information Deemed Necessary by the IRT

The Program Sponsor will also provide to the IRT other information as required for compliance with applicable legal and regulatory requirements.

SECTION VIII TERMINATION OF PARTICIPATION AND PROGRAM CLOSURE

A. Termination/Program Closure

Any Party to this Instrument may terminate its participation in this Instrument by giving ninety (90) calendar days' written notice to the other Parties. The written notice shall include the reason(s) the Party proposes to terminate its participation in this Instrument. The Parties shall meet and confer during the ninety (90) calendar-day period prior to termination to attempt to resolve the reason(s) for termination. If the Parties resolve the reason(s) for termination, the Party proposing termination shall provide a written withdrawal to the other Parties and the Parties shall amend or modify this Instrument as necessary. If the Parties fail to resolve the reason(s) for termination during the ninety (90) calendar-day meet and confer period, the termination shall become effective ninety (90) calendar days after the written notice. In the event the Program operated by Program Sponsor is terminated (i.e., closed), Program Sponsor is responsible for fulfilling any remaining ILF Project obligations, including the successful completion of ongoing mitigation projects, relevant maintenance, monitoring, reporting, and long-term management requirements. Program Sponsor shall remain responsible for fulfilling these obligations until such time as the long-term financial obligations have been met and the long-term management of all mitigation lands has been transferred for long-term management of the Project. Earmarked Funds for long-term management may, at the discretion of the Program Sponsor, be transferred to the third-party responsible for long-term management or be maintained and managed by the Program Sponsor and disbursed as needed for long-term management. Funds remaining in the Program Fund after these obligations are satisfied must continue to be used for the restoration, establishment, enhancement, and/or preservation of aquatic resources within the Service Areas. The USACE shall direct the Program Sponsor to use these funds to secure Credits from another source of third-party mitigation, such as another in-lieu fee program, mitigation bank, or another entity such as a governmental or non-profit natural resource management entity willing to undertake the compensation activities. The funds should be used, to the maximum extent practicable, to provide compensation for the amount and type of aquatic resource for which the fees were collected.

SECTION IX OTHER PROVISIONS

A. Extraordinary Circumstances

1. In their review of the ILF Project Mitigation Plan, the Program Sponsor, and IRT will make a concerted effort to identify the preservation, establishment, restoration, enhancement and management measures for ILF Projects, including Adaptive Management, necessary to qualify as Compensatory Mitigation for Waters of the U.S. and to manage and maintain these resources in perpetuity. However, the Parties recognize that there may be an extraordinary circumstance in which ILF Projects can no longer serve their intended purpose as Compensatory Mitigation, in whole or in part, for the specific resources for which it was established. The Parties agree that they will meet and confer with respect to an extraordinary circumstance. If the Program Sponsor has entered into a contractual agreement for long-term management, the third-party contractor shall be included in the meet and confer. An extraordinary circumstance of this type may lead to Program Sponsor being relieved of some or all its obligations under this Instrument. The Parties agree that the IRT will consider whether it is appropriate to relieve the Program Sponsor of any obligations under the process outlined below:
 - a. If the Program Sponsor believes that extraordinary circumstances have taken place, it shall send written notification to the IRT as promptly as reasonably possible, but no later than fourteen (14) calendar days following the date of discovery of the extraordinary circumstance. The Program Sponsor's written notification (invoking) will fully describe the nature of the extraordinary circumstance, its effect on the party's performance of the obligations under this Instrument, the habitat values affected by the extraordinary circumstance, and any expected timeframe of non-performance attributable to the extraordinary circumstance. As promptly as reasonably possible after providing written notification invoking extraordinary circumstance, the Program Sponsor invoking extraordinary circumstance shall meet with the IRT to discuss whether the event qualifies as an extraordinary circumstance. The Program Sponsor shall bear the burden of demonstrating that an extraordinary circumstance has occurred. Until such time the IRT determines whether the event qualifies as an extraordinary circumstance and whether it is appropriate to suspend performance pursuant to Section IX.A.1.d, the Program Sponsor shall continue to manage and maintain the ILF Project to the fullest extent practicable consistent with this Instrument and other applicable documents.
 - b. If the IRT concurs that an extraordinary circumstance has taken place, the IRT will provide written notification to the Program Sponsor. Within fourteen (14) calendar days of notification of concurrence from the IRT that an extraordinary circumstance has occurred, or on a date mutually agreed upon by all Parties, the Parties will meet to discuss the course of potential action to be taken in response to such occurrence, including potential Remedial Action as defined in Section II and potential suspension

- of Performance Standards as described in Section IX.A.1.c. Remedial Action in such circumstances may include, but is not limited to, restoration of the ILF Project, out-of-kind improvements on the ILF Project, a smaller Restoration on the ILF Project (taking into account the diminution of habitat values across the Service Area), improvements to another property, or the purchase of Credits from another bank. Once approved by the IRT, the Remedial Action shall be carried out by the Program Sponsor within a mutually agreed upon timeframe.
- c. If the Program Sponsor is prevented from or delayed in performing an obligation under this Instrument by an extraordinary circumstance that commences after an ILF Project is established, the IRT may suspend the Program Sponsor's obligation to perform, as well as the ability of the Program Sponsor to provide any remaining Released Credits, prior to Sale and/or Transfer, as Compensatory Mitigation.
 - d. Following the meeting discussed in Section IX.A.1.b. to consider potential actions to be taken in response to the event, the IRT will, in writing, (1) inform the Program Sponsor as to what, if any, performance is suspended, and (2) direct the Program Sponsor as to what specific Remedial Action is required at the ILF Project site. The Program Sponsor will continue to perform all other obligations that are not suspended.
 - e. Within sixty (60) calendar days of notification described in Section IX.A.1.d., or by a date mutually agreed upon by all Parties, the Program Sponsor will submit to the IRT in writing the implementation plan to meet the required Remedial Action. At a minimum, the Remedial Action will be sufficient to ensure that the habitat values that underlie all previously Transferred Credits will be supported.
 - f. If the Remedial Action agreed upon and implemented does not meet an agreed upon objective or standard within the agreed upon timeframe, the Program Sponsor and the IRT will reconvene to evaluate if alternative Remedial Action would be appropriate.
2. Failure to act in good faith to participate in the process outlined above in Section IX.A.1 or to implement any IRT-approved Remedial Actions shall be a default under this Instrument.
 3. The Signatory Agencies may, at their discretion, direct the Program Sponsor to suspend Sale and/or Transfer, prohibit the release of additional Credits, and/or reduce the number of Credits allocated to the ILF Project in proportion to such damaged area unless and until the Program Sponsor has remedied the defect pursuant to the Remedial Action as described in Section IX.A.1.d. of additional Credits, and/or reduce the number of Credits allocated to the ILF Project in proportion to such damaged area unless and until the Program Sponsor has remedied the defect pursuant to the Remedial Action as described in Section IX.A.1.d.
 4. Disputes over whether an event is a result of an extraordinary circumstance, or any Remedial Action taken in response pursuant to this Section, shall be resolved in accordance with Section IX.A.

5. The Program Sponsor is not entitled to termination of this Instrument under Section VIII.A as a result of extraordinary circumstances.

B. Force Majeure

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

C. Default

Program Sponsor shall be in default if it substantially fails to observe or perform any obligations or responsibilities required of it by this Instrument. In the event of default, the IRT shall issue a notice of default to Program Sponsor, which includes direction and a specified reasonable amount of time to cure the default. If the Program Sponsor fails to remedy the default within the allotted time, the IRT will take appropriate action, which includes but is not limited to suspending Credit sales, employing an Adaptive Management approach, decreasing available Credits, utilizing financial assurances, and terminating the Instrument. This Section shall not be construed to modify or limit any specific right, remedy, or procedure in any Section of this Instrument or any remedy available under applicable State and/or Federal law such as the Clean Water Act or the Endangered Species Act.

D. Dispute Resolution

1. The Parties agree to work together in good faith to resolve disputes concerning this Instrument. Unless a Party has initiated legal action in connection with the dispute, any Party may elect (“Electing Party”) to employ an informal dispute resolution process whereby:
 - a. The Electing Party shall notify all other Parties to this Instrument of the dispute through a Dispute Notice. The Dispute Notice shall identify the Parties against which the Electing Party is commencing the informal dispute resolution process (“Implicated Parties”), the position of the Electing Party (including, if applicable, the basis for contending that a violation has occurred), and the resolution the Electing Party proposes.
 - b. Each Implicated Party shall have forty-five (45) calendar days after receipt of the Dispute Notice (or such other time as the Parties may mutually agree) to respond to the Electing Party. During this time, any Party to this Instrument that received the Dispute Notice may seek clarification of the Dispute Notice.
 - c. Within forty-five (45) calendar days after each Implicated Party’s response was provided or due, whichever is later, the Electing Party and the Implicated Parties shall confer and negotiate in good faith toward a mutually satisfactory resolution or shall establish a specific process and timetable to seek such resolution.
 - d. The dispute resolution process may be terminated by the Electing Party or any Implicated Party upon written notice to all other Parties to this Instrument.

E. Modification and Amendment of Instrument

This Instrument, including its Exhibits, may be amended or modified only with the written approval of Program Sponsor and any other applicable Parties. Instrument modifications that would add or revise Mitigation Plans for ILF Projects will follow the process outlined in **Exhibit F, ILF Project Approval Process**. Any amendment to add an approved Mitigation Plan to the Instrument need only be executed by signature of those Parties that approved the Mitigation Plan in accordance with Section V.A. The USACE may use a streamlined modification review process for changes reflecting Adaptive Management of an ILF Project site, Credit Releases, changes in Credit Releases and Credit Release schedules, and changes that the USACE determines are not significant.

F. Controlling Language

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

extent that specific language in this Instrument conflicts with specific language in any document that is incorporated into this Instrument as an Exhibit, the specific language of the Instrument will control the meaning. The captions and headings of this Instrument are for convenient reference only and will not define or limit any of its terms or provisions.

G. Entire Agreement

This Instrument, its Exhibits, appendices, schedules, and agreements incorporated by reference constitute the final, complete, and exclusive statement of the terms of the agreement between and among the Parties pertaining to the Program, and supersede all prior and contemporaneous discussions, negotiations, understandings, or agreements of the Parties. No other agreement, statement, or promise made by the Parties—or to any employee, officer, or agent of the Parties—that is not contained in this Instrument will be binding or valid. No alteration or variation of this Instrument will be valid or binding unless made in writing in accordance with Section IX.E. Each of the Parties acknowledges that no representation, inducement, promise, or agreement, oral or otherwise, has been made by any of the other Parties or anyone acting on behalf of any of the Parties unless the same has been embodied herein.

H. Reasonableness and Good Faith

Except as specifically limited elsewhere in this Instrument, whenever this Instrument requires any Party to give its consent or approval to any action on the part of another Party, such consent or approval will not be unreasonably withheld or delayed. If any Party disagrees with any determination covered by this provision and reasonably requests the reasons for that determination, the determining Party will furnish its reasons in writing and in reasonable detail within thirty (30) calendar days following the request.

I. Partial Invalidity

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

J. Notices

Any notice, demand, approval, request, or other communication permitted or required by this Instrument will be in writing and deemed given when delivered personally, sent via electronic mail, or sent by recognized overnight delivery service, addressed as set forth below, or five (5) calendar days after deposit in the U.S. mail, postage prepaid, and addressed as set forth below. The USACE preferred method of notice is via electronic mail and will be used to the maximum extent practicable.

Notice by any Party to any other Party will be given to all Parties. Such notice will not be effective until it has been received by all Parties in accordance with this Section.

Addresses for purposes of giving notice are set forth below. Any Party may change its notice address by giving notice of change of address to the other Parties in the manner specified in this Section.

Program Sponsor:

Clark County Desert Conservation Program
4701 West Russell Road
Las Vegas, Nevada 89118
Attn: Director, Desert Conservation Program
Telephone: 702-455-3536
E-mail: dcp@clarkcountynv.gov

Signatory Agencies:

U.S. Army Corps of Engineers
Sacramento District
Attn: Chief, Regulatory Division
1325 J Street, Room 860
Sacramento, California 95814
E-mail: SPKRegulatorMailbox@usace.army.mil

U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Supervisor, Wetlands Section
Telephone: 415-972-3483
E-mail: Huddleston.Russell@epa.gov

Nevada Division of Environmental Protection
Bureau of Water Quality Planning
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701
Attn: Administrator, Nevada Division of Environmental Protection
Telephone: 775-687-9456
E-mail: ndep401@ndep.nv.gov

K. Counterparts

This Instrument may be executed in multiple counterparts, each of which will be deemed an original and all of which together will constitute a single executed agreement.

L. No Third-Party Beneficiaries

Except to the extent expressly stated herein, this Instrument will not create any third-party beneficiary hereto, nor will it authorize anyone not a Party hereto to maintain any action, suit, or other proceeding, including, without limitation, for personal injuries, property damage, or enforcement pursuant to the provisions of this Instrument. The duties, obligations, and responsibilities of the Parties to this Instrument with respect to third parties will remain as otherwise provided by law as though this Instrument had never been executed.

M. Availability of Funds

Implementation of this Instrument by the IRT is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341, and the availability of appropriated funds. Nothing in this Instrument may be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury, the Nevada State Treasury, or the Clark County funds, other than the Program Fund. No Party is required under this Instrument to expend any appropriated funds unless and until an authorized official affirmatively acts to commit to such expenditures as evidenced in writing.

N. No Partnerships

This Instrument will not make or be deemed to make any Party to this Instrument an agent for or the partner or joint venture of any other Party.

O. Governing Law

This Instrument will be governed by and construed in accordance with the CWA, 33 U.S.C. § 1251 et seq., and other applicable federal and State laws and regulations, including those referenced in Section I.C. However, nothing in this Instrument is intended or will be construed as a waiver of sovereign immunity beyond that which has been granted by the United States legislature in applicable federal laws.

P. Headings and Captions

Any paragraph heading or captions contained in this Instrument will be for convenience of reference only and will not affect the construction or interpretation of any provisions of this Instrument.

Q. No Contract

USACE approval of this Instrument constitutes the regulatory approval required for the Clark County ILF Program to be used to provide Compensatory Mitigation for Department of the Army permits pursuant to 33 C.F.R. 332.8(a)(1). This Instrument is not a contract between the

Program Sponsor and USACE or any other agency of the federal government. Any dispute arising under this Instrument will not give rise to any claim by any Party for monetary damages. This provision is controlling notwithstanding any other provision or statement in the Instrument to the contrary.

SECTION X EXECUTION

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

ILF Program Sponsor

By: _____

Michael Naft
Chair, Clark County Board of Commissioners

Date

ATTEST:

By: _____

Lynn Marie Goya
County Clerk

Date

APPROVED AS TO FORM:

