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P.O. Box 4601
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**DECLARATION OF PROTECTIVE COVENANTS AND
RESTRICTIONS OF THE GARY J. MAGRINO
INDUSTRIAL PARK, SAN LUIS, ARIZONA**

On this 5th day of September, 2014, the Greater Yuma Port Authority, Inc., an Arizona non-profit corporation (hereinafter "Declarant"), entered into this Declaration of Protective Covenants and Restrictions of the GARY J. MAGRINO INDUSTRIAL PARK, San Luis, Arizona.

WITNESSETH:

WHEREAS, Declarant owns certain real property in the County of Yuma, State of Arizona, which is located within the City of San Luis, Arizona, referred to in Article I; and

WHEREAS, Declarant intends that the real property now or hereafter made subject to this Declaration be developed as an industrial park to be known as the GARY J. MAGRINO INDUSTRIAL PARK; and

WHEREAS, it is the purpose of this Declaration to insure the proper development of such real property; to protect and enhance the values and amenities of all properties within the park; to ensure the proper use, appropriate development and improvement of such property; to protect against the construction of improvements and structures built of improper or unsuitable materials; to provide for a method for the maintenance and continued improvement of common areas thereof; and in general to encourage construction of high-quality, permanent improvements that will promote the general welfare of all existing and future owners and occupants;

NOW, THEREFORE, the Declarant does hereby declare that the property, now called the GARY J. MAGRINO INDUSTRIAL PARK, as hereinafter defined and such additions thereto as may be hereafter made pursuant to Article III hereof, is and shall be held, sold and transferred, conveyed and occupied subject to the covenants, conditions, restrictions, easements, uses, privileges, charges and liens hereafter set forth, all of which shall be binding on all parties having or acquiring any right, title and interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof:

ARTICLE I DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

1.01 Additional Property. Any real property, other than the initial properties, made subject to this Declaration pursuant to the provisions herein.

1.02 Declaration. This Declaration of Covenants and Restrictions for the GARY J. MAGRINO INDUSTRIAL PARK, as same may be amended from time to time.

1.03 Declarant. Greater Yuma Port Authority, Inc., an Arizona non-profit corporation.

1.04 Improvement(s). All structures or other improvement(s) to a Parcel of any kind whatsoever whether above or below grade, including, but not limited to, buildings, utility installations, waste water and disposal systems, storage, loading and parking facilities, pipelines, storm drainage system, walkways, driveways, landscaping, signs, site lighting, site grading and earth movement and any exterior additions, changes or alterations thereto, whether original or future construction.

1.05 Intent of Use. The intended explicit use of a Parcel by the Owner or Occupant.

1.06 Surface Drainage. Drainage ways, whether natural or manmade, which enable the flow of surface water in a desirable manner to drainage outlets (i.e. rivers, streams, channels, storm water retention lagoons, etc.).

1.07 Occupant. Any Person legally entitled to occupy and use all or any part or portion of a Parcel. "Occupant" shall include a Person occupying or using all or any part or a portion of a Parcel as a tenant or subtenant.

1.08 Operational Plans and Improvements. Complete plans, improvements and activities which owner intends to implement on its specific parcel of land within the GARY J. MAGRINO INDUSTRIAL PARK development.

1.9 Owner. The record owner, other than the Declarant, whether one or more persons or entities, of any Parcel.

1.10 Parcel. Each part of the Properties, the size and dimension of which shall be established by the legal description in the Parcel Deed conveying such Parcel, provided, however, no parcel shall be smaller than one (1) acre. A Parcel may also be established by the Declarant by an instrument in writing executed, acknowledged and recorded by the Declarant which designates a part of the Properties as a Parcel for the purposes of this Declaration. Such instrument may, but need not, be a plot of subdivision.

- 1.11 Parcel Deed. The deed of the Declarant conveying a Parcel to an Owner.
- 1.12 Parcel Site Plan. The Parcel Site Plan provided for in Section 4.02 of Article IV.
- 1.13 Permitted Operations and Use. Explicit uses as defined in Section 4.07 of Article IV, but not limited to those explicit uses.
- 1.14 Person. A natural person, firm, corporation, partnership or any legal entity, public or private.
- 1.15 Prohibited Operations and Uses. Explicit uses prohibited as defined in Section 4.08 of Article IV, but not limited to those explicit prohibitions.
- 1.16 Subdivision. The real property described in Article III of this Declaration comprising the GARY J. MAGRINO INDUSTRIAL PARK , and by this reference made a part hereof, and any part of the Additional Property made subject to this Declaration as provided in Section 3.02 of Article III.
- 1.17 Property Owners Association. The non-profit corporation to be founded by Declarant which will be the successor in interest to Declarant in the administration of certain rights and responsibilities as provided in this Declaration.
- 1.18 Standards, Regulations, Requirements, Code, or Ordinance of the City of San Luis. All such references, whether together or used in isolation, shall mean the existing legal requirements in effect in the City of San Luis as of July 1, 2014, whether codified or not, including the: 1) City of San Luis Zoning Ordinance dated May, 2012; 2) City of San Luis Subdivision Regulations in effect as of July 1, 2014; 3) 2003 International Building Code; 4) 2003 International Electrical Building Code; 5) 2003 International Property Maintenance Code; 6) 2003 International Fire Code; 7) 2006 International Plumbing Code; 8) 2006 International Mechanical Code; and 9) 2008 National Electrical Code, and as may be amended from time to time, provided such amendments are no less restrictive than what was in existence as of July 1, 2014.

ARTICLE II PROPERTY OWNERS ASSOCIATION

2.01 The Association. Declarant shall cause the formation and incorporation of the Association as a non-profit corporation organized and existing under Arizona Law, charged with the duties and invested with the powers prescribed by law and set forth in its Articles of Incorporation, Bylaws, and this Declaration. The Association shall be managed by the Board of Directors pursuant to the procedures set forth in the Association's Articles of Incorporation and Bylaws, subject to this Declaration. Neither the Articles of Incorporation nor the Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The Association will be formed prior to the sale of the first parcel in the Subdivision.

