



## REPORT TO CITY COUNCIL

**To:** Honorable Mayor or Members of the City Council

**From:** Jason Simpson, City Manager

**Prepared by:** Barbara Leibold, City Attorney

**Date:** December 13, 2022

**Subject:** **Conservation Easement for Approximately 33.8 Acres and Restrictive Covenant for Approximately 66 Acres of City Property in the Back Basin**

### **Recommendation**

1. Approve and authorize the City Manager to execute and record a Conservation Easement for approximately 33.8 acres of City property in the Back Basin in substantially the form attached and in such final form as approved by the City Attorney; and
2. Approve and authorize the City Manager to execute and record a Declaration of Restrictive Covenants for approximately 66 acres of City property in the Back Basin in in substantially the form attached and in such final form as approved by the City Attorney.

### **Background**

In 1989, the U.S. Army Corps of Engineers (ACOE) issued a Section 404 Permit for the Lake Elsinore Management Project. The Permit included special conditions, including Special Condition D to record a Conservation Easement for the areas generally described as the 71-acre buffer, the 25-acre San Jacinto River, the 33-acre preservation area, and the 10-acre River/Lake Corridor subject to ACOE review and approval. ACOE has approved several modifications to the Section 404 Permit revising certain of the special conditions and adding others.

In 2005, ACOE approved a modification to the Section 404 Permit in connection with the Summerly Project. As a result, the Summerly Project developer became a co-permittee with certain obligations under the Section 404 Permit. The Summerly Project developer, McMillin Summerly LLC, has completed its initial mitigation obligations and has assigned to Rivers and Land Conservancy (RLC) its long-term obligations under Special Condition U to implement a long-term management plan. In accordance with Special Condition V, McMillin Summerly LLC must establish and fund an endowment for the sole purpose of funding the long-term management obligations.

## Back Basin Conservation Easement

In addition to the ACOE 404 Permit, the Lake Elsinore Management Project and the Summerly Project were subject to the requirements of a Section 1602 Streambed Alteration Agreement (SAA) issued by the California Department of Fish and Wildlife (CDFW). The SAA also included requirements to record Conservation Easements over the same properties.

The ACOE and CDFW have removed the requirement to record a Conservation Easement over the 71-acre buffer area. Instead, a Declaration of Restrictive Covenants is required. The 10-acre and 25-acre easement areas have been combined into one Conservation Easement covering the combined approximately 33.8 acres in the form attached.

The 33-acre Conservation Easement is required and will be presented to the City Council at a future date.

### **Discussion**

The City owns the properties described for conservation in the Section 404 Permit and the SAA. Consequently, the City is the Grantor/Declarant that must approve these documents for recordation to ensure that the property is preserved in its natural open condition to maintain ecological, historic, visual and educational values. The Conservation Easement is made in favor of the Western Riverside County Regional Conservation Authority (RCA) with rights afforded to ACOE and CDFW to preserve and protect the conservation values of the property.

As the Grantor of the Conservation Easement, the City is responsible for (a) taking reasonable actions to prevent the unlawful entry and trespass that may degrade or harm the conservation values, (b) cooperating with RCA to protect the conservation values; (c) repair and restore damage to the Property directly caused by the City or its agents or third parties within the City's control, and (d) performing long-term maintenance of signage and chain link fencing (along the 71-acre area) installed by McMillin Summerly as required by the 404 Permit and SAA.

In addition to satisfying the conditions of these ACOE and CDFW regulatory permits, the properties are described for conservation in the 2003 MSHCP Consistency Analysis approved in connection with the East Lake Specific Plan. Consequently, the recordation of the Conservation Easements and Declaration of Restrictive Covenants will contribute to the 770 Acre East Lake Specific Plan Conservation Proposal.

A map depicting the Conservation Areas in the Back Basin, including the 10-acre, 25-acre and 77-acre sites is attached.

### **Fiscal Impact**

The costs associated with long-term maintenance responsibilities are limited to maintenance of signage and fencing and will be estimated on a 5-year schedule and included in the City's Annual Operating Budget. Costs associated with repair or damage to property are not anticipated but could arise within the City's obligations under the Conservation Easement.

**Attachments**

Attachment 1 - Conservation Easement

Attachment 2 - Declaration of Restrictive Covenants

Attachment 3 - Back Basin Conservation Area Map