By: _____

Sarah Schaerrer
Deputy District Attorney

Date

U.S. Army Corps of Engineers, Sacramento District

By:  _____

Michael Jewell
Chief, Regulatory Division

14 July 2026

Date

U.S. Environmental Protection Agency, Region IX

By: _____

Sahrye Cohn
Wetlands and Oceans Section Manager

Date

Nevada Division of Environmental Protection

By: _____

Jennifer Carr
Administrator, Nevada Division of Environmental Protection

_____ Date

Exhibits

Exhibit A – Program Area

A-1 Program Area/Service Areas Map

A-2 Narrative Description and Explanation of Service Areas

Exhibit B– Credit Release, Transfer, and Tracking

B-1 Credit Transfer Agreement Template

B-2 Clark County ILF Credit Ledger Final

Exhibit C – Deed of Conservation Easement Template

Exhibit D – Compensation Planning Framework

Exhibit E – Program Fund

Exhibit F – ILF Project Approval Process

Exhibit G – Clark County In-Lieu Fee Program Mitigation Plan Template

Exhibit H – Fee Schedule

Exhibit I – Property Assessment and Warranty

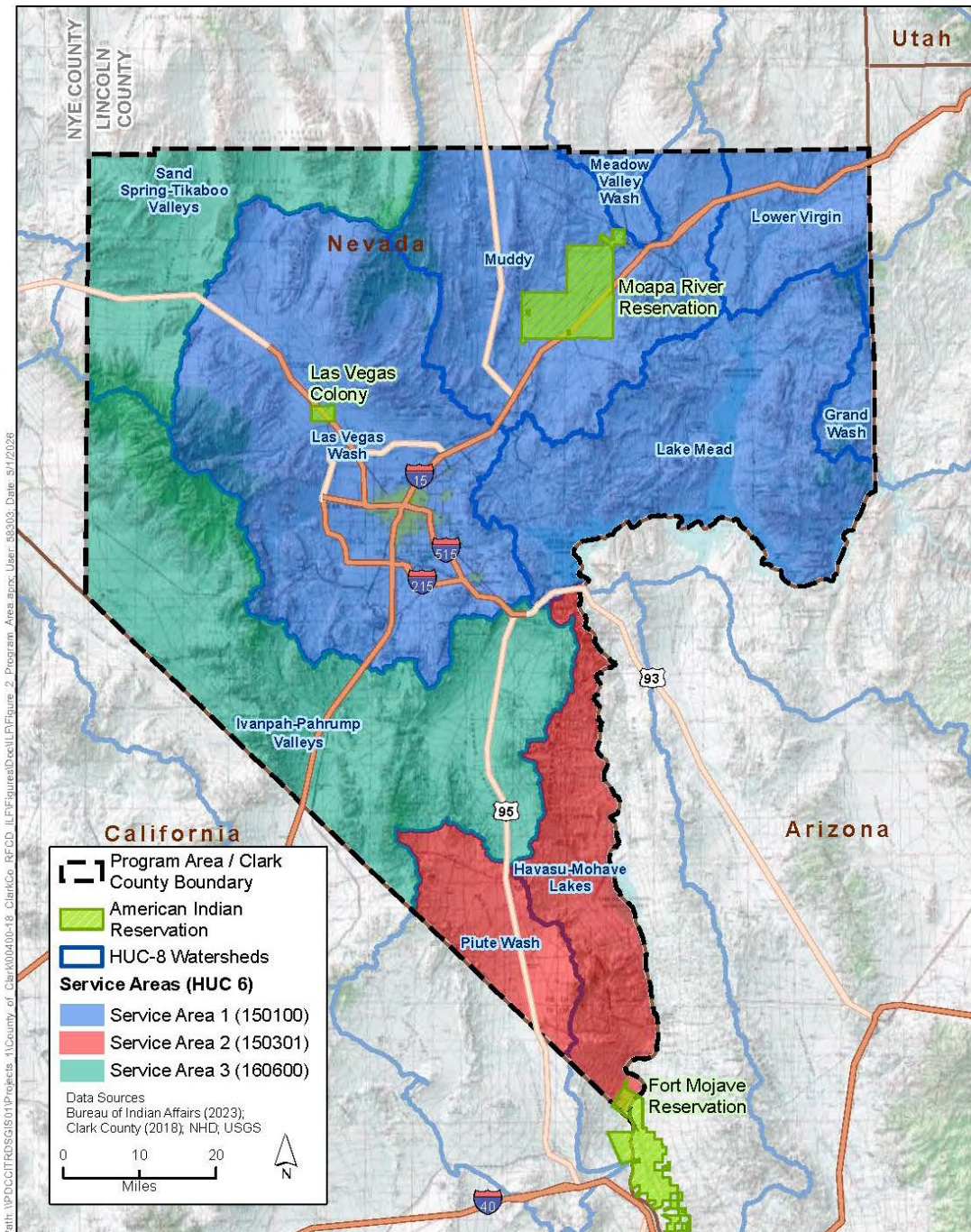
Exhibit J – Advance Credit Analysis

Exhibit K – Approved ILF Projects

Exhibit L – Long-Term Management Plan Outline/Table of Contents

Exhibit A
Program Area

A.1 Program Area/Service Area Map



Program Area Boundary
and Service Areas
Clark County ILF Program

A.2 Narrative Description and Explanation of Service Area/Program Area

The ILF Program Area is divided into three Service Areas, consistent with the Hydrologic Unit Code (HUC) 6 watershed boundaries within Clark County (Figure A-1). The ILF Program Area will service 5.2 million acres throughout Southern Nevada, all occurring within the same Level III ecoregion (i.e., Mojave Basin and Range). The Plan Area consists primarily of one Level III ecoregion, based on the ecoregional framework derived from Omernik (1987).¹ Ecoregions are areas with shared characteristics of climate, geology, soils, and natural vegetation and denote areas of general similarity in ecosystems and in type, quality, and quantity of environmental resources. The ILF Program will use the HUC 6 watersheds and ecoregion area at a scale that is appropriate to ensure that compensation projects selected for funding will effectively compensate for environmental impacts across each service area. Three Service Areas, based on the limits of the HUC 6 watersheds intersecting the boundaries of the ILF Program Plan Area, are being utilized for the ILF Program and include all incorporated and unincorporated areas of Clark County, excluding tribal lands.

The overall ILF Program Area was selected based on areas where the County has jurisdiction and where projects are anticipated and is consistent with previous planning efforts, and other resource conservation strategies of the Clark County MSHCP. It also includes a broad area, based on the Level III ecoregion, that can accommodate compensatory mitigation and the ecological and hydrological benefits of multiple types of aquatic resources should they be needed to compensate for adverse environmental impacts across the entire Plan Area. The Plan Area is further divided into three Service Areas, consistent with the HUC-6 boundaries occurring in the Program Area:

Service Area 1, Lower Colorado-Lake Mead Basin (HUC-6: 150100)

- Lake Mead (HUC-8: 15010005)
- Grand Wash (HUC-8: 15010006)
- Lower Virgin (HUC-8: 150100100)
- Muddy (HUC-8: 15010012)
- Meadow Valley Wash (HUC-8: 15010013)
- Las Vegas Wash (HUC-8: 15010015)

Service Area 2, Lower Colorado Basin (HUC-6: 150301)

- Havasu-Mohave Lakes (HUC-8: 15030101)
- Piute Wash (HUC-8: 15030102)

Service Area 3, Central Nevada Desert Basin (HUC-6: 160600)

- Sand Spring-Tikaboo Valleys (HUC-8: 16060014)
- Ivanpah-Pahrump Valleys (HUC-8: 106060015)

¹ Omernik, J.M. 1987. Ecoregions of the Conterminous United States. Map (scale 1:7,500,000). *Annals of the Association of American Geographers* 77(1):88–125.

The ILF Program Area and Service Areas are depicted in Exhibit A-1. Limits of the HUC-6 watersheds extending beyond the jurisdictional boundaries of Clark County are not included in the ILF Service Areas.

Exhibit B

Credit Release, Transfer, and Tracking

Exhibit B.1 Credit Transfer Agreement Template

B.1.1 Credit Transfer Agreement

Contract #: [ILF Program Transfer Number]

This Credit Transfer Agreement (“**Agreement**”) is entered into by and between CLARK COUNTY (“**Program Sponsor**”) and _____ (“**Project Applicant**”), jointly referred to as the “**Parties.**”

B.1.2 Recitals

The Program Sponsor has established the Clark County In-Lieu Fee Program (“**ILF Program**”) covering Clark County.

The ILF Program was approved by the Sacramento District of the U.S. Army Corps of Engineers (“**USACE**”), Region IX of the U.S. Environmental Protection Agency (“**USEPA**”), and the Nevada Division of Environmental Protection (“**NDEP**”) (jointly referred to as “**Agencies**”) on [enter date approved], and is currently in good standing with the Agencies.

The ILF Program has received approval from the Agencies to offer wetland and riverine/stream credits pursuant to the ILF Program Instrument (“**ILF Instrument**”), as compensation for impacts on aquatic resources regulated by the Agencies.

Project Applicant is seeking to implement the project described in **Attachment A** attached hereto (“**Project**”), which would adversely impact [enter aquatic resources to be impacted by the project] and seeks to compensate for such impact by purchasing credits from the ILF Program.

Project Applicant has been authorized according to the following permit(s) [enter regulatory agency name and permit #(s)] to purchase from the ILF Program [enter number of credits and credit type] Credits upon confirmation by the Program Sponsor of credit availability.

Project Applicant desires to purchase from the ILF Program and the Program Sponsor desires to transfer to Project Applicant [enter number of credits and credit type] Credits.

Now, therefore, the Parties agree as follows:

1. The Program Sponsor hereby agrees to transfer to Project Applicant from the ILF Program [enter number of credits and credit type] Credits for the purchase price of [enter purchase price] (“Purchase Price”). This Agreement is expressly conditioned upon the Program Sponsor’s receipt of the Purchase Price for said Credits, in accordance with this Agreement.
2. The sale and transfer of the Credits shall not be construed as a sale or transfer to Project Applicant of a security, license, lease, easement, or possessory or non-possessory interest in real property, nor the granting of any interest in any of the foregoing.

3. The sale and transfer of the Credits shall not obligate Project Applicant to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise make Project Applicant obligated to ensure, or liable for, the success or continued expense or maintenance in perpetuity of the Credits transferred, or the ILF Program. The Program Sponsor shall be solely responsible for satisfying any and all conditions placed on the Credits transferred and the ILF Program.
4. The Credits sold and transferred to Project Applicant shall be non-transferable and non-assignable and shall not be used as compensatory mitigation for any other Project or purpose, except as set forth herein.
5. Project Applicant must make payment of the Purchase Price to Project Sponsor by cashier's check, Automated Clearing House (ACH) payment, or wire transfer (in accordance with written instructions to Project Applicant from Program Sponsor) within thirty (30) days of the date the Parties entered into this Agreement, or this Agreement shall be null and void.
6. Upon receipt of the Purchase Price, Program Sponsor shall effectuate transfer of the Credits specified in Section 1 above by delivering to Project Applicant an executed Bill of Sale in the form attached hereto and marked **Attachment B**. The Program Sponsor shall submit to each member of the ILF Program Interagency Review Team a copy of this Credit Transfer Agreement, the Bill of Sale, the Payment Receipt (**Attachment C**), and an updated credit ledger (**Exhibit B.2**) reflecting the transfer of Credits to the Project Applicant.
7. Once a Credit is transferred, Program Sponsor may cancel a Credit Transfer and allow a Project Applicant to relinquish or return such Credit, subject to an administrative fee, if the Project Applicant's project is not approved or implemented, or if the project is modified to avoid the Impacts for which such Credit was Transferred. Any such relinquishment or return will be subject to IRT reasonable approval and will be entered into RIBITS by the Program Sponsor.

IN WITNESS WHEREOF, the Parties enter into this Agreement on *[date]* as follows:

Clark County (Program Sponsor)

By:	Date
Title	

[Enter name of project applicant] (Project Applicant)

By:

Date

Title

Attachment A Project Description

*[Name of Project (Regulatory permits and permit No's. _____)], Clark County,
Nevada*

[Insert project description, including map showing location of project.]

Attachment B

Bill of Sale Clark County In-Lieu Fee Program

Contract # [ILF Program Transfer Number]

In consideration of \$_____, receipt of which is hereby acknowledged, Clark County (“**Program Sponsor**”) does hereby sell and transfer to _____ (“**Project Applicant**”), _____ Credits, which have been approved by the Sacramento District of the U.S. Army Corps of Engineers (“**USACE**”), Region IX of the U.S. Environmental Protection Agency (“**USEPA**”), U.S. Fish and Wildlife Service (“**USFWS**”), and Nevada Division of Environmental Protection (“**NDEP**”), (jointly referred to as “**Agencies**”) [*add/delete agencies as appropriate*]. Program Sponsor, represents and warrants that the ILF Program is in good standing with the Agencies, has available the specified number of _____ Credits, and has authorization from the Agencies to transfer the Credits to the Project Applicant. Project Sponsor also represents and warrants to the Project Applicant that it has all right, title, and interest in the Credits necessary to transfer them to the Project Applicant.

Dated:

Clark County, Program Sponsor

By:

Title:

Payment Receipt Clark County In-Lieu Fee Program

Project Applicant Information

Name: _____

Address: _____

Telephone: _____

Contact: _____

Project Information

Project Description: _____

Project Location: _____

County/Address: _____

Agency File Numbers(s): _____

Credits Transferred: _____

Payment Amount: _____

Payment Information

Payee: _____

Payer: _____

Amount: _____

Method of payment:

Wire Transfer: _____

Check No. _____

Money Order No. _____

Received by: _____

Date: _____

Name: _____

Exhibit B-2 Clark County ILF Credit Ledger Final

Clark County ILF Credit Ledger Final

Clark County ILF	Permittee Information		Agencies					Credit Type		
Project Proponent	Project Name		USACE File #	NDEP File #	XXX			Credit Transfer Date	Credits Available	Wetland
							Credits Transfer			0.00
Credit Balance										

Exhibit C

Deed of Conservation Easement

APN:

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

[Fill in Grantee Name/Address]

Grantee Name

Grantee Address

City, State ZIP

Attn: _____

Space Above Line for Recorder's Use Only

DEED OF CONSERVATION EASEMENT

[Insert ILF Site Name]

THIS DEED OF CONSERVATION EASEMENT ("Easement"), dated this ____ day of _____, 20__, is made by _____ ("Owner" or "Grantor") and Clark County a political subdivision of the State of Nevada, by and through its Desert Conservation Program ("County" or "Easement Holder" or "Grantee"). The Owner and Easement Holder may be jointly referred to as the "Parties."

RECITALS

- A. _____ [owner/grantor] _____ is the sole owner in fee simple of real property in Clark County, Nevada identified as Assessor's Parcel Number ("APN") _____, consisting of approximately _____ acres, as depicted on Exhibit A ("Property"). The Owner or Grantor hereby grants an Easement to County to use a _____ square foot portion of the Property ("Easement Area"), as depicted in Exhibits B and C.
- B. Clark County is a political subdivision of the State of Nevada and is authorized to hold a perpetual conservation easement for the conservation and protection of natural resources and values of real property in accordance with NRS 111.390 through 111.440 ("Nevada Uniform Conservation Easement Act").
- C. Clark County is one of the permittees of a Section 10 incidental take permit issued by the United States Fish and Wildlife Service pursuant to the federal Endangered Species Act. Clark County is the lead agency and manages regional compliance with the Endangered Species Act by implementing the terms of the permit and its associated Multiple Species Habitat Conservation Plan ("MSHCP"). One of the terms of the permit requires the acquisition of riparian lands to support riparian bird species.

- D. Clark County is the Clark County In-Lieu Fee Program Sponsor and is authorized to sell wetland and riverine/stream credits to compensate for unavoidable impacts to waters of the U.S. pursuant to section 404 of the Clean Water Act.
- E. The Property possesses wildlife and habitat values of great importance to Grantee, the people of the State of Nevada and the people of the United States. The Property provides, or will provide high quality natural, established, restored and/or enhanced habitat for [*specify listed, sensitive, or at-risk plant and/or animal and/or invertebrate species*] and contains, or will contain, [*list habitats; native and/or non-native*], [*include the following phrase only if there are jurisdictional wetlands: and restored, created, enhanced and/or preserved jurisdictional waters of the United States*]. Individually and collectively, these wildlife and habitat values comprise the "Conservation Values" of the Property.
- F. The United States Fish and Wildlife Service (the "USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law. The U.S. Environmental Protection Agency ("USEPA") and U.S. Army Corps of Engineers ("USACE") have jurisdiction over waters of the United States pursuant to the federal Clean Water Act, 33 U.S.C. Section 1251, *et seq.*
- G. This Conservation Easement is granted pursuant to the In-Lieu Fee Enabling Instrument (the "Instrument"), by and between Clark County, acting through its Desert Conservation Program Grantor, and, USACE, USACE File No. [*insert number*], and USEPA, and NDEP, [*insert number*], entered into concurrently with this Conservation Easement, and the Mitigation Plan (the "Mitigation Plan"), Interim Management Plan and Long-Term Management Plan (as applicable, the "Management Plan") created under the Instrument. [*Remove reference to any agency that is not a party*], USACE, NDEP, and USEPA are together referred to in this Conservation Easement as the "Signatory Agencies".
- H. The Parties have the common purpose of protecting the Easement Area in perpetuity by restricting the uses of the Easement Area and continuing only those uses that do not adversely impact the natural values and resources of the Easement Area.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and pursuant to the Nevada Uniform Conservation Easement Act and other applicable provisions of Nevada law, Owner hereby grants and conveys to County a permanent, perpetual Easement over the Easement Area for the purpose of protecting its natural values and resources, and the Parties agree to the following terms and conditions:

1. Owner covenants and agrees to allow the use of the Easement Area for only those activities allowed pursuant to the Mitigation Plan and Management Plan and which do not impair the conservation, protection, restoration, and enhancement of the habitat or Conservation Values on the Easement Area for the purpose of supporting the MSHCP covered species and other flora and fauna indigenous to the Easement Area.
2. County covenants and agrees to use the Easement Area to retain and protect the Conservation Values of the Easement Area, in accordance with the Mitigation Plan and Management Plan which may include the following activities:
 - Monitoring flora and fauna species;
 - Population enhancement of native species;
 - Fire management;
 - Surface disturbances that enhance the quality of wildlife habitat or watershed protection;
 - Permitted or otherwise controlled maintenance of utilities and ancillary structures;
 - Non-manipulative and non-intrusive biological or geological research;
 - Such other activities determined by the County to be necessary to accomplish the Clark County In-Lieu Fee Program.
3. This Easement shall run with the land and encumber the title to the Easement area in perpetuity. The Easement shall bind the Owner and all future owners, tenants, lessees, licensees, occupants, and users of the Property. All subsequent owners of the Property are bound by all provisions of this Easement to the same extent as Owner.
4. Pursuant to the terms of the Nevada Uniform Conservation Easement Act, the Easement Area conserved by this Easement is declared to be relatively natural habitat and open space and may not be converted or directed to any uses other than those provided in this Easement.
5. To protect the Conservation Values of the Easement Area and uphold the conservation purposes of this Easement, Owner conveys to County in perpetuity, the following:
 - a. Right of access to the Easement Area at all times for itself and its successors, assigns, agents, invitees and licensees.
 - b. Right to identify, conserve, and protect the natural values of the Easement Area and advance the conservation purposes of the Easement.
 - c. Right to prevent any use of the Easement Area which County reasonably and in good faith believes will violate, potentially violate, or is inconsistent with the natural values of the Easement.
6. The Grantor and/or Grantee agrees to give written notice to the third-party beneficiaries at least sixty (60) days prior to taking any action to void or modify the deed of conservation

easement, including transfer of title to, or establishment of any other legal claims over the In-Lieu Fee site.