2.02 Membership. Each Owner (whether one or more persons or entities) of a Parcel shall, upon and by virtue of becoming such Owner, automatically become a Member of the

Association and shall remain a Member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each Parcel and may not be separated from such ownership. Whenever the legal ownership of any Parcel passes from one person to another, by whatever means, no instrument transferring membership in the Association is necessary, and no certificate of membership will be issued. An "Occupant" who is not an Owner is not a member.

2.03 Voting Rights. . Voting shall be based upon the actual acreage owned by each Owner. Each Owner, including the Declarant, of each Parcel shall have one (1) vote for each acre owned within the Subdivision. If there is more than one Owner of a Parcel, all such Owners shall be Members, and the vote for such acre may be exercised as the Owners mutually agree. However, in no event shall more than one vote per Parcel be cast; and

2.04 Quorum for Membership Action. With respect to any annual or special "general" membership meeting of the Association, at the first call of such meeting, the presence at the meeting in person or by proxy of 66% of the total votes of the membership shall constitute a quorum. If the required quorum is not forthcoming, the meeting may be adjourned to a new date not more than seven (7) days from the current date and the required quorum at such meeting shall be one-half (½) the required quorum at the immediately preceding meeting. This procedure shall be continued until a quorum has been obtained; provided, however, that such reduced quorum shall not be applicable at a subsequent meeting held more than sixty (60) days following the originally scheduled meeting.

2.05 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Directors may elect or appoint, in accordance with the Articles of Incorporation and the Bylaws, as the same may be amended from time to time.

2.06 Personal Liability. No member of the Board, any committee of the Association, or any Officers of the Association, shall be personally liable to any Owner, or any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board of Directors or any other representative or employees of the Association; provided, however, that such person has, upon the basis of such information as may be possessed by him, acted in good faith, and without willful or intentional misconduct.

2.07 Security. THE ASSOCIATION SHALL NOT BE CONSIDERED TO HAVE A DUTY TO INSURE OR GUARANTEE THE SAFETY OF THE OWNERS IN THE SUBDIVISION OR TO BE A PROVIDER OF SECURITY SERVICES. WHETHER OR NOT SUCH SERVICES ARE PROVIDED BY THE ASSOCIATION, THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS, DAMAGE OR INJURY BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR THE INEFFECTIVENESS OF SECURITY MEASURES AND SERVICES TAKEN OR PROVIDED. EACH OWNER, GUEST OR INVITEE ACKNOWLEDGES AND AGREES THAT THE ASSOCIATION, ITS OFFICERS, DIRECTORS AND COMMITTEE MEMBERS ARE NOT PROVIDERS OF SECURITY SERVICES AND THAT THE ASSOCIATION, ITS DIRECTORS, OFFICERS AND COMMITTEE MEMBERS

HAVE MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, RELATIVE TO ANY SECURITY MEASURES UNDERTAKEN WITHIN THE SUBDIVISION.

2.08 Power to Indemnify and to Purchase Indemnity Insurance. The Association, acting through the Board, shall indemnify and may reimburse and/or advance expenses and/or purchase and maintain insurance, including errors and omission policies of insurance, or any other arrangement on behalf of any person who is or was a director or officer of the Association against any liability asserted against such person and incurred by such person in a capacity or arising out of his status as such a person to the maximum extent permitted by Arizona Law. Further, the Association, acting through the Board, may indemnify and/or reimburse and/or advance expenses and/or purchase or maintain insurance on behalf of any person, other than a director of the Association, who is or was an officer, employee or agent of the Association against any liability asserted against such person and incurred by such person in such a capacity, to such extent (or in the case of officers of the Association, to such further extent), consistent with applicable law, as the Board may from time to time determine. The provisions of this Section shall not be deemed exclusive of any other rights to which any such person may be entitled under any Bylaw, agreement, insurance policy, vote of Members or otherwise. All costs and expenses of the insurance and other arrangements described herein shall be deemed expenses of the Association and be covered by Assessments.

2.09 Condemnation. If part or all of the Common Area shall be taken or condemned by any authority having the power of eminent domain, any compensation and damages shall be paid to the Association. The Board shall have the exclusive right to act on behalf of the Association with respect to the negotiation and litigation of the taking or condemnation issues affecting such Common Area. Such proceeds shall be added to the funds of the Association, and the Association shall decide on whether or not to replace or restore, as far as possible, the Common Area so taken or damaged. The Association shall give timely notice of the existence of such proceedings to all Owners and their mortgagees, if any. The expense of participation in such proceedings shall be common expenses and paid from Association dues.

2.10 Assessment. Each Parcel conveyed by a Parcel Deed to an Owner shall be subject to an annual assessment for: 1) the administration of the Association Board of Directors, including, but not limited to, insurance, legal, accounting and any other related administrative expense; and 2) compliance with Section 4.31 of this Agreement in an amount as will be fixed by the Association not exceeding in any year \$30.00 per acre.

(a) All assessments shall be payable to the Association. Each assessment shall be payable on the 1st day of July in each year, and shall be used exclusively for the purposes set forth above. Time is of the essence. A late charge of \$25.00 per day shall be levied against Owner and Owner's Parcel for each day the assessment is overdue.

(b) In the event of the non-payment of any assessment, the Association shall provide Owner with written notice of the non-payment of the assessment. If the Owner fails to pay the assessment within 30 days from the receipt of such notice, the Association may then without further notice to Owner record a notice of lien upon such Owner's Parcel, with a copy provided to the Owner. No assessment lien shall be placed upon, or attach to, any Parcel until the Association has

complied with the procedure set forth herein. The Association shall have the right to commence an action to foreclose the assessment lien against the Parcel and/or the Owner at any time 90 days after the recordation of the assessment lien. The assessments for each Parcel shall also be the personal obligation of each Parcel Owner. Each Owner expressly vests in the Association, the right and power to bring all actions against the Owner of the Parcel and/or the Parcel conveyed, or any part of thereof, without the waiver of any action against either the Owner or the Parcel for the collection of any delinquent assessment and to enforce the above-stated lien for the same, which may include, without limitation, an action for foreclosure of the lien. Owner agrees to pay all attorneys' fees, costs, and expenses of the Association and its successors and assigns incurred in collecting any delinquent assessment(s), including, but not limited to, any such fees, costs, or expenses incurred in filing and/or prosecuting a foreclosure action, in post-judgment collection efforts against the Parcel and Owner, and in any proceedings in Bankruptcy Court. Owner agrees, by acceptance of a Parcel Deed, that any such late charges, attorneys' fees, costs, and expenses shall be treated as an "assessment" included in the lien granted by Owner against Owner's Parcel.

(c) If the expenses authorized for payment hereinabove should exceed \$30.00 per acre, the per acre limit set forth in this Section may be amended by an affirmative vote of a majority of votes cast by the Members of the Association.

ARTICLE III PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

3.01 Initial Properties. All of the initial real property constituting the GARY J. MAGRINO INDUSTRIAL PARK, consisting of 227.097 acres, more or less, being those lands delineated on a Final Plat Magrino Industrial Park Unit No. 2, prepared by Core Engineering Group, PLLC, dated 2/27/15, 2015, and recorded in Office of the Yuma County Recorder at Fee Number 2015-12921, which is subject to this Declaration, subject to all previously recorded easements. *and found in Book 27 of Plats Page 82-84, Yuma County Recorder.*

3.02 Unaffected Property. This Declaration shall have no force or effect as to any real property, whether owned by the Declarant or by others, except that real property specifically described as set forth in Section 3.01 hereof.

ARTICLE IV REGULATIONS GOVERNING USES AND IMPROVEMENTS

4.01 Control of Uses and Improvements. All Owners shall submit to the Association in writing Operational Plans for review in order to show their intent of use. No Improvement shall be constructed, placed, or maintained or permitted on any Parcel without the prior written approval of the Operational Plans and Improvements' specifications by the Association. Owners shall submit Operational Plans and Improvements' specifications for review to the Association in the manner hereinafter set forth. Approvals under this Article IV shall not be arbitrarily or capriciously withheld. Approval of site plans by the Association in no way relieves the Owner from obtaining permits and other approvals as required to comply with local, state, or federal regulations. The Association may appoint a committee of its Members to perform the tasks set forth in this Article IV.

4.02 Submissions to Association. Prior to construction, the Owner shall deliver to the Association in form reasonably satisfactory to the Association two complete sets of Parcel Site Plans and the following data:

(a) The Parcel Site Plan showing the location and dimensions of the following Improvements:

- (1) The perimeter of all proposed buildings on the parcel;
 - (2) The vehicular parking areas;
 - (3) On-site roads;
 - (4) Points of ingress and egress;
 - (5) Loading and service areas;
 - (6) Easements of records;
 - (7) Easements reserved by the Declarant or the Association or allotted by the Owner for providing other services to the Parcel;
 - (8) Tie-in points for utilities including water and effluent collector lines, if any, electric, gas and telecommunications;
 - (9) Landscape planting and watering plans in accordance with the City of San Luis landscape ordinance, if any;
 - (10) Signs;
 - (11) Outside lighting; and
 - (12) Appropriate or required fencing.
- (b) Drawings of proposed building elevations and description of interior and exterior construction materials to be used.
- (c) Grading and drainage plans.
- (d) Complete information regarding air emissions and effluent and waste water discharge.
- (e) Drawings and design specifications of all proposed signs shown on the Parcel Site Plan in accordance with the applicable City of San Luis sign ordinance.

(f) Complete information and drawings, if necessary, on how Owner's intended plans and construction will comply with the requirements of that certain Memorandum re: Conference Opinion for the Transfer of 347 Acres of Bureau of Reclamation Land to the Greater Yuma Port Authority and U.S. General Services Administration issued by the United States Department of the Interior, U.S. Fish and Wildlife Service, on or about August 29, 2002, relating to the Flat Tail Horned Lizard. *See Exhibit "C,"* which is incorporated herein by this reference.

Provided, HOWEVER, no proprietary information shall be required of an Owner pursuant to any provision of this Declaration.

4.03 Review Time of Parcel Site Plan and Data. Within thirty (30) days after the Owner has served written notice upon the Association that it has submitted all required Parcel Site Plans and data to the Association, the Association shall notify the Owner in writing whether such Parcel Site Plans and data are approved or disapproved. Any such disapproval shall set forth the reason or reasons for such disapproval. Should the Association fail to approve or disapprove the aforesaid Parcel Site Plans and data in writing within the said thirty (30) day period, then the Association's approval shall be conclusively presumed to have been granted. No construction of the Improvements provided for in the submitted Parcel Site Plans and data shall be commenced until the expiration of the aforementioned thirty (30) day period without disapproval or the receipt of the Association's written approval of Parcel Site Plans and data, whichever shall first occur.

4.04 Time for Review of Revised Parcel Site Plans and Data. If the Association shall disapprove any part of the Parcel Site Plans and data submitted as aforesaid, the Owner shall revise its Parcel Site Plans and data to incorporate such changes and shall deliver two (2) complete sets of revised Parcel Site Plans and data to the Association and the Association shall have fifteen (15) days after receipt within which to review such revised Parcel Site Plans and data to determine the Owner's compliance with the Association's requested changes. Should the Association fail to advise the Owner in writing of whether or not such revised Parcel Site Plans and data are in compliance with the suggested changes within the fifteen (15) day period, then the Association's approval shall be conclusively presumed to have been granted.

4.05 Changes in Approved Parcel Site Plans and Data. The Owner shall submit to the Association for approval any change or revision in approved Parcel Site Plans and data in the manner provided in this Article for the approval of Parcel Site Plans and data. The Association shall endeavor to review such changes or revisions within a shorter period of time than thirty (30) day period after receipt provided in Section 4.03, but shall not be required to do so.