7. Mutual Consideration. Owner agrees to irrevocably and unconditionally convey to County a real property interest in the Easement Area. In exchange, County agrees to utilize the real property interest for the purposes set forth herein. County, through its Board of County Commissioners, may at any time relinquish the property rights obtained herein in accordance with Nevada Revised Statutes.
8. Notices. Any notices or other communications related to this Easement shall be in writing and shall be deemed to have been made or given only as follows: (a) when hand delivered; (b) one business day after delivery to a nationally-recognized overnight courier service for next business day delivery; or (c) three business days after certified mailing via United States Mail with return receipt requested, in all cases addressed to the Parties at their respective addresses as follows:

To Grantor: Grantor Name
 Attn:
 Address
 City, State ZIP

To Grantee: Clark County Real Property Management
 Attn: Director
 500 S Grand Central Pkwy, 4th Floor
 Las Vegas, NV 89155-1825

With Copy to: Clark County Department of Environment and Sustainability
 Attn: MSHCP Plan Administrator
 4701 West Russell Rd.
 Las Vegas, Nevada 89018

[Remove/modify the following blocks as appropriate third-party beneficiaries to the CE.]

To USFWS: United States Fish and Wildlife Service
 [Field Office name] Fish and Wildlife Office
 Attn: Field Supervisor

[FIELD OFFICE ADDRESS]

To USACE: U.S. Army Corps of Engineers
 Sacramento District
 Attn: Chief, Regulatory Division
 [DISTRICT OFFICE ADDRESS]

To USEPA: U.S. Environmental Protection Agency, Region IX
 Attn: Director, Water Division

75 Hawthorne Street
San Francisco, CA 94105

To NDEP: Nevada Division of Environmental Protection
Bureau of Water Quality Planning
Attn: Administrator, Nevada Division of Environmental
Protection
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701

9. Breach, Restoration, and Remedies

- a. Right to Restoration. The County shall have the right to enforce the restoration of the Easement Area that are adversely impacted by Owner's activities that are materially inconsistent with the natural values of the Easement. Such restoration shall be as near as reasonably possible to the condition of the Easement Area that existed prior to such injury.
- b. Right to Recover Damages. In the event of a violation of this Easement, in addition to the other remedies provided for in this Easement and any other remedies available in law or equity, County shall also be entitled to recover all damages necessary to place County in the same position that it would have been before the violation, including, but not limited to, the costs of restoration of the Easement Area.

10. Miscellaneous

- a. No Public Right or Dedication. Nothing contained in this Easement shall be deemed to be a gift or dedication of all or any part of the Easement Area to the public.
- b. Prohibited Uses. To the extent allowed by law, the County may prohibit any activity on or use of the Easement Area inconsistent or incompatible with the purposes of this Easement, including but not limited to the following:
 - i. All motorized vehicle activity;
 - ii. All military maneuvers, clearing for agriculture, landfills, and any other surface disturbance that diminishes the capacity of the land to support the southwestern willow flycatcher and yellow-billed cuckoo, and other native flora and fauna;
 - iii. Grazing;
 - iv. Commercial flora harvest and fauna collection;
 - v. Non-commercial vegetation harvest;

- vi. Non-commercial collection of biological specimens;
 - vii. Dumping, refuse disposal, littering and use of herbicides or biocides;
 - viii. Depositing of captive or displaced other animals, except pursuant to translocation projects authorized by the USFWS;
 - ix. Uncontrolled dogs out of vehicles;
 - x. Discharge of firearms;
 - xi. Hunting or trapping;
 - xii. Planting, introduction of or any non-indigenous vegetation, flora or fauna.
 - xiii. Any pedestrian activity including walking, biking, hiking or any other activity that would impact the Easement Area.
- c. Severability. If any provision of this Easement shall be invalid or unenforceable for any reason and to any extent, the remainder of this Easement shall not be affected thereby but shall be enforced to the greatest extent permitted by law.
- d. No Waiver. No failure or delay of either Party in the exercise of any right given to such Party hereunder or by law shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other further exercise thereof or of any other right. The waiver by a Party of any breach of any provision hereof shall not be deemed to be a waiver of any subsequent breach thereof, or of any breach of any other provisions hereof.
- e. No Merger. The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement containing the same protections embodied in this Conservation Easement shall be recorded against the Property.
- f. Construction and Governing Law. This Easement shall be enforced, governed by, and construed in accordance with the laws of the State of Nevada.
- g. Third-Party Beneficiary. Grantor and Grantee acknowledge that the USFWS, USEPA, NDEP, and USACE are third party beneficiaries of this Easement with the right of access to the Property, including, without limitation, the right to enter the Property and the right to enforce all the provisions of the Easement and all other rights and remedies of the Grantee under this Easement.

- h. Each Party warrants to the other that they have the authority and capacity to perform the provisions hereof.
- i. The Parties to this Easement, and each of them, acknowledge that: a) this Easement and its reduction in final written form are a result of good faith negotiations between the Parties to this Easement through their respective attorneys; b) the Parties to this Easement and their attorneys have reviewed and examined this Easement before execution by said Parties or any of them; and c) the rule of construction that ambiguities are to be construed against the drafting Party will not be employed in the interpretation of this Easement.
- j. Entire Agreement. This Easement, together with the exhibits attached hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior agreement and negotiations, which shall not, in part or whole, be deemed to have merged into this Easement.
- k. Exhibits. Each exhibit referred to herein and attached hereto is an integral part of this Easement and is incorporated herein by this reference.
- l. Amendment. This Easement may be amended from time to time with IRT approval and only by a mutually agreed upon written document by the Parties recorded in the Official Records of the Clark County Recorder.
- m. Perpetual. This Easement declared herein is appurtenant and shall run with the Easement Area and shall continue perpetually without limitation, defeat, diminutions, discharge, lapse of time or change of ownership.
- n. Binding. This Easement shall be binding upon and inure to the benefit of the County, its successors, and assigns.
- o. Indemnification. Owner agrees to hold harmless, indemnify and defend the County, its agents, officer, and employees against any and all claims or liability of any kind, including liability for attorney's fees and other litigation costs and expenses, for any personal injury, wrongful death, or damage to the Property arising out of County's or Owner's use of the Property or Easement Area, occurring in, on or in the vicinity of the Property and Easement Area, including the adjacent streets or sidewalks or any part thereof, due to the alleged negligence, fault, act or omission of the County, its agents, officers, employees and invitees or the Owner.
- p. Effective Date. This Easement shall be effective when signed by both Parties.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Grantor and Grantee have entered into this Easement effective as of the day and year first above written

GRANTOR:

[NAME]

By: _____
[NAME]

GRANTEE:

COUNTY OF CLARK, a political
subdivision of the State of Nevada

By: _____
_____, Director of Real Property
Management

APPROVED AS TO FORM:

By:

_____, County Counsel

[Notary page follows]

STATE OF NEVADA) COUNTY OF CLARK}

This instrument was acknowledged before me on _____, 20__ by
_____ as Director of Real Property Management Department of
County of Clark, Nevada.

Signature of Notarial Officer

Notary Seal area →

STATE OF NEVADA) COUNTY OF CLARK}

This instrument was acknowledged before me on _____, 20__ by
_____ as

Signature of Notarial Officer

Notary Seal area →

Exhibit D

Compensation Planning Framework

Contents

D.1	Geographic Service Areas	D-1
D.2	Threats to Aquatic Resources	D-4
D.3	Historic Aquatic Loss	D-5
D.4	Current Aquatic Resource Conditions	D-6
D.5	Aquatic Resource Goals and Objectives	D-7
D.6	Prioritization Strategy for Selecting, Implementing Compensatory Mitigation	D-8
D.7	Use of Preservation	D-9
D.8	Public and Private Stakeholder Involvement.....	D-9
D.9	Long-term Protection and Management Strategies.....	D-9
D.10	Evaluation and Reporting	D-9
D.11	Description of Individual Service Areas	D-10

Tables

Table 1. Service Areas and HUC-8 Watersheds	D-1
--	------------

Figures

Figure 1. ILF Program Service Areas	D-2
Figure 2. Plan Area Level III Ecoregions	D-3
Figure 3. Service Area 1 – Colorado-Lake Mead Percent Land Cover Composition.....	D-11

D.1 Geographic Service Areas

The In-Lieu Fee (ILF) Program Area is divided into three Service Areas, consistent with the Hydrologic Unit Code (HUC) 6 watershed boundaries up to the limits of Clark County, Nevada. The geographic Service Areas include the incorporated and unincorporated areas of Clark County, Nevada, excluding tribal lands. The ILF Service Areas are based on a combination of ecological and logistical considerations/factors, including consistency with the Clark County Multiple Species Habitat Conservation Plan (MSHCP) and incidental take permit. The Service Areas are depicted in Figure 1. The HUC-8 watersheds occurring in each Service Area are provided in Table 1.

Table 1. Service Areas and HUC-8 Watersheds

Watershed Name	HUC-8
Service Area 1- Colorado-Lake Mead (150100)	
Lake Mead	15010005
Grand Wash	15010006
Lower Virgin	15010010
Muddy	15010012
Meadow Valley Wash	15010013
Las Vegas Wash	15010015
Service Area 2 – Lower Colorado (150301)	
Havas-Mohave Lakes	15030101
Piute Wash	15030102
Service Area 3 - Central Nevada Desert Basins (160600)	
Sand Spring-Tikaboo Valleys	16060014
Ivanpah-Pahrump Valleys	16060015

HUC = Hydrologic Unit Code

In total, ILF Program Area covers approximately 5.2 million acres throughout southern Nevada, the majority of which occurs within the same Level III ecoregion (i.e., Mojave Basin and Range). The ILF Program Area consists primarily of a single Level III ecoregion, based on the ecoregional framework derived from Omernik (1987), as depicted in Figure 2. Ecoregions are areas with shared characteristics of climate, geology, soils, and natural vegetation and denote areas of general similarity in ecosystems and in type, quality, and quantity of environmental resources. The ILF Plan Area is based on areas where the County has jurisdiction and is consistent with previous planning efforts and other resource conservation strategies of the Clark County MSHCP.

The ILF Service Areas are based on the HUC-6 watershed boundaries occurring within the ILF Program Area. The Service Areas are consistent with the watershed approach and balance the need to develop an economically viable ILF Program and the ability to provide mitigation that is proximate and reasonably compensates for adverse environmental impacts across the entire Service Area.

Figure 1 – Clark County ILF Program Service Areas

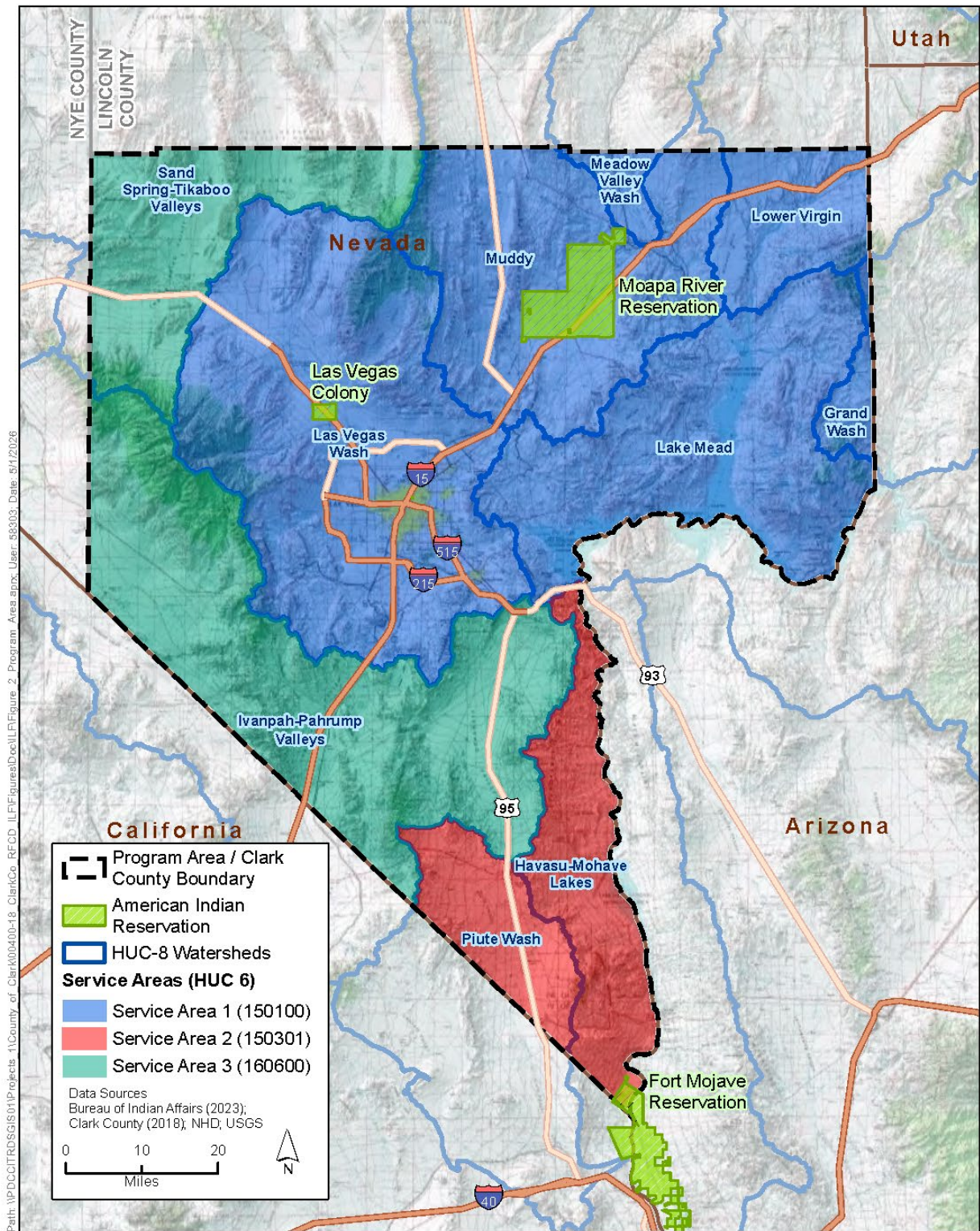
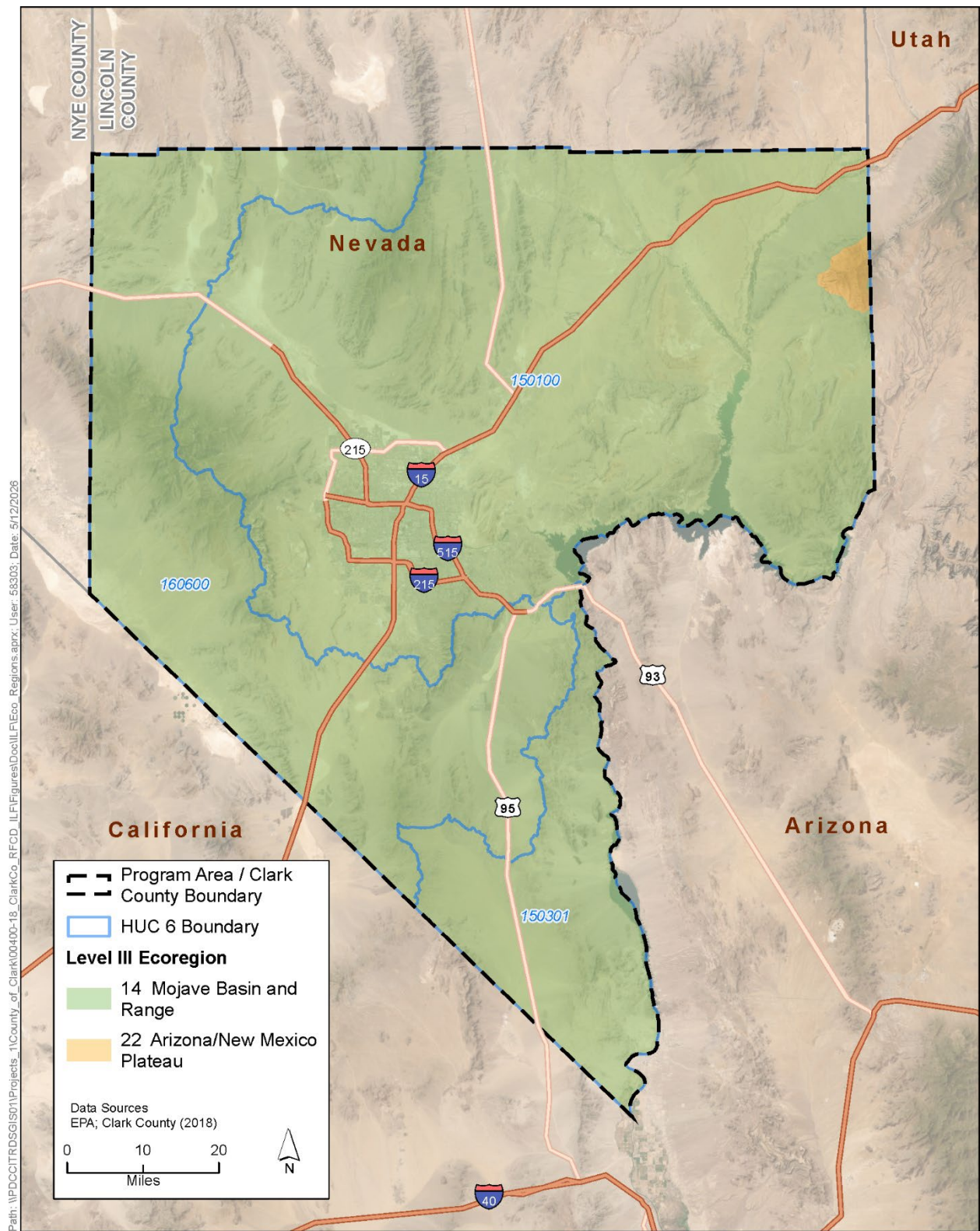


Figure 2 – Plan Area and Service Areas Level III Ecoregions, Clark County ILF Program



D.2 Threats to Aquatic Resources

For more than two decades, Clark County, and specifically Las Vegas Valley, has been one of the fastest growing communities in the nation. Clark County's population is projected to increase by 23 percent (+23%) through the year 2060 (UNLV 2024). Since February 2001, more than 130,000 acres of non-federal land has been developed in Clark County, and there are plans to amend the Clark County MSHCP and incidental take permit to allow for an additional 200,000 acres of development over the next 50 years (K. Goodwin personal communication April 23, 2025). Additionally, the U.S. Army Corps of Engineers (USACE) took action on approximately 425 permit applications in Clark County between 1998 and 2003, and between 2003 and 2004 Clark County's population increased by 4.8% (NNHP 2006). Given that population growth accelerates residential, commercial, and industrial land development, it is expected that substantial direct and indirect impacts on aquatic resources will occur. This rapid growth will primarily directly impact desert washes that are typically regulated as Waters of the U.S. Even if land development occurs in floodplains and on slopes, it can profoundly affect watershed hydrology and riparian vegetation. With the expansion of impervious coverage brought on by buildings, roads, and compacted soils, less water infiltrates and recharges groundwater bodies, which intensifies local and downstream flooding but diminishes subsurface water reaching local waterways. The altered hydrology of urbanized watersheds concentrates runoff, which impacts stream channel stability and water quality, and increases sediment loads, while also increasing the levels of nutrients, pesticides, petrochemical products, heavy metals, harmful bacteria, and salts.