4.06 Intent of Use. The Owner shall submit to the Association in writing according to Section 4.01 the intended use or uses of the proposed facility at the time of submission of the Parcel Site Plans and data. Descriptions of the use or uses should be in detail, provided, however, no proprietary information shall be required of an Owner pursuant to any provision of this Declaration. Operations and uses which are neither specifically prohibited nor specifically authorized in this Declaration may be permitted in a specific case if operational plans and specific uses are submitted to and approved in writing by the Association. Time considerations for approval shall follow the procedures set forth in Section 4.03. Should the Association disapprove of the intended use in

writing, the Owner may resubmit an alternate use or uses utilizing the same procedures as detailed in this Section.

4.07 Permitted Operations and Uses. Unless otherwise specifically prohibited herein, any business operation and use allowed by applicable zoning and other land use regulations will be permitted if the principal use is performed or carried out within a building that is so designed and constructed that the enclosed operations and uses do not cause or produce nuisance to adjacent sites, such as, but not limited to, vibration, sound, electro-mechanical disturbance and radiation, electro-magnetic disturbance, air or water pollution, dust, emission of odorous, toxic or non-toxic matter, smoke, heat, unusual excavations, or other activities which may, in the sole discretion of the Association, be considered objectionable to the purposes for which the property is being developed. Exceptions to the preceding use restrictions may be made during periods when equipment breakdown or malfunction occurs in such a manner as to make it evident that the effect was not reasonably preventable. No conditional use permit or zoning variance may be obtained by an Owner without the prior written consent of the Association.

4.08 Prohibited Operations and Uses. The operation and use of drilling for and/or removal of oil, coal, gas, or other hydrocarbon substances on any property subject to these restrictions shall not be permitted. The following operations and uses shall not be permitted on any property subject to these restrictions: residential; trailer courts; labor camps; junk yards; commercial excavation of building or construction materials; distillations of bones; any activity which shall cause undue fire hazard; dumping, disposal and/or incineration of garbage, sewage, offal, dead animals or refuse; fat rendering; stock yard or slaughter of animals; refining of petroleum or its products; smelting of iron, tin, zinc, or other ores; hog, cattle, chicken or other animal raising, adult orientated businesses and any use specifically prohibited by law. The following operations or uses shall not be permitted on any property subject to these restrictions without the prior consent of Association: scrap yard storage; automotive garage repair or sales facility; coal yard; auto wrecking, salvage yards; used material yards; storage of baled or waste scrap paper, rags, scrap metals, bottles or other junk; bag cleaning, boiler and tank works; central mixing plant for asphalt, mortar, plaster or concrete; any quarry operations.

4.09 Approvals - Responsibilities. To the extent permitted by applicable law, neither the Association nor its agents, employees, members, successors and assigns shall be liable for damages to any Owner or to any other Person submitting for approval, Intent of Use, Parcel Site Plans and data, or to any one or more of them, by reason of good-faith mistake in judgment arising out of or in connection with the approval or disapproval or failure to approve any Intent of Use, Parcel Site Plans and data. Every Person who submits Intent of Use, Parcel Site Plans and data to the Association for approval as herein provided agrees by submission of such Intent of Use, Parcel Site Plans and data and every Owner or Person claiming by or through an Owner agrees by acquiring title to any part of the Properties or any interest in the Properties, that it will not bring any action or suit against the Association or any one or more of them, their respective agents, employees, members, successors or assigns to recover any such damages.

4.10 Assignment of Association's Powers and Rights. The Association may delegate and assign to any designated and appropriate assignee the powers and rights under Article IV with

respect to review of any specific Intent of Use, Parcel Site Plans and data submitted to the Association.

4.11 Improvements Generally. No improvement shall be constructed, erected, placed, altered, maintained or permitted on any Parcel unless it complies with the provisions of this Article IV and is approved by the Association in the manner provided in this Article IV, such approval not to be unreasonably withheld.

4.12 Government Regulations. All improvements and construction must be in compliance with local, state, and federal regulations, including without limitation, standards for building and construction, land use, air emissions, sanitary systems, industrial effluent, noise levels and regulations of the Federal Aviation Administration. In the event such other regulations are less restrictive than the regulations set out herein, then the more restrictive provision of these regulations shall apply.

4.13 Building to Land Ratio. The maximum ratio of building area (footprint) to total Parcel size shall be in accordance with City of San Luis standards.

4.14 Set Back Lines and Parcel Size. No structure of any kind and no part thereof shall be placed on any site closer to a property line than permitted by City of San Luis standards.

4.15 Height Limitations. Improvements erected on a Parcel shall meet City requirements, if applicable. In the absence thereof, improvements shall not exceed sixty (60) feet in height, or four (4) stories, whichever is less, provided, however, that water towers or tanks, stand pipes, structures for housing elevator equipment, stairways, ventilating fans or other similar equipment required to operate and maintain the buildings, fire or parapet walls, skylights, tanks, cooling and other towers, wireless radio or television masts or towers, communications towers, flagpoles, gravity flow storage and/or mixing towers, or similar structures may exceed this height with the written approval of the Association.

4.16 Exterior Wall Systems/Building Specifications. Exterior wall systems shall be constructed using a uniform and unicolor, metal exterior wall system, concrete brick masonry walls, common brick, concrete, tile blocks, tile bricks, glass, stone, concrete tilt panels, precast concrete panels, a combination of such systems, the equivalent or better, or such other recognized and building systems for industrial construction approved by the Association. No exterior wooden framing system, shall be allowed within the Subdivision, except upon express prior written approval of Association, in its sole and absolute discretion.

4.17 Vehicular Parking. The parking of all motor vehicles by occupants, their guests, invitees and licensees, shall be within the Parcel boundaries. Sufficient parking spaces with dimensions as provided in the applicable City of San Luis standards must be provided by the Owner in areas designated for such purposes.

4.18 Loading Areas. All loading and receiving shall be conducted entirely within the Parcel at loading/receiving areas which shall not be permitted in the front yard of any Parcel or in the side yard that fronts any streets unless otherwise approved in writing by Association. Loading

and receiving areas shall be located and/or screened so as to minimize their visibility from any neighboring Parcel or street, and shall be constructed with asphalt or concrete and shall include adequate drainage and retention facilities to dispose of surface water.

4.19 Outdoor Storage and Equipment. No articles, goods, materials, supplies, inoperable vehicles, incinerators, storage tanks, sea containers except for permanently placed sea containers, unicolor, and aesthetically suitable, refuse containers or like equipment shall be stored in any area on a Parcel except inside a closed building or behind a visual, natural vegetation barrier in conformance with the Landscape Plan screening such areas from the view of adjoining properties and/or public streets, or behind an approved wall or fence, unless explicit written approval is provided to the Owner by the Association. Water towers, storage tanks, transformers, pump houses, processing equipment, cooling towers, communication towers, vents, stacks, skylights, mechanical rooms and other structures or equipment (whether freestanding or roof mounted) shall be architecturally compatible and effectively shielded from public view by an architecturally approved method to provide a "roofscape" which shall be approved by the Association before construction or erection of said structures or equipment. Such regulation shall not be enforced during construction. Screening shall consist of opaque fencing constructed of uniform and unicolor masonry or like material which are harmonious in appearance, design and quality with the primary structure or densely planted shrubs providing an opaque screening height of 8 feet at maturity. Chain link fencing or other alternative may be used at the rear of a parcel and on the sides of interior parcels with prior written consent of Association.

4.20 Utilities. Except where otherwise prohibited by Association in this Declaration, including any Exhibits annexed hereto, "on-site" electrical lines and telephone lines may be placed above ground in accordance with the requirements of the respective utilities. Transformer or terminal equipment shall be visually screened from view from streets and adjacent properties. The Association reserves the right to construct utility lines overhead, and utility lines, pipes and conduits underground through an area of not more than twenty (20) feet in width adjacent to the boundary lines of a property, and the Parcel Owner agrees to execute any and all instruments necessary and reasonable with the further development of the Subdivision, including the granting of easements of not more than twenty (20) feet in width along such boundary line for utilities and access roads, provided that the exercise of such rights shall not unreasonably interfere with, or diminish, the Owner's use and enjoyment of the Parcel and shall be exercised in a manner most consistent with such use and enjoyment and without cost, expense or liability to the Owner, except as otherwise agreed. Initial utility easements are shown on the Plat attached to this Declaration as **Exhibit "A,"** and incorporated herein by this reference.

4.21 Easements. The Association reserves unto itself its successors and assigns, an easement or easements of sufficient width for laying sanitary sewers or for utility installation, utility rights-of-way rail rights-of-way, storm water drainage and maintenance thereof but Association covenants that it will not construct nor grant the right to construct any sewer or utility pipes or lines that will interfere with any existing or planned structure.

4.22 Storm Drainage and Grading. All Owners shall provide details of proposed storm drainage systems to the Association for approval and shall include detailed drawings, specifications, and locations concerning all applicable storm drainage improvements, including, but not limited to

impoundment facilities, underground piping, catch basins, headwalls, ditches and swales from each building site to any designated drainage easements within the Properties. All such drainage plans and facilities shall likewise comply with all rules, regulations and requirements of the City of San Luis and/or other governmental authority(ies) having jurisdiction thereof. The Association may elect to require that the Owner provide any on-site drainage facilities on any Parcel or provide connections to off-site drainage facilities in the Common Property or otherwise. No grading, excavation work or alteration of natural surface drainage or manmade surface drainage is permitted without prior written approval of the Association. Proof shall be provided by the Owner to the Association that such grading, excavation work or alteration of natural surface drainage or manmade surface drainage shall not create or cause adverse effects on adjoining properties or Parcels.

4.23 Landscaping. Landscaping shall be in accordance with all applicable landscape ordinances of the City of San Luis standards.

4.24 Signage. The size, shape, design and location of all signs shall be shown on the Parcel Site Plans submitted to Association for approval, and must comply with the City of San Luis sign ordinance. No advertising signs shall be permitted other than those identifying the name, business and products of the firm or person occupying the premises and those offering the premises for sale or lease when specifically approved by the Association. Each site shall be required and limited to one free standing sign per street frontage. Signs shall conform to setback lines unless specific approval to the contrary is granted by the Association in writing. Signs and identifications on buildings or building sites shall only be of such size and design and color as is specifically approved by the Association in writing. Signs shall be of an architectural design and may not exceed a height of ten (10) feet, unless attached to the building. Signs attached to the building may not exceed the height of the wall system. In addition to the foregoing signs, an Owner shall erect necessary traffic, directional and warning signs of size and character appropriate for such purposes with prior written approval by the Association. Any sign erected without the prior written consent of the Association shall be removed within five (5) days of the receipt of written notice from the Association demanding such removal. If the owner fails to remove such signs within five (5) days, the Association shall have the right but not the obligation to enter upon the Parcel and remove such signs. The cost of such removal shall be assessed against and paid by the Owner.

(a) Temporary signs shall be permitted during construction and when a Parcel is offered for sale or lease, provided that the Owner first secures the written approval of the Association and provided further that such approval shall not extend for a period in excess of one (1) year.

(b) Signage of an unsightly nature or that obstructs vision to vehicular traffic as determined by the Association is prohibited.

4.25 Illumination of Buildings and Parking Areas. Any flood lighting of buildings and parking areas shall be arranged in such a way that no direct glare shall be cast toward any residentially zoned (or residentially developed property) and luminary devices shall be hooded or arranged so that the source of the illumination is not visible from such residential property or highway. Any flood lighting shall be limited to the illumination of the building for security

purposes and to the lighting of parking areas and access ways as necessary for the safe movement of pedestrian and vehicular traffic. Lighting intensity shall be limited to that which is necessary to afford minimum adequate illumination for the purposes set forth in the paragraph. No freestanding luminary devices shall in any case exceed thirty (30) feet in height. The height, location and intensity of luminary devices shall be indicated on the Parcel Site Plans and approved by the Association.