Throughout Clark County, water development, water use (including groundwater), and flood control threaten aquatic resources (RECON 2000). These multipurpose water projects alter water regimes causing changes in water flows, including increasing depths to groundwater, indirectly affecting riparian areas and plant communities. Wetland and riparian quantity and quality are threatened by urban and suburban growth and expansion in the Las Vegas Valley, as well as agriculture, domestic livestock grazing, non-native and invasive vegetation, and noxious weeds along the Virgin and Muddy Rivers (City of Las Vegas 2012, NDNH 2023a, Virgin River Coalition [VRC] 2019, Clark County 2017a). Non-native plant species, such as saltcedar (*Tamarix ramosissima*), impair floodplain function and flow regimes by armoring banks and causing streams to narrow, as well as outcompeting native vegetation along the Virgin and Muddy Rivers (NNHP 2006, VRC 2019). Other substantial impacts include flood management activities, linear transportation projects, and renewable energy projects (Bureau of Land Management, Southern Nevada District Office 2015).

In addition to the anthropogenic threats identified above, the onset and persistence of drought conditions in southern Nevada will likely result in compounding effects on existing aquatic resources. Beginning in early 2000 and continuing today, snowfall and rainfall within the region has been variable and unpredictable. Drought conditions have persisted in the region, resulting in declines in surface water and groundwater levels (Southern Nevada Water Authority 2017).

As discussed above, streams, floodplains, and riparian habitats are expected to be heavily impacted by the projected growth and development within the Plan Area. The ILF Program would help offset these impacts through identification of priority mitigation sites based on a watershed approach and targeting vulnerable resource types. Mitigation projects are

anticipated to be centralized near the Muddy and Virgin Rivers, as appropriate and feasible. The Lower Virgin River watershed provides riparian habitat for approximately half of the sensitive invertebrate, plant, and animal species in Clark County (VRC 2019). The desert riparian watersheds of the Muddy and Virgin Rivers are identified as unique habitats and resources addressed by the Clark County MSHCP. The Biological and Conference Opinion (U.S. Fish and Wildlife Service 2000) for the Clark County MSHCP was issued on the basis that private land within these riparian watersheds would be acquired for conservation of covered species. These lands provide a unique opportunity for further establishment and restoration of aquatic resources to offset impacts on waters of the U.S. in other parts of Clark County. Impacts on waters of the U.S. are anticipated to occur primarily in the Las Vegas Valley, where there is less opportunity for mitigation. Extensive efforts in the Las Vegas Wash have been and continue to be effective to ensure the quality of waters entering the Colorado River from Clark County meet national and local water quality standards. The Las Vegas Wash Coordination Committee has overseen the restoration and enhancement of resource values along the Las Vegas Wash since 1998 through implementation of the Las Vegas Wash Comprehensive Adaptive Management Plan. As of 2019, all 21 proposed erosion control structures have been completed on the Las Vegas Wash, and over 525 acres of land have been revegetated (Las Vegas Wash Coordination Committee 2019). By concentrating mitigation in the Virgin and Muddy Rivers, the ILF Program will provide needed resources to essential desert riparian and wetland habitat, as appropriate and feasible.

D.3 Historic Aquatic Loss

Nevada is the driest state in the U.S., with wetlands and other aquatic resources covering less than one percent (1%) of the state (U.S. Geological Survey 1996). Aquatic resources are unevenly distributed across the state's 17 counties. The unevenness reflects differences in surface area, precipitation, topographic relief, regional drainage, and water development and use. It is estimated that, from the 1780s to the 1980s, Nevada lost approximately fifty-two percent (52%) (approximately 251,000 acres) of its historic wetland acreage (including wet meadows, seeps, springs, playas, riparian areas, and perennial, intermittent, and ephemeral washes/streams) (Dahl 1990). Historic losses of aquatic resources have been due to diversion of water for agricultural and urban purposes, filling and draining of wetlands for development, and stream channelization for flood control purposes.

In southern Nevada, dry desert streams and lowland riparian habitat in Las Vegas Wash, along the Virgin and Muddy Rivers, and along the Colorado River have been lost due to development and other anthropogenic impacts (RECON 2000, Virgin River Coalition 2019, Clark County 2017a). Native riparian plant communities have been replaced by nonnative annual grasses, noxious weeds, and invasive saltcedar (Bureau of Land Management, Southern Nevada District Office 2015). Aquatic resource loss from land conversion and reclamation, water diversions and dams, stream channel alteration, sedimentation, and stray cattle has been significant since early immigrants settled throughout southern Nevada in the early 1800s (NDNH 2023, Bureau of Land Management, Southern Nevada District Office 2015). Deterioration and loss of aquatic habitat, along with water quality impairments and invasive aquatic species, have threatened or eradicated native aquatic species (Bureau of Land Management, Southern Nevada District Office 2015).

The state of Nevada does not have a comprehensive wetland inventory program; therefore, there is a lack of information and analytical framework to accurately estimate current rates of loss or to reliably assess where impacts occur, which resources are affected, and how serious the impacts are (NDNH 2023). However, as noted above, Clark County, and specifically the Las Vegas Valley, has been one of the fastest growing communities in the nation. Activities associated with urban and rural land development impacting aquatic resources include construction of roads and highways, residential and commercial subdivisions, industrial sites, linear utility facilities, mining operations, irrigation ditches, dams/reservoirs, channel realignment or relocations, water recreation, and bridges and other water passage structures. Based on a comparison of 2001 and 2019 development disturbance layers for the Las Vegas Valley and the city of Mesquite, approximately 227 linear miles of surface waters, as identified by the National Hydrography Dataset, were impacted between 2001 and 2019.

D.4 Current Aquatic Resource Conditions

The Las Vegas Valley is an externally draining basin. The general drainage pattern of the corridor includes collection of precipitation runoff from tributaries located on alluvial fill from the Sheep Mountains and Spring Mountains, and alluvial fans north of the city of North Las Vegas to the Upper Las Vegas Wash. These flows are then conveyed to the southeast end of the valley and eventually to the Las Vegas Wash and the Colorado River Basin via Lake Mead (Dames & Moore 1991). The Las Vegas Wash is the primary conveyance corridor of surface water runoff for the Las Vegas Valley. The major tributaries to the Las Vegas Wash include Range Wash, Northern Las Vegas Wash, Flamingo/Tropicana Wash, Duck Creek/Blue Diamond Pittman Wash, and the C-1 channel. These tributaries are ephemeral, except for nuisance flow draining from adjacent developments.

Surface hydrology of the Colorado River Basin is marked by complex flow patterns in the alluvial fans of the valley, with areas of concentrated but frequently shifting flows. The dynamic drainage pattern, topography, and soils of the alluvial fan generally are more conducive to sheeting runoff than to channelized flow. Consequently, pronounced gullies and ravines rarely develop, and flash floods are a recurrent problem. Las Vegas Wash is the only perennial stream in the valley and one of few in the entire county. Las Vegas Wash is supplied with water from runoff channeled during storm events and water from regional wastewater treatment facilities. The other primary surface waters are the Virgin River, Muddy River and Muddy Springs, Colorado River, Lake Mead, and Lake Mojave.

The Virgin River is a perennial tributary of the Colorado River. From its headwaters in the mountains of southwestern Utah, it flows through northwest Arizona and southern Nevada before emptying into Lake Mead (Clark County 2017a). It is a rare river in that it is one of the few rivers in the southwest U.S. with no major dams and a semi-natural flow regime (Clark County 2017a, VRC 2019). The Virgin River's flashy and dynamic flow regime, yet minimal extreme flood events, is only altered by diversions at Mesquite and Bunkerville (VRC 2019).

The Muddy River is also a Colorado River perennial tributary. It begins in thermal springs approximately 60 miles northeast of Las Vegas and flows 26 miles before emptying into

Lake Mead (Clark County 2017a). Before the Colorado River was impounded to form Lake Mead, the Muddy River met the Virgin River before they both entered the Colorado River.

Additionally, a recent NDEP report found that 37% of 699 streams, wetlands, and lakes tested throughout the state do not meet water quality standards (NDNH 2023). Clark County has 53,746 acres of open water, 22,948 acres of desert riparian, 19,130 acres of dry lake beds/playa ecosystems (Clark County 2017b), and 750 linear wetland miles (NNHP 2006). There are 15 waters or water segments listed on the State of Nevada 303(d) impaired waters list within Clark County. These include the Colorado River, Las Vegas Creek and Wash, Muddy River, Pittman Wash, Sloan Channel, Flamingo Wash, Virgin River, and Duck Creek. The 303(d)-listed waters are listed as impaired for one or more of the following parameters: temperature, boron, fluoride, selenium, total dissolved solids, *E. coli*, dissolved oxygen, total phosphorus, fecal coliform, iron, and pH. Impaired uses include aquatic life, irrigation, watering of livestock, and recreation involving contact with water (Clark County 2017b).

D.5 Aquatic Resource Goals and Objectives

The primary goals and objectives for the Clark County ILF Program are as follows:

- Provide an effective regional and watershed-based compensatory mitigation program for unavoidable impacts on Waters of the U.S. permitted by the USACE and the Nevada Division of Environmental Protection (NDEP) in Clark County.
- Consolidate mitigation funds to develop more ecologically valuable mitigation projects that sustain aquatic resource functions and values consistent with the watershed approach and the goals of the Clark County Master Plan, Lower Virgin River Integrated Watershed Plan, and the Nevada Wetlands Priority Conservation Plan (Clark County 2021, Virgin River Coalition 2019, NDNH 2023a).
- Encourage the development of riverine, wetland, riparian, and upland buffer habitats that help to improve wildlife connectivity and water quality of impaired waters, such as the Muddy and Virgin Rivers (Clark County 2021).
- Identify opportunities to preserve intact riverine systems and/or restore or re-establish riverine systems within the Plan Area to improve the ecological integrity of these systems.
- Facilitate reasonable development and streamline the decision-making process by providing an alternative to permittee-responsible mitigation by constructing mitigation projects that meet the current and future demand for mitigation credits in Clark County.
- Ensure the sound and perpetual management of the mitigation governed by this ILF Program through collaboration between the Sponsor, USACE, NDEP, and all affiliated agencies and organizations, including maintenance and management of a program fund designed to cover the costs of this ILF Program.

In addition to the overall goals and objectives of the Clark County ILF Program, the overarching aquatic resource goal is to offset via acreage and/or condition permitted aquatic resource impacts located within the proposed ILF Program Plan Area to ensure no net loss of

aquatic resource functions. Mitigation sites will be identified based on consideration of watershed needs, compatibility with current and future land uses, and responsible water resources development. A combination of aquatic resource establishment (creation), rehabilitation and re-establishment (restoration), and enhancement will be provided in order to maximize mitigation opportunities and ensure the waters entering the Colorado River from Clark County meet national and local water quality standards (Clark County 2021). Additionally, the Sponsor seeks to minimize temporal losses of functions and services by implementing mitigation projects in advance of the permitted impacts to the maximum extent practicable. Specific goals and objectives (including but not limited to identification of mitigation type, aquatic resource types, and acreages) for each mitigation project under the ILF Program will be outlined in the project-specific development plan.

Finally, the ILF Program goals and objectives align Compensatory Mitigation with the following Clark County MSHCP conservation goals and objectives:

- Identification and evaluation of habitats with significant potential for enhancement and restoration.
- Provision for long-term protection of habitats and species on a regional basis with a focus on source population, reduction of threats and/or impacts on key conservation areas, and enhancement of connectivity between conservation areas.
- Comprehensive and coordinated mitigation for species and habitat impacts as a substitute for project-by-project evaluation and mitigation.

D.6 Prioritization Strategy for Selecting, Implementing Compensatory Mitigation

The Nevada Wetland Priority Conservation Plan (NNHP 2006) and Update to the Nevada Priority Wetlands Inventory (NDNH 2023b) provides an index of priority wetland areas that are identified in numerous wetlands and related conservation plans. Based on the index, the following areas have been identified as priority wetland areas in Clark County: Lake Mead National Recreation Area (NRA), Las Vegas Valley/Wash, Moapa Valley (Muddy River), Spring Mountains NRA, and the Virgin River Valley. The prioritization strategy for the ILF Program will be to identify project sites within or adjacent to the priority areas that have the highest habitat value for conservation and activities management. In general, compensatory mitigation would be located in areas with the highest likelihood of successfully replacing lost functions and services while taking into consideration hydrology, trends in land use, and compatibility with surrounding current and future land uses.

Areas acquired for compensatory mitigation within the Plan Area will focus on large scale restoration and establishment projects that address the needs of the Plan Area and will be further prioritized based on the following:

- Location within or near priority wetland areas as identified in the 2006 Nevada Wetlands Priority Conservation Plan (NNHP 2006) and/or Nevada Priority Wetlands Inventory (NDNH 2023b), or any updates thereto;

- Whether the type of aquatic resource proposed for mitigation would help sustain and improve the overall watershed profile (e.g., abundance, diversity, condition of aquatic resources) of the watershed;
- Whether the mitigation project will result in functional or conditional lift (e.g., net gains) in aquatic resource functions and services;
- Whether the mitigation project is contiguous to existing preserves or lands under conservation easements;
- Whether the project would connect to existing stream network and/or wetland complex such that the mitigation site would not be ecologically isolated; and
- Whether the project would have onsite and offsite hydrological conditions that ensure the mitigation site can be maintained and is self-sustaining.

A site evaluation form, provided as Attachment 1 to this exhibit will be completed to demonstrate consistency of the ILF Site with the prioritization strategy and ILF Program goals and objectives.

D.7 Use of Preservation

For impacts on aquatic resources within USACE jurisdiction, preservation may be utilized as a method of compensatory mitigation when the five factors in the Mitigation Rule are met (33 CFR 332.3(h)). Preservation can be credited by discretion if it is associated with a larger complex of mitigation areas (restoration and/or enhancement projects). Additionally, landscapes that contain sensitive ecological features (endangered species, wetlands, or intact riparian corridors) with established natural processes should be protected (preserved) in perpetuity for the cumulative benefit of the ecosystem.

D.8 Public and Private Stakeholder Involvement

The ILF Program is designed to involve partners such as government entities, private entities, and non-profit conservation organizations in its implementation. Such stakeholder involvement will be critical to the success of the ILF Program. The regulatory agencies—including the USACE, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service (USFWS), and the NDEP, as represented by the Interagency Review Team (IRT)—are engaged in the development, review, and approval process of the ILF Program and also have jurisdiction over and substantial knowledge about the local environment and aquatic resources this program addresses. If approved, the ILF Program will require the ongoing, active involvement of the IRT.

D.9 Long-term Protection and Management Strategies

The ILF Program provides for the long-term preservation and management of the mitigation sites through direct acquisition of land and/or conservation easements or other appropriate

protection mechanisms. The County may work with other partners who will own and manage the land in cooperation with the IRT and County. Each mitigation project covered by the ILF Program will meet the appropriate ownership and stewardship requirements to ensure its long-term protection pursuant to the Mitigation Rule.

D.10 Evaluation and Reporting

The Sponsor proposes to meet with the IRT once annually to report on progress toward achieving the ILF Program's goals and objectives. A formal ILF Program monitoring report will be generated and submitted to the IRT annually. The Compensation Planning Framework is intended to be a living document that is evaluated periodically, updated and refined as necessary to incorporate new information and stakeholder participation. Potential updates to the Compensation Planning Framework will be presented to the IRT at the annual meeting.