4.26 Refuse/Outside Storage, Thereof. Waste must be disposed of by Owner in an environmentally acceptable manner. The Owner's Parcel shall not be used or maintained as a dumping ground for rubbish or junk. Trash, garbage or other waste shall not be kept, except temporarily in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All outdoor refuse collection areas shall not be exposed to public view. When it is necessary to store or keep waste or refuse in the open, the lot or area shall be fenced with a screening fence at least high enough to screen the materials from site at ground level; said storage shall be limited to the rear two-thirds of the property.

4.27 Bulk Storage of Liquids. Bulk storage above ground of all liquids, including gasoline and petroleum products on the outside of the buildings, shall be permitted only in locations as approved by the Association in writing, and subject to compliance with rules and regulations of any governmental agency or agencies having jurisdiction over such matters.

4.28 Subdivision-Re-Subdivision. No Parcel may be re-subdivided without the written permission of Association, provided that no resulting parcel shall contain less than one (1) acre. Declarant or an Owner that re-subdivides may impose additional protective covenants and restrictions on the re-subdivided parcels. Such protective covenants and restrictions shall not be inconsistent with the provisions of these protective covenants and restrictions; shall not be less restrictive than these protective covenants and restrictions; and, so long as Declarant owns any parcels within the GARY J. MAGRINO INDUSTRIAL PARK, shall require the consent of Declarant to be valid.

4.29 All improvements set out in the Parcel Site Plans shall be at the sole cost of Owner.

4.30 Restrictions Relating to Cattle or Livestock. In addition to any other restrictions or prohibitions contained herein, Owner shall be prohibited from using any part of the property described in the attached **Exhibit "B,"** which is incorporated herein by this reference, for the purpose, in whole or in part, of herding, feeding, detention, or transportation of cattle or other livestock.

4.31 Restrictions Relating to the Flat Tail Horned Lizard. Upon recordation of a Parcel Deed conveying a Parcel from Declarant to Owner, Owner agrees to assume, and hereby covenants to diligently perform and undertake, any and all actions, measures, and obligations as may be required in reference to the proposed-threatened Flat Tail Horned Lizard in, on, or about Owner's Parcel, as more particularly described in that certain Memorandum re: Conference Opinion for the Transfer of 347 Acres of Bureau of Reclamation Land to the Greater Yuma Port Authority ("GYPA") and U.S. General Services Administration issued by the United States Department of the Interior, U.S. Fish and Wildlife Service, on or about August 29, 2002 ("Conference Opinion"). See

Exhibit “C.” Owner shall be solely responsible for compliance with the Conference Opinion as to his, her, or its Parcel, and all references in the Conference Opinion to the Greater Yuma Port Authority or GYPA shall be applicable and refer to, and binding upon, Owner. All references to “GYPA” in this section hereinafter shall include the GYPA’s successors and assigns (which shall include the Association). In addition to the foregoing and the obligations and duties assumed by Owner in the Conference Opinion, Owner further agrees as follows:

(a) To install, maintain, inspect, and repair, at Owner’s sole cost and expense, any and all fence lines required by the Conference Opinion and/or the GYPA, after prior consultation with, and obtaining the approval of, the GYPA.

(b) To provide the GYPA with all documents, written assurances, and other information as reasonably required by the GYPA in connection with Owner’s compliance, or failure to comply, with the Conference Opinion or the GYPA’s directives.

(c) To contact the GYPA prior to the commencement of any construction on the Parcel, and to obtain the GYPA’s consent and approval to the process and manner in which Owner intends to comply with the requirements of the Conference Opinion and/or the GYPA’s directives before, during, and after the construction.

(d) To immediately contact the GYPA upon the discovery of a Flat Tail Horned Lizard, and demonstrate to GYPA that all proper actions have been taken or will be taken in accordance with the Conference Opinion in connection therewith.

(e) To contact the GYPA prior to the commencement of any annual report required by the Conference Opinion, and comply with the GYPA’s directives with respect to the annual report’s preparation, and submission.

(f) That perpetual non-exclusive easements for ingress and egress over, under, across, in and upon the Owner’s Parcel are hereby declared, created and reserved by the GYPA for the benefit and use of itself and/or any Owner’s Association, as the case may be, their respective successors and assigns, agents and employees, to provide reasonable access to such areas and to enter upon the Properties for the purposes of determining whether Owner is in compliance with the Conference Opinion, and/or the GYPA’s directives concerning the Flat Tail Horned Lizard. Owner further irrevocably grants the GYPA a license and its consent to take all necessary action to correct any actual or perceived violations of the Conference Opinion or the GYPA’s directives, and perform any acts that may be required pursuant to the Conference Opinion or the GYPA’s derivatives that the Owner has neglected to do. In the event the GYPA incurs any cost or expense in connection with such action, Owner agrees to fully reimburse GYPA within twenty (20) days of GYPA’s notice requesting reimbursement. Should Owner fail to timely reimburse the GYPA, such costs and expenses shall be charged against Owner’s Parcel as a lien in the same manner as provided in section 2.10(b) hereof.

(g) That, by exercising any degree of oversight, supervision, or control over Owner and its compliance with the Conference Opinion or the GYPA’s directives, or by performing any acts in relation thereto, neither the GYPA, nor its successors or assigns, shall be deemed as

having undertaken or assumed any responsibilities, obligations, or duties, in any part or manner, of Owner with respect to the Conference Opinion. Owner shall remain solely responsible and obligated to attain compliance with this section and the Conference Opinion, at all times.

(h) To indemnify, defend at its own cost, and hold harmless the GYPA and its successors and assigns from any and all claims, demands, damages, costs, expenses (including reasonable attorneys' fees) arising from, or in any way related to, the Conference Opinion, its requirements, or the GYPA's directives in connection therewith.

ARTICLE V PARCEL MAINTENANCE

5.01 Owner's Maintenance. It is the intention of the Declarant that the Subdivision and Parcels constitute an attractive and quality development with a view toward preserving the functional aesthetics of the area to the greatest extent possible with the intended development. To facilitate such intention, each Owner shall at all times maintain all Improvements in a neat and attractive appearance and free from debris, consistent with the nature of the Improvements and the operations of the Parcel. All unimproved areas shall be kept by the Owner in a neat and attractive manner consistent with the natural surroundings. If any Improvement is damaged by fire, storm or other casualty, or if any Improvement is abandoned, it shall be repaired or removed promptly by the Owner and not allowed to deteriorate or to become an eyesore. The obligations of an Owner under this paragraph are hereinafter known as "Owner's Maintenance".

5.02 Maintenance Easement. Perpetual non-exclusive easements for ingress and egress over, under, across, in and upon the area outside of each Property's fenced area, (but not so as to interfere with Improvements on the Properties located in accordance with an approved Parcel Site Plan) are hereby declared, created and reserved by the Declarant for the benefit and use of itself or the Association, as the case may be, their respective successors and assigns, agents and employees, to provide reasonable access to such areas and to enter upon the Parcels for the purposes of maintaining and beautifying the Parcels within the Subdivision.

ARTICLE VI DECLARANT'S RIGHTS

6.01 Rights Reserved to Declarant. So long as the Declarant owns a Parcel (or the beneficial interest therein) the following rights shall be reserved to the Declarant and this Declaration, the Articles, Bylaws or Association Rules may not, without Declarant's consent, be amended in any way which would eliminate, modify or impair any rights granted to the Declarant under the terms of this Declaration, this Article, Bylaws or Association Rules including, but not limited to, the following:

(a) The right to maintain offices for the sale, rental and management of Parcels, the right to erect signs, and the right to conduct promotional activities; and

(b) The right to use the Subdivision in any manner related to the Declarant's Development and sale of the Subdivision.

6.02 Declarant's Rights Prior to Transfer to Association. Notwithstanding anything contained herein to the contrary or otherwise, until such time as all of the Parcels within the Subdivision have been conveyed to ultimate purchasers for sale thereof (as evidenced by the recordation of deeds or agreements for sale thereto), all of the rights and authorities granted to the Association, the Board, and duly constituted and authorized committees, or any duly authorized designee of the Board, including but not limited to the right to make assessments, as set forth below, shall be and remain in Declarant unless Declarant, prior to the time specified above, elects to relinquish and/or delegate all or part of such rights and authority to the Association, which it shall have the right to do by written notice delivered to the Board at any time and signed by Declarant and thereafter all such rights and authority with the duties attendant thereto shall be assumed, held and administered by the Association, its Members, the Board and its Officers, in accordance with the Articles, Bylaws, and this Declaration. Until Declarant has relinquished its rights hereunder to the Association, Declarant shall have and is hereby granted the right to make assessments and receive from each Owner such assessments. The assessments charged and received by Declarant may be subject to such additional and other provisions (including but not limited to the amount and the manner in which same are payable) as may be set forth herein and in the purchase contract, escrow instructions or other agreement entered into with each buyer of a Parcel. Further, until the time Declarant relinquishes its rights as set forth above (i) the only voting membership in the Association shall be the membership of Declarant; and (ii) the membership in the Association by all the other Owners of Parcels shall be non-voting.

ARTICLE VII MISCELLANEOUS SECTIONS

7.01 Term. These covenants and restrictions shall remain in full force and effect until December 31, 2034, at which time they shall automatically be extended for successive ten (10) year periods unless, prior to any such renewal date, these covenants and restrictions are otherwise amended or revoked by the affirmative written consent of not less than three-fourths (3/4th) of the Owners within the Subdivision.

7.02 Amendment. This Declaration may be amended (a) by an instrument executed by the Owners of no less than three-fourths (3/4) of the votes entitled to be cast under this Declaration and (b) by an instrument executed by Declarant within three (3) years from the recordation hereof if such amendment is necessary or desirable in the sole judgment of Declarant to clarify this Declaration or to correct typographical or similar errors or as may be required by a title insurance company, provided that the manner of determining the percentage of assessments allocated to each Parcel under Section 6.04 shall not be affected without the consent of the Owners of each Parcel so affected. However, no amendment shall change or alter the Owner's voting rights set forth in Article 2.03, or result in any reduction or elimination of the regulations and standards set forth in Article IV. All amendments shall become effective when recorded in the Office of the Yuma County Recorder.

7.03 Enforcement. The covenants, conditions, restrictions, easements, uses, privileges, charges and liens of this Declaration shall run with the land and be binding upon and inure to the benefit of the Declarant, the Association and each Owner of the Parcels or any part thereof, their

respective heirs, successors and assigns. The enforcement of the provisions of this Declaration shall be vested in the Association. A breach of any of the provisions of this Declaration shall give to the party entitled to enforce such provision the right to bring a proceeding in law or in equity against the party or parties breaching or attempting to breach the Declaration and to enjoin such party or parties from so doing or to cause such breach to be remedied or to recover damages resulting from such breach. A breach of this Declaration by an Owner relating to the use or maintenance of a Parcel or part thereof is hereby declared to be and constitute a nuisance and every public or private remedy allowed by law or equity for the abatement of a public or private nuisance shall be available to remedy such breach. In any legal or equitable proceedings for the enforcement of this Declaration or to restrain a breach thereof; the party or parties against whom judgment is entered shall pay the attorneys' fees and costs of the party or parties for whom judgment is entered in such amount as may be allowed by law and be fixed by the Court in such proceedings. All remedies provided under this Declaration including those at law or in equity shall be cumulative and not exclusive. The failure of a party having a right to enforce this Declaration to do so shall not be deemed a waiver of the right of any other party having such right, nor shall a waiver of one breach constitute a waiver as to another breach whether of the same or different nature. No party having the right to enforce this Declaration shall be liable for failure to enforce this Declaration.