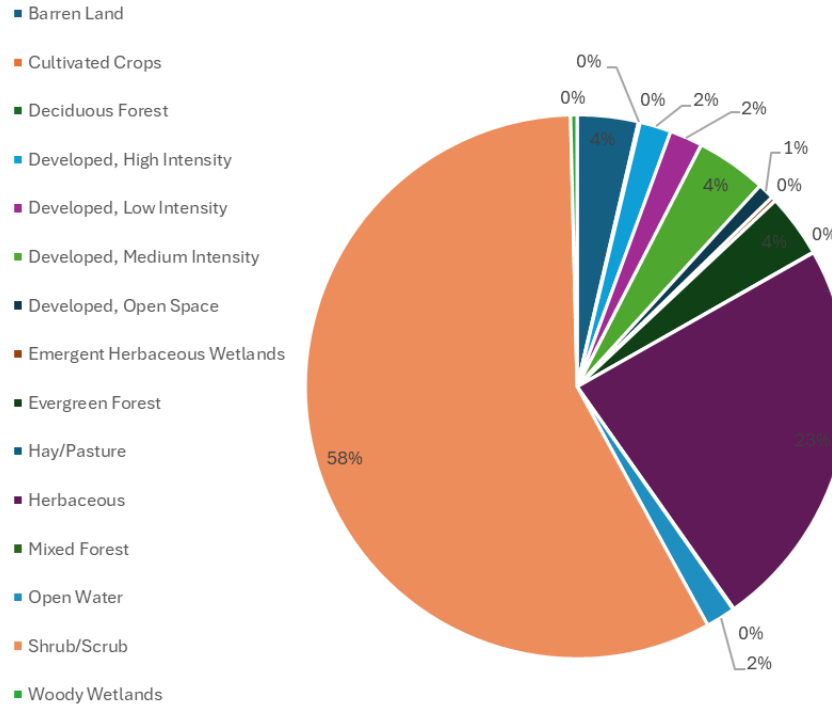
D.11 Description of Individual Service Areas

The remaining sub-sections provide a description of and the planning framework for each services area.

D.11.1 Service Area 1 – Colorado-Lake Mead

Service Area 1 is approximately 3,061,576 acres and includes six HUC-8 watersheds: Lake Mead (15010005), Grand Wash (15010006), Lower Virgin (15010010), Muddy (15010012), Meadow Valley Wash (15010013), and Las Vegas Wash (1501015). The service area includes Las Vegas Wash, Muddy River, Virgin River, Lake Mead, Flamingo Wash, and California Wash. Medium and high intensity development is concentrated in the Las Vegas Valley with more than half of the service area consisting of shrub/scrub land cover. The shrub/scrub land cover is defined as an area dominated by shrubs, which are woody plants less than 5 meters tall. Land cover composition for this service area is depicted in Figure 3 (USGS 2021).

Figure 3 – Service Area 1 – Colorado-Lake Mead Percent Land Cover Composition



Historic Aquatic Loss

Residential and commercial development as well as water development and flood control projects have resulted in the loss and degradation of wetland and stream/riverine resources in the Colorado-Lake Mead Service Area (Service Area 1). As discussed above, the state of Nevada does not have a comprehensive wetland inventory program; therefore, there is a lack of information and analytical framework to accurately estimate current rates of loss or to reliably assess where impacts occur, which resources are affected, and how serious the impacts are (NDNH 2023a). However, based on a comparison of the 2001 and 2021 National Land Cover Dataset the land coverage of woody wetlands, emergent herbaceous wetlands, and open water decreased by nearly one percent or approximately 27,500 acres (USGS 2001 and 2021).

Aquatic Resource Threats and Conditions

The continued rapid population growth in this service area will primarily directly impact desert washes that are typically regulated as Waters of the U.S. Even if land development occurs in floodplains and on slopes, it can profoundly affect watershed hydrology and riparian vegetation. With the expansion of impervious coverage brought on by buildings, roads, and compacted soils, less water infiltrates and recharges groundwater bodies, which intensifies local and downstream flooding but diminishes subsurface water reaching the local

waterways.

In the Las Vegas Valley wetland and riparian quantity and quality are threatened by urban and suburban growth and expansion. In the Virgin and Muddy Rivers, it is threatened by agriculture, domestic livestock grazing, non-native and invasive vegetation, and noxious weeds (City of Las Vegas 2012, NDNH 2023a, VRC 2019, Clark County 2017a). Non-native plant species, such as saltcedar, impair floodplain function and flow regimes by armoring banks and causing streams to narrow, as well as outcompete native vegetation along the Virgin and Muddy Rivers (NDNH 2023a, VRC 2019). Other substantial impacts include flood management activities, linear transportation projects, and renewable energy projects (Bureau of Land Management, Southern Nevada District Office 2015).

Prioritization Strategy

ILF Project prioritization is generally outlined for all aquatic resource service areas in the overall compensatory planning framework. Consistent with the overall compensatory planning framework, ILF projects in the service area will focus on prioritizing mitigation projects in or near wetlands and stream/riverine systems identified as rare, vulnerable, or important by resource managers, stakeholders, and/or agencies (NDNH 2023a and Abele 2011). Extensive efforts in the Las Vegas Wash have been and continue to be effective to ensure the quality of waters entering the Colorado River from Clark County meet national and local water quality standards. The Las Vegas Wash Coordination Committee has overseen the restoration and enhancement of resource values along the Las Vegas Wash since 1998 through implementation of the Las Vegas Wash Comprehensive Adaptive Management Plan. As of 2023, the 22 Las Vegas Wash erosion control projects transitioned from capital improvements construction to long-term operations plan have been completed on the Las Vegas Wash, and over 615 acres of land have been revegetated (Las Vegas Wash Coordination Committee 2023).

While the ILF Program will continue to look for compensatory mitigation opportunities in the Las Vegas Valley due to ongoing development pressure, ILF Projects are anticipated to be centralized near the Muddy and Virgin Rivers. ILF Projects that improve in-stream temperatures, decrease loading of total phosphorous, remove saltcedar, and improve beneficial uses will be prioritized. The Lower Virgin River watershed provides riparian habitat for approximately half of the sensitive invertebrate, plant, and animal species in Clark County (VRC 2019). The desert riparian watersheds of the Muddy and Virgin Rivers are identified as unique habitats and resources addressed by the Clark County MSHCP. By concentrating mitigation in the Virgin and Muddy Rivers, the ILF Program will provide needed resources to essential desert riparian and wetland habitat that has otherwise been degraded or that has lacked funding for restoration activities.

D.11.2 Service Area 2 – Lower Colorado

Service Area 2 is approximately 575,000 acres and includes portions of 2 HUC-8 watersheds: Havasu-Mojave Lakes (1030101) and Piute Wash (1030102). The service area includes the

headwaters of Piute Wash, the Colorado River downstream of Hoover Dam, and Lake Mohave. Piute Wash flows to the south into California and then east where it converges with the Colorado River in Arizona. Approximately 80 miles of the Colorado River, including Mohave Lake, occur in Service Area 2. The Colorado River flows downstream (south) of Hoover Dam into Lake Mohave and downstream of Davis Dam into Arizona. Approximately 93 percent of the service area is characterized as shrub/scrub land cover, which is defined as an area dominated by shrubs, which are woody plants less than 5 meters tall. Approximately 3 percent of the service area is open water and woody wetlands associated with the Colorado River and Lake Mojave at the Nevada-Arizona border. Less than one percent of the service area is developed (low, medium, or high intensity). Development occurs along existing linear transportation infrastructure and downstream of Davis Dam in the unincorporated community of Laughlin (National Land Cover Database [NLCD] 2021).

Historic Aquatic Loss

Based on a comparison of the 2001 and 2021 National Land Cover Dataset the land coverage of woody wetlands and open water decreased by approximately 700 acres; however emergent herbaceous wetlands increased by approximately 280 acres (USGS 2001 and 2021). The net loss of more than 400 acres of aquatic resources is due to the increase of developed land classifications (high, medium, and low intensity) and developed open space, defined as lawn grasses and impervious surfaces associated with golf courses, or large-lot single family housing units (NLCD 2021).

Aquatic Resource Threats and Condition

The rate of development in this service area is substantially less than Service Area 1. The primary threats to aquatic resources in Service Area 2 are dams that alter flows and inhibit downstream sediment transport, water quality degradation, and changes in climate and increased variability. Current predictions suggest that Nevada is going to be drier and hotter. Additionally, seasonable variability of precipitation is likely to increase. Average annual temperature is projected to increase by 4 to 6°F and average annual precipitation is projected to decrease by up to 5 percent between 2030 and 2059 in the service area (NDNH 2023a). The onset and persistence of drought conditions in southern Nevada will likely result in compounding effects on existing aquatic resources. Beginning in early 2000 and continuing today, snowfall and rainfall within the region has been variable and unpredictable. Drought conditions have persisted in the region, resulting in declines in surface water and groundwater levels (Southern Nevada Water Authority 2017).

Prioritization Strategy

Given the slower pace of development in Lower Colorado Service Area (Service Area 2) the need for compensatory mitigation in the service area will be less. As such the Program Sponsor is not seeking Advance Credits in the service area. ILF Project prioritization is generally outlined for all aquatic resource service areas in the overall compensatory planning framework. Consistent with the overall compensatory planning framework, ILF projects in

the service area will focus on prioritizing mitigation projects in or near wetlands and stream/riverine systems identified as rare, vulnerable, or important by resource managers, stakeholders, and/or agencies (NDNH 2023a, NDNH 2023b, and Abele 2011). Priority will also be given to vulnerable headwaters, wetlands, and riparian corridors (NDNH 2023a), areas facing increased land use pressure from urbanization, wildfire, or resource development, and regions with potential environmental co-benefits such as groundwater recharge or wildlife resilience. Finally, given the service area is likely to be disproportionately affected by climate change and existing wetlands and stream/riverine areas will decline due to persistent, drier conditions, ILF Projects will be prioritized based on their ability to provide social and economic benefits, such as water conservation, pollution control and recreation as well as ILF Project designs and locations to ensure their long-term sustainability.

D.11.3 Service Area 3 – Central Nevada Basin

Service Area 3 is approximately 1,541,085 acres and includes portions of 2 HUC-8 watersheds: Sand Spring-Tikaboo Valleys (16060014) and Ivanpah-Pahrump Valleys (16060015). The Central Nevada Basin is a drainage area characterized by an internal drainage system where water evaporates, sinks underground, or collects in lakes, with no outlet. The service area does not include any major rivers, however it does include several dry lakes including Mursha, Jean, Roach, Dog Bone Dry Lakes or playas and Willow Creek, Cold Creek, Wheeler Wash, Lovell Wash and Potosi Wash. Approximately 85 percent of the service area is characterized as shrub/scrub land cover, which is defined as an area dominated by shrubs, which are woody plants less than 5 meters tall. Another 8 percent of the service area is classified as evergreen forest dominated by trees generally greater than 5 meters tall and approximately 3.5 percent is classified as herbaceous. Less than one percent of the service area is developed (high, medium, and low intensity) (NLCD 2021).

Historic Aquatic Loss

Aquatic resources in the Central Nevada Basin Service Area are primarily desert washes and dry desert lakes. Based on a comparison of the 2001 and 2021 National Land Cover Dataset the land coverage of emergent herbaceous wetlands and open water decreased by approximately 110 acres throughout the service area (USGS 2001 and 2021). The acreage of woody wetlands nearly doubled from 69 acres in 2001 to 129 acres in 2021. The net loss of approximately 40 acres of aquatic resources is likely due to the increase of developed land classifications (high, medium, and low intensity), developed open space, and an increase in herbaceous land cover classification (NLCD 2021).

Aquatic Resource Threats and Condition

Invasive species are a threat to wetlands and stream/riverine resources in the Central Nevada Basin Service Area. Cheatgrass (*Bromus tectorum*) and tall white top (*Lepidium latifolium*) dominate native plant communities and continue to spread across the valley slopes and bottoms throughout the Central Nevada Basin, displacing native grasses and forbs and

blocking the establishment of shrub and woodlands on burned sites after wildfire. Tall white top (or perennial pepperweed) eventually forms a monoculture where it invades wetland and riparian areas. Another non-native invader is saltcedar. It has replaced riparian trees and shrubs in portions of all the major and minor river basins. Once established saltcedar increases soil salinity, creating conditions that most riparian natives cannot tolerate. Other invasive plant species frequenting Nevada wetlands are Russian olive (*Elaeagnus angustifolia*), purple loosestrife (*Lythrum salicaria*), diffuse knapweed (*Centaurea diffusa*), Russian knapweed (*Centaurea repens*), and hoary cress (*Cardaria draba*) (NNHP 2006).

Prioritization Strategy

Like Lower Colorado Service Area (Service Area 2) the rate of development in the Central Nevada Basin Service is much slower. Based on an analysis of mitigation amount and frequency of need, the need for compensatory mitigation in the service area is expected to be minimal. As such the Program Sponsor is not seeking Advance Credits in the service area.

ILF Project prioritization is generally outlined for all aquatic resource service areas in the overall compensatory planning framework. Consistent with the overall compensatory planning framework, ILF projects in the service area will focus on prioritizing mitigation projects in or near wetlands and stream/riverine systems identified as rare, vulnerable, or important by resource managers, stakeholders, and/or agencies (NDNH 2023a, NDNH 2023b, and Abele 2011). Priority will also be given to vulnerable headwaters, wetlands, and riparian corridors (NDNH 2023a), areas facing increased land use pressure from urbanization, wildfire, or resource development, and regions with potential environmental co-benefits such as groundwater recharge or wildlife resilience. Finally, ILF Projects addressing invasion of noxious and invasive species such as saltcedar and cheatgrass will be prioritized.

D.12 References

- Abele, S.L. (ed) 2011. Nevada Spring Conservation Plan. Springs Conservation Plan Working Group. The Nature Conservancy, Reno, NV.
- Bureau of Land Management, Southern Nevada District Office. 2015. *Prospectus for an In-Lieu Fee Program for Watersheds of the Virgin River, Muddy River, and Meadow Valley Wash*. Prepared for the U.S. Army Corp of Engineers. November 16.
- City of Las Vegas. 2012. *Conservation Element of the Las Vegas 2020 Master Plan*. Available: <https://files.lasvegasnevada.gov/planning/Conservation-Element.pdf>. Accessed: October 17, 2018.
- Clark County. 2017a. *Clark County Desert Conservation Program Riparian Reserve Units Management Plan*. March 2017. Available: http://www.clarkcountynv.gov/airquality/dcp/Documents/Library/dcp%20reports/2017/Riparian%20Reserve%20Unit%20Mgt%20Plan%20Ver1_Final_Mar2017.pdf.

———. 2017b. *Draft Multiple-Species Habitat Conservation Plan Amendment*.

Clark County. 2021. *Transform Clark County Master Plan*. Available:

https://www.clarkcountynv.gov/assets/documents/government/departments/comprehensive_planning_department/divisions/advanced_planning_division/cc-masterplan-web.pdf. Accessed: May 23, 2025.

Dahl, T. E. 1990. *Wetland Losses in the United State, 1780s to 1980s*. U.S. Department of Interior, Fish and Wildlife Service. Washington, D.C. 13 pp.

Dames & Moore. 1991. *Final Environmental Impact Statement, Flood Control Master Plan, Clark County Regional Flood Control District*. April 1991.

Las Vegas Wash Coordination Committee. 2023. *Year-end Report, 2022-2023*. Available: <https://www.lvwash.org/assets/pdf/resources-lvwcc-2023.pdf>. Accessed: October 2025.

Nevada Division of Natural Heritage (NDNH). 2023a. *State of Nevada Wetland Program Plan, 2023-2028*. May. Prepared for the U.S. Environmental Protection Agency, Region 9. Available at: https://heritage.nv.gov/assets/documents/WPP_NV_2023_Final.pdf. Accessed September 2025.

NDNH. 2023b. *An Update to the Nevada Priority Wetlands Inventory*. April. Available at: https://heritage.nv.gov/assets/documents/NV_Priority_Wetland_Inventory_2023.pdf. Accessed September 2025.

Nevada Natural Heritage Program (NNHP). 2006. *Nevada Wetlands Priority Conservation Plan. Technical Review Draft*. January 2006. E. Skudlarek (ed.). Prepared for the Nevada Conservation and Natural Resources.

Omernik, J.M. 1987. Ecoregions of the Conterminous United States. Map (scale 1:7,500,000). *Annals of the Association of American Geographers* 77(1):88–125.

RECON. 2000. *Final Clark County Multiple-Species Habitat Conservation Plan and Environmental Impact Statement for the Issuance of a Permit to Allow Incidental Take of 79 Species in Clark County, Nevada*. September. Appendix A: *Ecosystem Analyses*. Prepared for the Clark County Department of Comprehensive Planning and U.S. Fish and Wildlife Service.

Southern Nevada Water Authority. 2017. *Water Resource Plan 2017*.

University of Las Vegas (UNLV) Center for Business and Economic Research. 2024. *Population Forecasts: Long-term Projections for Clark County, Nevada 2024–2060*.

U.S. Fish and Wildlife Service. 2000. Intra-Service Biological and Conference Opinion on Issuance of an Incidental Take Permit to Clark County, Nevada for a Multiple Species Habitat Conservation Plan. November. Available: https://files.clarkcountynv.gov/clarknv/Environmental%20Sustainability/Desert%20Conservation/Library/Guiding%20Docs/MSHCP_BioOpin.pdf?t=1661199036427&t=1661199036427.

U.S. Geological Survey (USGS). 1996. *National Water Summary on Wetland Resources. Nevada*. Water-Supply Paper 2425. Compiled by J.D. Fretwell, J.S. Williams, and P.J.

Redman. Available: <https://doi.org/10.3133/wsp2425>.

U.S. Geological Survey (USGS). 2001. National Land Cover Database (NLCD) 2001 Land Cover Conterminous United States: U.S. Geological Survey data release, <https://www.sciencebase.gov/catalog/item/6345b637d34e342aee0863aa>. Accessed: October 2025.

USGS. 2021. National Land Cover Database (NLCD) 2021 Land Cover Conterminous United States: U.S. Geological Survey data release, <https://www.sciencebase.gov/catalog/item/6345b637d34e342aee0863aa>. Accessed: October 2025.

Virgin River Coalition (VRC). 2019. *Integrated Watershed Plan for the Lower Virgin River in Arizona and Nevada 2019–2022*. April 2019.

Attachment 1 – Site Evaluation Form

Clark County In-Lieu Fee Program Site Evaluation Form

Preliminary mitigation potential of a site for planning purposes only.

Service Area:	
Site Name:	
Site Evaluated By:	
Date:	
Wetland Mitigation Potential:	
Riverine Mitigation Potential:	

Site Description

Location (nearest cross street, latitude/longitude):	
Assessor Parcel Number(s):	
Size of Parcel(s) (acres):	
Ownership:	
Watershed:	
Name of Nearest Waterbody:	
Designated Land Use:	
Easements (e.g., utility, transportation, mineral, previous mitigation, trails, etc.):	
Approximate Existing Aquatic Resource Area (acres) (attach reconnaissance figure if appropriate):	
Vegetation Characteristics (attach reconnaissance figure if appropriate):	
Additional Notes:	

Compensatory Planning Framework Prioritization

Prioritization Criteria	Additional Discussion
The site located in or near priority wetland area. ☐ yes / ☐ no/ ☐ N/A	

Type of aquatic resource would help sustain and improve overall watershed profile. ☐ yes / ☐ no/ ☐ N/A	
Mitigation project would result in a gain in aquatic resource area and/or functions. ☐ yes / ☐ no/ ☐ N/A	
Is the site continuous with existing preserves or other conserved lands? ☐ yes / ☐ no/ ☐ N/A	
Site location is consistent with current and future land uses? ☐ yes / ☐ no/ ☐ N/A	
The site is ecologically connected to existing streams and/or wetland complexes. ☐ yes / ☐ no/ ☐ N/A	
The site has on- and off-site hydrological conditions ensuring a self-sustaining mitigation project. ☐ yes / ☐ no/ ☐ N/A	

Mitigation Opportunities

--

Recommendations

--

Exhibit E
Program Fund

E.1 Background

The Clark County In-Lieu Fee Program (“ILF Program”) will serve the 5.2-million-acre Plan Area. Nearly all of the Plan Area is within the Mojave Basin and Range Level III Ecoregion.

The Program Area is coextensive with the Clark County Desert Conservation Program (DCP).

E.1.1 Federal Statutory Requirements

Program Fund

In accordance with 33 C.F.R. 332.8(d)(6)(ii)(D) and 33 C.F.R. 332.8(i), the Program Sponsor will create a fund (“Program Fund”), as defined by the Governmental Accounting Standards Board (“GASB”) for the management and administration of funds received from the Transfer of Credits and disbursed to implement ILF Projects under the Program. All interest and earnings in the fund will be used for the purpose of the fund.

Any expenditures during the Interim Management Period will be tracked and reported separately. An Annual Report will be prepared and available for inspection on or before the first business day of the month of March for the prior fiscal year and will include a financial activity report for the fund, which includes:

- All income received from Transfers of Released Credits and investment earnings accrued by the Program Fund; and,
- A description of disbursements and expenditures from the Program Fund, such as the costs of land acquisition, planning, construction, monitoring, maintenance, contingencies, adaptive management, and administration.

Program Sponsor will include in each Annual Report a report that accounts for all funds, including funds for specified purposes. Upon request, the Program Sponsor will provide to any requesting IRT Member copies of its audited financial statements for any completed fiscal year. The IRT may inspect and review Program Fund records by giving thirty (30) days advance written notice to the Program Sponsor. When so requested, the Program Sponsor will make available for inspection of all books, accounts, reports, files, and other records relating to the Program Account in accordance with Section IV(D) of the Instrument and 33 CFR 332.8(i)(4).

Clark County Program Fund

Fee revenues collected from the transfer of each specific credit type will be earmarked as follows:

- Wetlands
- Riverine/Stream

The Restoration and Enhancement earmarked funds are limited to and fund 100% of the cost to design, build, permit, construct, maintain and monitor until the ILF Project meets its

performance requirements (see Exhibit H).

The Program Sponsor will charge additional fee amounts equal to the additional cost of land, operations and management, and other related costs including administration and contingency. Fee revenues to fund these costs include each of the following:

- Land Acquisition: 38.4%
- Operations and Management: 54%
- Long-term Management: 5.3%
- Reimbursement Costs: 2.3%
- Contingency funds (percentage of fee allocations 1, 2, 3 above)

*Percentages shall be subject to adjustment with fees based on annual review of the fee schedule. Fee amount allocations will also be adjusted to reflect case-specific differences in where impacts occur and where mitigation projects are located within the Service Area.

Disbursements for Implementation of ILF Projects

Program Sponsor may disburse funds from the Program Fund to cover the costs of implementing ILF Projects. IRT approval is required for any disbursement of funds in excess of 10 percent of the approved budget for an ILF Project. After written approval from IRT, each ILF Project will be implemented in accordance with a Mitigation Plan approved by applicable IRT Members in accordance with the process described in Exhibit F. Each Mitigation Plan will include a detailed budget, and Program Sponsor's disbursements from the Program Fund will be made in accordance with the IRT-approved budget.

Administrative Costs

Program Sponsor may use up to 10.4 percent of the funds received from the Transfer of Credits to cover the cost of administering the Program.

Contract Administration

Program Sponsor may enter into contracts with third parties for the development, implementation, and/or interim and long-term stewardship of individual ILF Projects. The Program Sponsor will pay third parties performing work to implement ILF Projects in accordance with the budget included in the approved Mitigation Plan for the Mitigation Project.

Contingency Earmark

Contingencies that may arise from time to time in implementing the ILF Program will be addressed using Earmarked Funds. The Program contingency Earmark shall serve as financial security for the Program. Contingencies that may be funded through the Program Fund include, without limitation, such circumstances as funding unanticipated costs associated with ILF Project implementation, funding to accelerate ILF Project implementation to address temporal concerns, and other unforeseen funding needs. The use of these funds shall be subject to the approval of the IRT, based upon written proposals

submitted by the Program Sponsor. Contingency costs are earmarked at an initial rate of 7.5% of the fee revenues for Restoration and Enhancement, 3% for all other costs except Land Acquisition (which is 5% due to land price variability) (see Exhibit H).

Long-Term Maintenance & Monitoring

Program Sponsor will separately track each ILF Project for the long-term management and maintenance of the ILF Project site. The Program Fund and each ILF Project earmark will be reported separately in the Program Fund report in each Annual Report. The Program Sponsor will disburse funds from the Program Fund to the land manager for its performance of land management activities on the ILF Project site in accordance with the Long-Term Management Plan for the site. If either (a) Program Fund balance has decreased to levels that may threaten its continued existence as a source of perpetual funding for long-term management; or (b) if long-term management expenses exceed those estimated in the IRT-approved budget, the Sponsor and land manager shall consult with the IRT. During the Long-term Management Period, the Sponsor shall be responsible for submitting annual reports to each member of the IRT. The Sponsor shall upload all reports into RIBITS and furnish a hard copy to each IRT member.

Fee Schedules

As stated in the 2008 Rule, “The cost of compensatory mitigation credits provided by a mitigation bank or in-lieu fee program is determined by the sponsor.” (See 33 CFR Part 332.8(o)(5) and 40 CFR Part 230.98(o)(5).). Program Sponsor has determined that the minimum prices for Credits under the ILF Program will be as set forth in the fee schedules included in the ILF Program.

The fee schedules are premised on the fundamental principle that adequate funding is essential to the ILF Program’s ability to function and to develop, implement, and provide for long-term protection of ILF Projects, and address contingencies. The ILF Program is intended to be fully funded by Credit Transfers, and to the extent Program Sponsor has invested its own resources in the development of the ILF Program, such investments will be recovered through a portion of the proceeds from Credit Transfers. Therefore, the Credit prices are intended to cover the full cost of Program expenses in accordance with the 2008 Rule. An additional critical factor is that the pricing of Credits within an in-lieu fee program is, by necessity, based on modeling and estimates. This reflects the very nature of in-lieu fee programs, in which funds are generated through Credit sales *prior to or concurrent with* the identification and implementation of actual projects with actual budgets.

Base Price

There are numerous variables that affect ILF Project costs, including: the size and location of the ILF Project site, the land costs in that area, the acreage of habitat that may be restored, wetland type and complexity of restoration. Overall, large projects may have a relatively high ILF Project price, but may result in a relatively low per-credit cost. However, the ILF Program is targeting restoration that has the greatest functional lift for the Program Area, and the type of ILF Projects may vary by location and by year. In addition, the variability in potential costs escalates as time between planning and implementation increases, based on the potential for land costs, inflation, and market prices for labor and fuel to rise. The

activities may focus on the overall ILF Program or may be associated with activities related to undifferentiated ILF Projects. They include, without limitation, the following:

- Fiduciary functions
- Accounting functions
- Investment oversight
- Human resources management
- Office management
- Internet technology management
- Contract management and oversight
- Internal and external audits
- Agency coordination
- Legal support or enforcement
- Stakeholder and partner coordination
- ILF Project site selection process
- Reporting

Program Sponsor is a Public Agency and cannot subsidize the cost to compensatory mitigation for impacts or effects from private or public projects with staffing contributions or other funding sources. Therefore, the cost to administer the Program must fully cover all costs each fiscal year, including certain fixed administrative costs that are associated with each Credit Transfer regardless of size, as well as other fixed and variable costs of administration and management of implementing the Program.

Financial Assurances

Financial assurances are used to ensure a high level of surety that compensatory ILF Projects are successfully completed and meet the Performance Standards (i.e., “short-term” financial assurances), and to ensure the long-term sustainability of the compensatory mitigation (i.e., “long-term” financial assurances).

The ILF provides that site-specific short-term mitigation costs will be described in the final site-specific ILF Project budget. In accordance with the mitigation rule (33 CFR 332.3(n)(2)) short-term mitigation cost estimates will include planning, design, construction, construction monitoring, post-construction surveys, post-construction compliance requirements including monitoring and annual reporting, and contingency. These costs are proposed to be funded fully through the collection of Credit Fees.

Beyond the immediate short-term mitigation costs, the costs to manage, monitor and report are also proposed to be funded directly through fees. These fees are designed to work collectively and consistently with the MSHCP requirements above and beyond performance-based monitoring and management.

Under the ILF, long-term funding will be earmarked in the Program Fund described above. Financial assurances for perpetual management of ILF Projects are to be provided through Earmarked Funds at a rate of 5.3% of the separate fees collected and transferred to a separate fund and invested with a minimum capitalization target rate of 3.25%.

Pursuant to 33 CFR 332.3(n)(5), the third-party assurance provider and/or the Program Sponsor shall provide USACE with notification no less than 120 days in advance of the termination or revocation of the financial assurance.

Exhibit F

ILF Project Approval Process

After the first Transfer of Advance Credits within the Service Area, the Program Sponsor is required to secure ILF Project sites and conduct the initial physical and biological improvements (e.g., grading and planting) by the third full growing season. If the Transfer of Advance Credits does not generate sufficient funds to commence the development and implementation of an ILF Project in a Service Area within the required timeframe, alternative mitigation implementation approaches will be evaluated, or an extension of time may be requested from the IRT. As funding becomes available within a Service Area to implement an ILF Project, areas of greatest mitigation need will be evaluated based on the Compensation Planning Framework (Exhibit D).

Section I. Process for ILF Project Selection

- Program Sponsor will evaluate potential ILF Project opportunities on an ongoing basis. Program Sponsor will complete the site evaluation form provided in Exhibit D to evaluate and compare potential ILF Project sites using the prioritization criteria set forth in Section D.6., Prioritization Strategy for Selecting, Implementing Compensatory Mitigation, of the Compensation Planning Framework (Exhibit D).
- If sufficient funding¹ is present and Program Sponsor proposes to acquire land for an ILF Project site, Program Sponsor will approach property owners to explain the potential interest in acquiring land from them as willing sellers through conservation easement or fee title. With landowner's permission, Program Sponsor will conduct a pre-acquisition assessment of the site for consistency with the Compensation Planning Framework. The pre-acquisition assessment will identify: location, quantity, quality (e.g., qualitative and quantitative evaluation), and presence of aquatic resources; other existing conditions or infrastructure; and the potential to establish/re-establish aquatic resources that would advance or conflict with the Compensation Planning Framework.
- Program Sponsor may submit a request to the IRT for expenditure of Program Fund funds for the site acquisition, baseline studies, or other ILF Project development costs. As soon as all approving IRT Members notify the USACE that they do not object to such approval, the USACE will provide a written response approving/denying the request per 33 CFR 332 to the Sponsor within 5 days of the receipt of the request.
- IRT may attend any pre-acquisition site visits as needed to facilitate early coordination for ILF Project Review.
- Program Sponsor will present to the IRT the highest priority ILF Project(s) that Program Sponsor determines to be feasible and practicable, and that can be implemented with available funds. The presentation will be in the form of a Mitigation Plan (as described in further detail below), including an estimated budget for each such proposed ILF Project(s), which Program Sponsor will submit to the IRT. Alternatively, to obtain IRT guidance before developing a full Mitigation Plan, and to obtain IRT approval for use of Program Fund funds to develop it, Program Sponsor may first present an ILF Project site

¹ Sufficient funding for the purposes of this ILF Program is defined as funding necessary to complete due diligence activities such as site appraisal, title report, Phase 1 assessment, mineral remoteness assessment, boundary survey, monumentation, legal description as well as land acquisitions costs. Funding necessary to complete the due diligence tasks and land acquisition costs is approximately \$250,000.

evaluation to the IRT for review (as described in further detail below).

Section II. IRT Review of Site Evaluation (Optional)

- If Sponsor elects to submit an ILF Project site evaluation form (Exhibit D – Attachment 1) and ask for preliminary review and consultation of a modification request, it will submit the completed site evaluation form and any supporting materials, including the information identified in Section III, by uploading the proposal to the Cyber Repository in RIBITS. As soon as possible, and no later than thirty (30) days from receipt of the materials, each IRT Member will notify the USACE and Program Sponsor in writing whether it will participate or abstain from review of the proposed ILF Project.
- If the proposed ILF Project is found to be generally acceptable to the IRT and the IRT approves use of Program Fund funds to develop a draft Mitigation Plan for the proposed ILF Project, then as of the date of the IRT's written evaluation, the Program Sponsor may access and expend funds in the Program Fund, in accordance with the estimated budget for preparation of the draft Mitigation Plan. If in the course of preparing the draft Mitigation Plan, the Program Sponsor discovers that the expenditure will exceed the previously approved budget, the Program Sponsor will notify the IRT in writing and propose a budget augmentation for the IRT's consideration and written approval. The expenditure of such funds is intended to allow the Program Sponsor to develop and finalize, based on the foundation of the site evaluation, a draft Mitigation Plan for the proposed ILF Project.
- The draft Mitigation Plan will be submitted to the IRT as a formal request for an amendment to the Instrument in accordance with the Mitigation Plan Review Process set forth in Section IV below.

Section III. Required Information for a Complete Site Evaluation

Each site evaluation provided to the IRT must include the following information, to enable the IRT to evaluate the proposed ILF Project and consider whether to approve the use of Program Fund funds for preparation of a draft Mitigation Plan:

- Property location and ownership;
- ILF Project conceptual proposal describing benefits to aquatic resources, species, and habitat, as appropriate;
- Narrative explanation of how the proposed ILF Project complies with the Compensation Planning Framework;
- Project partners and other funding sources (if applicable);
- Number and type of proposed Released Credits to be generated by the ILF Project;
- Proposed budget (including any other funding sources to implement the project) for Mitigation Plan development, project implementation (including interim management and monitoring), and long-term management and monitoring; and

- Current preliminary title report (if applicable).²

Section IV. Mitigation Plan Review and Instrument Modification Approval Process

- Program Sponsor may expend Program Fund funds to develop a Mitigation Plan in accordance with the approved budget, as provided above. If Program Sponsor develops a Mitigation Plan without using Program Fund funds, Program Sponsor may include Mitigation Plan development costs as part of the budget for the proposed ILF Project. Upon IRT approval of the Mitigation Plan, Program Sponsor may expend funds in the Program Fund to reimburse Mitigation Plan development costs.
- The review and approval of Mitigation Plans for proposed ILF Projects will be conducted by the IRT in accordance with procedures in 33 C.F.R. 332.8(g)(1) and processed as modifications of the Instrument.
- Accordingly, the Program Sponsor will submit to the IRT a draft Mitigation Plan and a request for modification of the Instrument in accordance with procedures in 33 C.F.R. 332.8(g)(1). In accordance with 33 C.F.R. 332.8(d)(6)(i), this request for modification will consist of a draft amendment to the Instrument that adds the Mitigation Plan to the Instrument as an exhibit (Exhibit K).
- The Mitigation Plan must be in substantially the form of the Exhibit G (Mitigation Plan Template) and must include all of the information identified therein, along with other information requested by the IRT based on review of the site evaluation form, if applicable, with a level of detail commensurate with the scale and scope of the proposed ILF Project.
- The Program Sponsor will submit the draft Mitigation Plan and other required information, along with a formal request for an Instrument modification, to the IRT by uploading the proposal to the Cyber Repository in RIBITS. Within thirty (30) days of receipt of Program Sponsor's formal request for an Instrument modification, the USACE will notify Program Sponsor whether the draft modification to the Instrument is complete. The IRT will specify and request from the Program Sponsor any information necessary to make the draft modification complete. Once any additional information is submitted, the IRT must notify the Program Sponsor if the Instrument modification is complete within thirty (30) days (33 C.F.R. 332.8(d)(6)(i)).
- As soon as possible, and no later than thirty (30) days from receipt of the complete draft Mitigation Plan and draft modification, the USACE will issue a public notice of the Mitigation Plan providing a thirty (30) day public comment period.
- Within thirty (30) days after the close of the public comment period, the USACE must notify the Program Sponsor and provide a written evaluation of the proposed ILF Project's potential to provide compensatory mitigation, addressing whether Mitigation Plan is generally acceptable and what changes, if any, are needed (33 C.F.R. 332.8(d)(5)).

² Prepared within 1 year of submittal to the IRT. If the ILF Site was acquired by the Program Sponsor prior to submittal of the Mitigation Plan, the most-current title report must be provided.

- If the USACE notifies the Program Sponsor that any changes are needed to the draft Mitigation Plan, the Program Sponsor must incorporate such changes and may submit a revised Mitigation Plan and Instrument modification to the IRT for approval, along with supporting documentation that explains how the final Mitigation Plan and instrument modification addresses the changes identified by the IRT (33 C.F.R. 332.8(d)(8)). The Program Sponsor will submit the revised information to the Cyber Repository in RIBITS.
- Within 90 days of the receipt of a complete revised Mitigation Plan and Instrument modification by the IRT members, the USACE will notify the Sponsor of the status of the IRT review
- If no changes are needed to the Mitigation Plan (or revised Mitigation Plan), the Sponsor will submit a final Instrument modification and Mitigation Plan to the IRT. Within thirty (30) days of receipt of the Mitigation Plan and Instrument modification, the USACE will notify the IRT Members whether the USACE intends to approve the modification. If no IRT Member objects by initiating the dispute resolution process within forty-five (45) days of receipt of the Final Instrument modification and Mitigation Plan, the USACE will notify the Program Sponsor of its final decision, and if approved arrange for signing by the appropriate parties (33 C.F.R. 332.8(d)(8)).
- The Program Sponsor will upload the Approved Instrument modification and final Mitigation Plan to the Cyber Repository in RIBITS.

Exhibit G
Mitigation Plan Template

CLARK COUNTY IN-LIEU FEE PROGRAM MITIGATION PLAN TEMPLATE

Name of Proposed Mitigation Parcel

PREPARED FOR:

Clark County Desert Conservation Program
4701 West Russell Road
Las Vegas, Nevada 89118
Attn: Director, Desert Conservation Program
Telephone: 702-455-3536

PREPARED BY:

[Name]
[Street or PO Address]
[City, ST ZIP]
Contact: [Project Manager Name]
[Phone Number]

[Click and type month and year]

Contents

I.	Summary and Overview	2
II.	Objectives	2
III.	Site Selection.....	3
IV.	Baseline Information.....	3
V.	Determination of Credits	3
VI.	Site Protection Instrument.....	4
VII.	Mitigation Work Plan	4
VIII.	Maintenance Plan	6
IX.	Performance Standards	6
X.	Monitoring Requirements	7
XI.	Long-Term Management Plan	7
XII.	Adaptive Management Plan	8
XIII.	Financial Assurances	8
XIV.	Other Information.....	9

Appendix A Mitigation Monitoring Report Form

Tables

Table	Page
Table 1. Existing Land Cover and Proposed Credit Types at the Mitigation Site.....	2
Table 2. Number and Resource Types of Credits Proposed	4
Table 3. Performance Standards.....	6
Table 4. Monitoring Schedule	7

[Name of Mitigation Parcel]

Monitoring Report Form (South Pacific Division [SPD] placeholder)

I. Summary and Overview

This section must include a 2-3 paragraph summary of the proposed ILF project site, why it is appropriate for mitigation, and any proposed enhancement, establishment, or restoration efforts. It should include the following information: size, number of acres, acres of various land-cover types, including wetlands, a narrative description of the location, and a spatial description of the location (i.e., latitude/longitude, Assessor's Parcel Number (APN), Township/Range/Section). Additionally, this section should address whether any Advance Credit Sales are anticipated to be fulfilled through this ILF Project and whether any Released Credits would be generated. All maps and drawings shall comply with the SPD map and drawing standards.

Include a table similar to that below:

Table 1. Existing Land Cover and Proposed Credit Types at the Mitigation Site

Land Cover Type	Existing (acres)	Proposed (acres)
Upland		
Developed		
Wetland		
Freshwater Wetland		
Etc.		
Riverine/Stream		
Perennial		
Intermittent		
Ephemeral		
Etc.		
Total (acres)		

II. Objectives

This section must include a description of the resource type(s) and amount(s) that will be provided, the method of compensation (i.e., restoration, establishment, enhancement, and/or preservation), and the manner in which the resource functions of the compensatory mitigation project will address the needs of the watershed, ecoregion, physiographic province, or other geographic area of interest. See 33 CFR § 332.4(c)(2) also see SPD Mitigation and Monitoring Guidelines (MMGs) Section 4.8.6.

The objectives associated with developing mitigation at this site are:

- [Establish/Re-establish/Restore/enhance X] acres of aquatic resources (describe types proposed)
- [Preserve Y] acres of uplands

Describe why this is important.

III. Site Selection

This section must include a description of the factors considered during the site selection process. This should include consideration of watershed needs, onsite alternatives where applicable, and the practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the compensatory mitigation project site. (See 33 CFR § 332.3(d), 332.4(c)(3), and 40 CFR § 230.93(d).)

Elaborate on where and how this project fits in terms of the watershed needs, and how it will be sustainable. See SPD MMGs Section 4.8.7.

IV. Baseline Information

This section must include a description of the ecological characteristics of the proposed compensatory mitigation project site. This may include descriptions of historic and existing plant communities, historic and existing hydrology, soil conditions, a map showing the locations of the impact and mitigation site(s) or the geographic coordinates for those site(s), and other site characteristics appropriate to the type of resource proposed as compensation. The baseline information should also include a delineation of waters of the United States on the proposed compensatory mitigation project site. See 33 CFR § 332.4(c)(5) and SPD MMGs Section 4.8.8 for required information to be included.

Substantial baseline information has been collected for the project including:

- [List baseline studies and resources]

Elaborate on this information to provide context and address requirements above.

V. Determination of Credits

This section must include a description of the number of credits to be provided, including a brief explanation of the rationale for this determination. (See 33 CFR § 332.4(c)(6), 332.3(f), and 40 CFR § 230.93(f).) It should include the number and resource type of credits to be secured and how these were determined.

Include a table similar to that below.

Table 2. Number and Resource Types of Credits Proposed

Land-Cover Type Restored	Established (acres)	Re- Established (acres)	Rehabilitation (acres)	Enhancement (acres)	Preserved (acres)	Credits Proposed
Wetland						
Freshwater						
Wetland						
Etc.						
Riverine/Stream						
Perennial						
Intermittent						
Ephemeral						
Total						

VI. Site Protection Instrument

A description of the legal arrangements and instrument, including site ownership, that will be used to ensure the long-term protection of the compensatory mitigation project site (see 33 CFR § 332.4(c)(4) and 40 CFR § 230.97(a)).

IRT-approved conservation easement template will be used to protect the site.

In accordance with NRS 111.390 through 111.440 (“Nevada Uniform Conservation Easement Act”), the site will either be privately owned with a deed of conservation easement granted to Clark County, or owned by Clark County and which will include the applicable IRT member agencies designated as third-party beneficiaries.

The site will be managed by [landowner, designated long-term manager, conservation easement holder] and Clark County, and/or other qualified organization(s) approved by the Sponsor and IRT.

VII. Mitigation Work Plan

This section must include detailed written specifications and work descriptions for the compensatory mitigation project, including, but not limited to, the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; methods for establishing the desired plant community; plans to control invasive plant species; the proposed grading plan, including elevations and slopes of the substrate; soil management; and erosion control measures. For stream compensatory mitigation projects, the mitigation work plan may also include other relevant information, such as planform geometry, channel form (e.g., typical channel cross-sections), watershed size, design discharge, and riparian area plantings. (See 33 CFR §

332.4(c)(7) also see SPD MMGs Section 4.8.9.). This section will also define the completion of the initial physical and biological improvements necessary to satisfy the requirements of 33 CFR § 332.8(n)(4).

From SPD MMGs: The work plan (or “mitigation plan” for mitigation banks and ILF programs) should consist of the practical “how-to” details necessary to take the compensatory mitigation project from a design on paper to “in-the-ground” implementation.

These should include the following as applicable:

- *Geographic boundaries of the project*
- *Construction methods*
- *Timing (implementation schedule)*
- *Sequence*
- *Source(s) of water, including connections to existing waters and uplands*
- *Methods for establishing the desired plant community, including the proposed source(s) of seed/plants*
- *List of species to be planted/seeded in table format*
- *Planting plan describing where and when species will be planted*
- *Plans to control invasive exotic plant species*
- *The proposed grading plan, including elevations and slopes of the substrate*
- *Soil management*
- *Erosion control measures*
- *Itemized budget, including total estimated cost of proposed compensatory mitigation. The budget should include, at a minimum, costs for:*
 - *Land acquisition*
 - *Planning and engineering*
 - *Legal fees*
 - *Mobilization*
 - *Construction*
 - *Monitoring*
- *For stream compensatory mitigation projects:*
 - *Rosgen classification (including bankfull depth (mean and max), floodprone width, width/depth ratio, channel slope, and sinuosity)*
 - *Planform geometry*

- Channel form (e.g., typical channel cross-sections)
- Longitudinal profile
- Characterization of sediment grain sizes
- Watershed size
- Design discharge
- Discussion of use of native materials and bioengineering
- Riparian area plantings
- Description of any riffle-pool complexes and/or other special aquatic sites present
- Discussion of the aquatic fauna, such as the resident fish with their times of breeding and spawning
- Avoidance measures: description of measures to be taken to avoid any non-impacted aquatic resources or other sensitive resources within the compensatory mitigation site (e.g., use of construction monitor, flagging, fencing, contractor training)

VIII. Maintenance Plan

This section must include a description and schedule of maintenance requirements to ensure the continued viability of the aquatic resources once initial construction is completed. (See 33 CFR § 332.4(c)(8).)

IX. Performance Standards

This section must include ecologically based standards that will be used to determine whether the compensatory mitigation project is achieving its objectives. (See 33 CFR § 332.4(c)(9) and 332.5 and 40 CFR § 230.95.) Performance Standards must also be summarized in a table format.

Table 3. Performance Standards

	Monitoring Year									
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Performance Standard										
(Habitat Type 1)										
Hydrology-1:										
Vegetation-1:										
(Habitat Type 2)										
Hydrology-1:										

Vegetation-1:										
---------------	--	--	--	--	--	--	--	--	--	--

X. Monitoring Requirements

This section must include a description of parameters to be monitored in order to determine if the compensatory mitigation project is on track to meet performance standards and if adaptive management is needed. A schedule for monitoring and reporting on monitoring results to the district engineer must be included. (See 33 CFR § 332.4(C)(10), 332.6, and 40 CFR § 230.96 and SPDMMGs Section 6.)

Table 4. Monitoring Schedule

Monitoring Activity	Monitoring Year									
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10

XI. Long-Term Management Plan

This section must include a description of how the compensatory mitigation project will be managed after performance standards have been achieved to ensure the long-term sustainability of the resource, including long-term financing mechanisms and the party responsible for long-term management. (See 33 CFR § 332.4(c)(11), 332.7(d), and 40 CFR § 230.97(d) and SPD MMGs Section 4.8.15.)

Long-term monitoring is intended to ensure the long-term sustainability of the mitigation site. As the mitigation project will be part of a larger conservation program, long-term monitoring is intended to support overarching regional conservation objectives. Ultimately, long-term management planning is anticipated to be integrated with specific regional reserve unit management plans.

The Sponsor will be obligated to arrange for the management and monitoring of the Mitigation Project site in perpetuity to preserve its aquatic resources, habitat, and conservation values in accordance with the instrument, the conservation easement, and the long-term management plan. For this site, the following long-term management is anticipated:

- Describe what is proposed and what is budgeted for including:
 - Habitat evaluation (frequency and specifics [i.e., grass levels, wetland changes, etc.])

- Site inspection (*frequency and specifics [i.e., determination if there is encroachment or management issues]*)
- Monitoring (*frequency and specifics [i.e., every 5 years]*)
- Other management issues and considerations

XII. Adaptive Management Plan

This section must include a management strategy to address unforeseen changes in site conditions or other components of the compensatory mitigation project, including the party or parties responsible for implementing adaptive management measures. The adaptive management plan will guide decisions for revising compensatory mitigation plans and implementing measures to address both foreseeable and unforeseen circumstances that adversely affect compensatory mitigation success. (See 33 CFR § 332.4(c)(12), 332.7(c), and 40 CFR § 230.97(c).)

As described above, long-term management planning is anticipated to be integrated with specific regional reserve unit management plans. Similarly, long-term adaptive management will be part of the overall reserve unit system. Adaptive management tasks are listed below.

- If management actions are not resulting in the desired effect, implement a targeted study to identify alternative management actions.
- If monitoring protocols are not providing definitive results, evaluate efficacy of monitoring protocols using appropriate targeted studies methods, such as conducting pilot projects before making large-scale or long-term changes.
- Incorporate best available scientific information from recent literature into management.
- Adaptive management may be needed if the site experiences fire, flood, drought, or other conditions that could affect the long-term viability of the mitigation site. This includes management and restoration responses to these conditions.

XIII. Financial Assurances

This section must include a description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the compensatory mitigation project will be successfully completed, in accordance with its performance standards (see 33 CFR § 332.4(C)(13) and 40 CFR § 230.93(n) and SPD MMGs Section 3.5). Additionally, this section should identify the total amount of funds to be set aside for financial assurance. Financial assurances will be funded by the mitigation credit fees.

The project's financial assurances are intended to be provided from the Program's mitigation fund. The County will use development-based fees to meet federal permitting requirements.

[Name of Mitigation Parcel]

Mitigation credit fees will generate sufficient funding to offset costs, including funding the financial assurance.

XIV. Other Information

The district engineer may require additional information as necessary to determine the appropriateness, feasibility, and practicability of the compensatory mitigation project. See 33 CFR §332.4(C)(14) and SPD MMGs Section 4.8.19. Other information may include the property assessment and warranty, real estate records, other agency permits, Phase I environmental site assessment, biological resources surveys, cultural resources surveys, GIS data, etc.

Appendix A

Mitigation Monitoring Report Form
(SPD – Mitigation Monitoring Report Form)

Exhibit H
Fee Schedule

A draft fee schedule is provided below. The schedule for each credit category represents a range of fees that might be charged to acquire, develop, endow, and manage an ILF Project site. Actual fee amounts will be based on current cost information and estimates based on experience with ILF Project implementation but will not be less than the lower limit. ILF Program fees may also be adjusted based on inflation, project specifics, and other economic considerations. The Program Sponsor will submit any fee schedule changes to the IRT for review and comment no less than 30 days before implementing the revised fees.

H.1 ILF Project Land Costs

The cost of land necessary to implement ILF Projects is based upon the best available current real estate market information. Actual land costs and easement values may vary depending on numerous parcel-specific factors.

Over time, land acquisition costs will be influenced by scarcity considerations, particularly for key mitigation land-cover types (e.g., wetland and streams). The fee schedule assumes a higher premium applies to wetland land-cover types reflecting their particular value:

- All natural communities except wetlands: \$30,000 per acre
- Wetlands: \$50,000 per acre

Land costs per acre are likely to change over time during certain points in the real estate cycle. Therefore, during ILF Program implementation, actual costs, including changes in the land market, will be fully evaluated with each project and updated routinely using appropriate indices.

H.2 Transaction Costs

Transaction costs include costs for appraisals, title reports, property line surveys, preparing legal descriptions, and other due diligence activities such as Phase 1 environmental site assessments for hazardous materials. These costs can vary depending on the size of the site, the conditions present on the property and the complexity of the land transaction. For the purposes of this cost estimate, based on Program Sponsor experience and best professional judgement, these costs are assumed to be \$33,000.

Administration costs are separate from the actual restoration and enhancement costs outlined below and are expenses directly related to the cost of administering the ILF Program. Administrative costs are anticipated to be approximately 10.4% of all program costs.

For estimating administration costs, this fee schedule assumes that the Program Sponsor will administer the ILF Program with a cost structure similar to that for Clark County Desert Conservation Program which has comparable responsibilities and staffing. This assumption ensures that the fee schedule does not understate potential costs of staffing and plan administration. There may be alternative management structures that result in cost savings. For example, the Program Sponsor may instead contract with non-profit land managers or researchers working in the Program Area to accomplish some of the work identified for Program Sponsor staff positions, especially in the early phase of implementation. The

Program Sponsor may also leverage existing resources of agencies already working in the Service Area to use funding as efficiently as possible. Examples include sharing facilities and equipment. Any such savings would be reflected in the periodic financial review of Program implementation.

H.3 ILF Project Costs

Separate from the cost of land, restoration and enhancement costs have been estimated and project specific costs incorporated where actual costs are known. ILF Project related costs include the following:

- Surveys to select sites, delineate wetlands, and prepare detailed habitat maps and species reports for mitigation plans
- Soil sampling or geomorphologic mapping
- Design of restoration and establishment projects
- Development of plans, specifications, and engineering documents
- Construction bid assistance
- Pre-construction surveys
- Construction activities
- Construction oversight and monitoring
- Post-construction monitoring and maintenance
- Restoration repair necessary to meet success criteria specified in each reserve unit management plan (monitoring component) and site restoration plans
- Costs associated with using contractors to assist or do any of the restoration and creation components identified in the items above or payments to partner agencies for restoration and establishment activities
- Costs associated with field and technical staff management and oversight of the work of contractors
- Management and long-term monitoring of the restored/created habitat during and after the permit term (see Exhibit E Program Account)
- Research studies to reduce the level of uncertainty related to restoration/creation activities and species goals and objectives
- Contingency of 15 percent to account for the greater uncertainty in these costs

The following table presents mitigation cost factor assumptions by credit type to be restored. Projects will be completed by contractors or alternatively by third-party partners that have access to the necessary labor, vehicles, and equipment. The Program Sponsor is not planning to maintain in-house the types of labor resources and specialized equipment needed for projects. For large-scale projects, a great deal of labor is typically required (e.g., grading, planting seedlings, cuttings, or container stock for riparian restoration projects), which specialized contractors are best equipped to provide. Staff time is included in this cost category to account for the time needed to prepare restoration management plans and to hire and oversee contractor designs, specifications, and construction.

The fee schedule provided in Tables 1 and 2 assumes all land to be restored will require cultural and biological surveys and planning. Construction cost factors are expressed per acre and cover construction labor and materials.

Table 1. Fee Schedule: Wetland Credit Type

Cost Element	Wetland Credit Type
Due Diligence	\$1,320.00
Pre-acquisition Surveys and Permitting	\$7,800.00
Site Identification	\$1,400.00
Design plans, specifications, and engineering documents	\$ 5,912.00
Bid Assistance	\$192.00
Pre-construction surveys	\$740.00
Construction	\$81,000.00
Construction Oversight	\$2,000.00
Post-Construction Maintenance and Monitoring	\$12,410.00
<i>Total planning and construction (w/o contingency)</i>	<i>\$112,774.00</i>
Contingency (15%)	\$16,916.10
<i>Total planning and construction with contingency</i>	<i>\$129,690.10</i>
Endowment	\$40,000.00
Land acquisition	\$50,000.00
Admin Fees (10.4%)	\$ 22,847.77
Financial Assurance	\$19,403.03
Cost/Credit	\$261,940.90

Table 2. Fee Schedule: Riverine/Stream Credit Type

Restoration Cost Element	Riverine/Stream Credit Type
Due Diligence	\$1,320.00
Pre-acquisition Surveys and Permitting	\$7,800.00
Site Identification	\$1,040.00
Design Plans, Specifications, and Engineering Documents	\$5,912.00
Bid Assistance	\$ 192.00
Pre-construction surveys	\$740.00
Construction	\$74,750.00
Construction Oversight	\$2,000.00
Post-Construction Maintenance and Monitoring	\$12,410.00
Total Planning and Construction (w/o Contingency)	\$106,164.00
Contingency (15%)	\$15,924.60
Total planning and construction with contingency	\$122,088.60
Endowment	\$30,009.68
Land acquisition	\$30,000.00
Admin Fees (10.4%)	\$18,938.22
Financial Assurance	\$16,082.92
Cost/Credit	\$217,119.42

Exhibit I

Property Assessment and Warranty for
[Insert ILF Project Name]

PROPERTY ASSESSMENT and WARRANTY

for ***[Insert ILF Site Name]***

PLEASE NOTE: The following Property Assessment and Warranty is provided as a standard template document. Any modifications to the boilerplate language shall be identified and explained in an attached addendum.

This Property Assessment and Warranty (“Property Assessment”) is made as of this ____ day of _____, 20__, by ***[insert name(s) of vested owner(s) (this may include one individual or multiple individuals and/or business entity(ies))]*** (individually or collectively the “Property Owner”), for the benefit of the following agencies:

[delete any of the following agency(ies) not a party to the ILF Instrument]

- Sacramento District, U.S. Army Corps of Engineers;
- Region IX of the U.S. Environmental Protection Agency;
- Nevada Division of Environmental Protection.

The above-listed agencies are jointly referred to in this Property Assessment as the IRT. Property Owner acknowledges that this Property Assessment and the statements in it may be conclusively relied upon by the IRT when entering into the Instrument modification for the ***[insert ILF Site name]***.

The following are attached to this Property Assessment and incorporated herein by this reference:

Attachment 1 – Preliminary Title Report dated **[enter date]** prepared by **[enter Title Company name]**.

Attachment 2 – Encumbrance Documents.

Attachment 3 – Explanation of all recorded or unrecorded lien or encumbrance on, or possessory or non-possessory interest in, the Property.

Attachment 4 – Boundaries/ Improvements/Encumbrances Map.

Attachment 5 – Legal Description(s) **[Choose an item.]**

[Option 1: If the ILF Site will cover the entire Property]
Legal Description of Property (defined below)

[Option 2: If the ILF Site will cover only a portion of the Property]
Legal Description of the Property (defined below); and,
Draft Legal Description of the Bank Property (defined below)

PROPERTY ASSESSMENT and WARRANTY

for *[Insert ILF Site Name]*

Covenant, Representation and Warranty

Property Owner (defined above) covenants, represents, and warrants to IRT as follows **[Choose the appropriate statement for #1]:**

1. TITLE TO PROPERTY. Property Owner is the sole owner in fee simple of that certain real property containing approximately _____ acres located in the county of *[insert county name]*, state of Nevada designated as Assessor's Parcel Number(s) *[insert parcel number(s)]* (the "ILF Site"), as legally described in **Attachment 5** and the Preliminary Title Report (**Attachment 1**).

[OR if the ILF Site Property is a portion of the real Property owned by Property Owner use this paragraph:]

TITLE TO PROPERTY. Property Owner is the sole owner in fee simple of certain real property containing approximately _____ acres located in the county of *[insert county name]*, state of Nevada, designated as *[a portion of (if not owned in fee simple)]* Assessor's Parcel Number(s) *[insert parcel number(s)]* (the "Property"), as legally described in **Attachment 5** and the Preliminary Title Report (**Attachment 1**).

A conservation easement will restrict a _____-acre portion of the Property (the "ILF Site") as described in **Attachment 5**.]

2. AUTHORITY. Property Owner has, and upon the recordation of the required conservation easement will have, good, marketable and indefeasible fee simple title to the *[Property]* or *[ILF Site]*, subject only to any exceptions approved in advance of recordation, in writing, by the IRT.
3. NO CONFLICTING RIGHTS. The *[Property]* or *[ILF Site]* may be encumbered and restricted by the conservation easement as required by the Instrument, and no recorded or unrecorded lien, encumbrance, or possessory or non-possessory interest in, affecting and/or impacting the *[Property]* or *[ILF Site]* contains terms (e.g., rights, permitted or prohibited activities) that might interfere or conflict with the terms of the conservation easement, including without limitation the conservation purposes identified in the conservation easement.
4. LEGAL ACCESS. There is, or will be prior to recordation of the conservation easement, legal access to the *[Property]* or *[ILF Site]*, including without limitation legal access to and from *[insert name of public street or road]* as shown and described in **Attachment 4**.

PROPERTY ASSESSMENT and WARRANTY
for ***[Insert ILF Site Name]***

5. SENIOR RIGHTS. A true, accurate and complete listing and explanation of each recorded or unrecorded lien, encumbrance, or other exception to, or possessory or non-possessory interest in, the Property is set forth in **Attachments 2 and 3**.
6. MINERAL, WATER, AND AIR RIGHTS. Except as stated herein, no mineral, air, or water right or any water associated with the [Property] or [ILF Site] has been granted, transferred, abandoned or relinquished. **[If any mineral, air, or water right or any water associated with the ILF Site or Property has been granted, transferred, abandoned or relinquished, discuss the impact on the Property and ILF Site.]**
7. NO OTHER INTERESTS. Except as disclosed in **Attachments 2 and 3** there are no outstanding mortgages, liens, encumbrances or other interests in the [Property] or [ILF Site](including, without limitation, mineral rights or interests).
8. CERTIFICATION. Prior to recordation of the conservation easement, Property Owner shall certify to the IRT in writing that this Property Assessment remains true, accurate and complete in all respects.
9. RESTRICTIONS. Property Owner has no knowledge or notice of any restrictions upon the use of the [Property] or [ILF Site] for conservation purposes, or affecting the [Property] or [ILF Site's] conservation values, as described in the conservation easement, or any other matter that may adversely affect title to the Property or interfere with the establishment of an ILF Site thereon.
10. NO OPTIONS. Property Owner has not granted any options or committed or agreed to sell, subdivide, or obtain a lot line adjustment of the Property or any portion thereof, except as disclosed in writing to and agreed upon in writing by the IRT. **[OR if ILF Site Property is a portion of the real property owned by Property Owner use this paragraph:** Property Owner has not granted any options, or committed or agreed to sell, subdivide, or obtain a lot line adjustment of the Property, or any portion thereof, including without limitation the ILF Site except as disclosed in writing to and agreed upon in writing by the IRT.

A true, accurate and complete listing and explanation of each recorded or unrecorded lien or encumbrance on, or possessory or non-possessory interest in, the Property is set forth in **Attachment 3** attached to and incorporated by reference in this Property Assessment.

I hereby certify that the above information is true and correct.

PROPERTY ASSESSMENT and WARRANTY
for *[Insert ILF Site Name]*

PROPERTY OWNER

By: _____

Print Name:

Date

PROPERTY ASSESSMENT and WARRANTY
for *[Insert ILF Site Name]*

I.1 ADDENDUM

I.2 **[Choose the appropriate statement:]**

Option 1: Property Owner represents and warrants that this Property Assessment and Warranty remains true and correct in all respects.

OR

Option 2: The encumbrances affecting the Property have changed and Property Owner has attached an updated Attachment 2 and Attachment 3. Property Owner represents and warrants that this Property Assessment and Warranty as updated with new Attachment 2 and Attachment 3 is true and correct.

PROPERTY OWNER

By: _____

Print Name:

Date

Agency Tracking No.	
Conservation Goals:	
County(ies):	
APN(s):	
Title Company:	
Order No.	
Report Date:	
Amended Date:	
Vested Owner:	
	Important: Please note that the Preliminary Report should be referenced on the Boundaries/Improvements/Encumbrances (BIE) Map (Attachment 4 of the Property Assessment and Warranty); and, all exceptions shown on the BIE Map should be described by the recorded document number as well as the referenced Preliminary Report exception number consistent with this Explanation of Title Exceptions document. Please also describe any Unrecorded Encumbrances at the end of the list of recorded encumbrances. *Please state the intended disposition of each encumbrance, e.g., will the encumbrance remain (ACCEPT), remove the encumbrance (REMOVE), subordinate to a conservation easement (SUBORDINATE), remove from the legal description of the protected land (EXCLUDE), or expand the coverage of the title policy against loss or damage to the protected property (ENDORSE).

EXPLANATION OF TITLE EXCEPTIONS
SCHEDULE B

<i>(Note: Standardized title exceptions are exempt from explanations.)</i> Exception #	Book # Page # or Instrument #	Description of Recorded Document (Easement, Deed of Trust, Notice, Leases, etc.)	Enumerate and describe all rights and obligations in the encumbrance document and whether the rights and obligations will conflict with the conservation values of the conservation easement [link to referenced document].	Explain Disposition of Rights (encumbrances)*: ACCEPT (no credit), ACCEPT (credit), REMOVE, SUBORDINATE, EXCLUDE (from easement area), ENDORSE (Additional Title Insurance) or Other

PROPERTY ASSESSMENT and WARRANTY for *[Insert ILF Site Name]*

[illegible]

Exhibit J

Advance Credit Analysis

The Clark County In-lieu Fee (ILF) Program is being established by Clark County (County), a Nevada local government. As a local government entity, the County cannot operate similar to a private mitigation banking company or invest general fund tax revenue to build compensatory mitigation projects in advance of collecting fees. Therefore, advance credits provide the County with the ability to collect ILF fees and begin using the program as soon as possible. The County, with IRT approval, will use funds to acquire land, design restoration sites, and construct and manage compensatory mitigation projects to meet program objectives as outlined in the ILF Instrument.

In accordance with 33 CFR 332.8(d)(6)(iv)(B) and (C), Program Credits are available for Transfer by the Program Sponsor as provided in the instrument to satisfy compensatory mitigation requirements issued by the IRT Members.

Based on current planning documents, such as the Clark County Comprehensive Master Plan, as well as a general understanding of the needs of the Regional Flood Control District, the Sponsor anticipates the need for a substantial amount of high-quality mitigation credits to offset impacts associated with planned and future projects within the County. While development has slowed in the County, the pace of development in the County continues to be one of the highest in the Country. A 2024 study completed by the Center of Business and Economic Research at the University of Nevada, Las Vegas, estimates the County's population will continue to grow over 1 percent per year until 2039. With the projected population growth, the County will continue to invest in transportation infrastructure such as roads, highways, and mass transit as well as new development and redevelopment. On average, approximately 4,700 acres of land are disturbed annually, as reported through the County's Multiple Species Habitat Conservation Plan. While impacts are primarily on upland resources a small portion of the land disturbed annually is expected to be on wetland and/or stream resources requiring mitigation. Additionally, the Regional Flood Control District has conservatively estimated project impacts over the next 10 years will be approximately 35 acres of stream and wetland resources needing approximately 50 acres of compensatory mitigation credits to offset unavoidable impacts to Waters of the U.S. by various flood control projects in the region. Finally, there are several planned transportation and fiber optic cable projects in Clark County that may need mitigation. The County is not located within the service area of an existing approved mitigation bank or ILF Program that can meet the projected mitigation needs.

The status and amount of aquatic resources potentially impacted and requiring mitigation and the rate of development over the next five years is difficult to estimate with certainty. However, the majority of the anticipated impacts and therefore the mitigation need will be in Service Area 1, Lower Colorado-Lake Mead Basin. To meet the anticipated need for mitigation in Clark County and to begin implementation of the ILF Program at the earliest possible date, the Sponsor is requesting 20 advance credits consisting of 8 wetland and 12 riverine/stream credits. Advance credits would be available for Service Area 1, Lower Colorado-Lake Mead Basin, only.

Wetland credits include freshwater wetlands dominated by trees, shrubs, and/or emergent vegetation. Wetland credits have a Cowardin System classification of Palustrine (P) and will generally be utilized to offset unavoidable impacts to palustrine wetlands.

Riverine/stream credits include freshwater aquatic resources contained within a channel. The aquatic resource may have a hydrologic regime that is perennial, intermittent, or ephemeral. Riverine/stream

credits have a Cowardin System classification of Riverine (R) and will generally be utilized to offset unavoidable impacts to regulated stream and riparian areas that are also classified as Riverine.

Beginning on the Program Establishment Date, this initial allocation of Advance Credits shall be available for Transfer in accordance with Section IV.A of the Instrument. Once the Program Sponsor has Transferred all Advance Credits, no more Advance Credits may be Transferred until the Advance Credits have been Fulfilled. As the Program Sponsor Fulfills Advance Credits, it may request IRT approval of additional Advance Credits for Transfer.

Exhibit K
Approved ILF Projects

Exhibit L **Long Term Management Plan Outline/Table of Contents**

This management plan placeholder outline/table of contents template is a companion document to the Clark County ILF Program conservation easement template and is intended to provide a general outline to assist in the development of site-specific long-term management plans for mitigation sites included in the Clark County ILF Program.

Contents

Chapter 1 Introduction.....	1-1
1.1 Purpose	1-X
1.2 Site Location	1-X
1.3 Long-term Manager – Responsibilities and Qualifications	1-X
Chapter 2 Baseline Information	2-1
2.1 Climate	2-X
2.2 Hydrologic Conditions	2-X
2.2.1 Watershed	2-X
2.2.2 Historic Hydrological Conditions.....	2-X
2.2.3 Existing Hydrological Conditions	2-X
2.3 Water Quality	2-X
2.4 Topography.....	2-X
2.5 Soil Characteristics	2-X
2.6 Vegetation Communities and Wildlife.....	2-X
2.6.1 Vegetation.....	2-X
2.6.2 Wildlife	2-X
2.6.3 Special-Status Species	2-X
2.7 Wildlife Corridor	2-X
2.8 Aquatic Resources.....	2-X
2.9 Functions and Services.....	2-X
2.10 Adjacent Land Use.....	2-X
2.11 Easements.....	2-X
Chapter 3 Monitoring and Management Activities.....	3-1
3.1 Waters of the U.S.	3-X
3.2 Vegetation.....	3-X
3.3 Sensitive Wildlife Species	3-X
3.4 Trash, Signage, and Trespass.....	3-X
3.5 Summary of Maintenance and Monitoring Tasks	3-X
Chapter 4 Adaptive Management Strategy.....	4-1
Chapter 5 Reporting.....	5-1
5.1 Annual Report.....	5-X
Chapter 6 LTMP Revisions	6-1
6.1 LTMP Revisions.....	6-X
Chapter 7 Costs and Funding	7-1
7.1 Cost for Long-Term Monitoring and Management Activities	7-X
7.2 Task Prioritization	7-X
Chapter 8 Literature Cited and Referenced Documents.....	8-1
Appendix A Long-Term Stewardship Calculator	
Appendix B Grading and Planting Plans	