7.04 Responsibility of Owner. Each Owner shall be responsible for any breach of this Declaration which is a result of its own acts or omissions or the acts or omissions of an Occupant of its Parcel(s). In the event that an Owner leases or otherwise permits or licenses the use of its Parcel to an Occupant, Owner agrees that, as a condition of the use or occupation, Occupant shall agree in writing to abide by the covenants and restrictions contained herein and be jointly and severally liable for any breach thereof. Such writing shall be in a form satisfactory to Declarant and/or the Association, and a copy thereof shall be delivered by Owner to Declarant and/or the Association upon its execution. No provision of this Declaration or any other agreement shall be construed to relieve Owner of its responsibility or liability hereunder in the event that Owner and/or Occupant breach(es) this Declaration. Although Owner's Occupant shall be bound by the covenants and restrictions contained herein, Occupant shall not acquire, or be permitted to exercise, at any time, any rights accruing to Owner hereunder.

7.05 Compliance with Law. Each Owner shall at all times comply with all applicable federal, state, county and municipal laws, ordinances, rules and regulations and with the applicable regulations of the local fire insurance rating organization having jurisdiction or any other organization or board exercising a similar function with respect to the construction, maintenance, operation and use of such Owner's Parcel or Improvements thereon.

7.06 Estoppel Certificate. Upon the written request of an Owner or any person interested, the Declarant and/or the Association, as the case may be, shall issue a certificate within ten (10) business days setting forth the amount of any delinquent assessment or charge with respect to said Parcel. A reasonable charge not to exceed Twenty-five Dollars (\$25.00) may be made for issuance of the certificate.

7.07 Severability. If any of the covenants, conditions or terms of this Declaration shall be found void or unenforceable for whatever reason by any court of law or of equity, then every other covenant, condition or term herein set forth shall remain valid and binding provided that in such

event Declarant and all of the then Owners of the Parcels shall to the fullest extent possible modify such covenant, condition or term to the extent required to carry out the general intention of this Declaration and to impart validity to such covenant, condition or term.

7.08 Owners' Liability, Subsequent Sale, Successor's Obligation. On sale of a Parcel, the Owner so selling shall have no further liability for the obligations with respect to such Parcel which accrues after the date of the recording of the conveyance provided, however, that nothing herein contained shall be construed so as to relieve either the Parcel of any lien arising by reason of such liability or the Owner of such Parcel from any liabilities or obligations incurred or arising under this Declaration for the time prior to such recording.

7.09 Combination of Parcels. If two or more adjoining Parcels are acquired by the same Owner in fee, such common ownership may, at the option of such Owner, be combined and treated as a single Parcel for the purposes of this Declaration by an instrument duly recorded, notice of which shall be given to the Declarant, and if in existence, an Owners' Association, and compliance with the requirements of the City of San Luis.

7.10 Delay in Performance - Force Majeure. If the performance of any act or obligation under this Declaration is prevented or delayed by an act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, mob violence, sabotage, malicious mischief, inability to procure or general shortage of labor, inability to procure equipment or facilities, materials or supplies in the open market, failure of transportation, strike, Lock-out, action of labor union, condemnation, threatened condemnation, requisitions, laws, orders of government or civil or military or naval authorities or any other cause whether similar or dissimilar to the foregoing not within the reasonable control of the Person required to perform such act or obligation, then such Person shall be excused from the performance of such act or obligation for so long as such Person is so prevented or delayed by reason thereof, provided the Person claiming the benefit of force majeure shall within five days of the occurrence of any of the aforesaid causes give to the Declarant, and/or others as the case may be, written notice thereof together with a statement setting forth all the facts evidencing force majeure. At the conclusion of the duration of each such force majeure, written notice shall be given by such Person of the termination of such force majeure. This force majeure provision shall apply to the Declarant's and each Owner's obligations hereunder except those that require payment of money.

7.11 Notice. Any notice required or desired to be given under the Declaration shall be in writing and shall be deemed to have been properly served when (i) delivered in person (ii) five (5) days after deposit in the United States Mail, certified, return receipt requested, postage prepaid, addressed, if to an Owner, at its last known address as shown on the records of the Declarant or the Association, as the case may be, at the time of such mailing or to the Declarant and Association, addressed as follows (or to such other address as Declarant shall from time to time designate by written notice to each Owner):

Greater Yuma Port Authority, Inc.
P.O. Box 4601
Yuma, Arizona 85366-4601


Association
P.O. Box 4601
Yuma, Arizona 85366-4601

With mandatory copy to:
Byrne & Benesch, P.C.
230 W. Morrison St.
Yuma, AZ 85364

7.12 Captions - Singular, Plural, Gender. The Article and Section headings are intended for convenience only and shall not be construed with any substantive effect in this Declaration. Words used herein shall be deemed to include singular and plural, and any gender as the context requires.


7.13 Days. All references to days shall be computed in calendar days. If a designated period of time ends on a Saturday, Sunday, or legal holiday, such time period shall be extended to the next business day.

IN WITNESS WHEREOF, Declarant has caused its name to be signed herein by its Chairman of the Board thereunto duly authorized, all as of the day, month and year first above written.

GREATER YUMA PORT AUTHORITY, INC.

By: Robert Pickels for
Its: Chairman of the Board of Directors

STATE OF ARIZONA)
) ss.
COUNTY OF YUMA)

The foregoing instrument was acknowledged before me on this 29th day of May, 2015, by Robert Pickels, for the Chairman of the Board of Directors of the Greater Yuma Port Authority, Inc., the same acknowledging and affirming that he was authorized to do so, on behalf of the Greater Yuma Port Authority, Inc.


Notary Public

My Commission Expires:
10/5/15

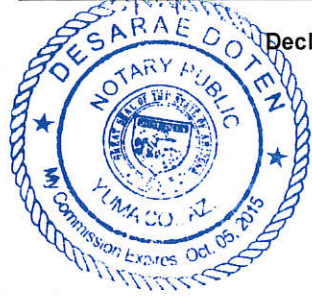


EXHIBIT "A"

PLAT OF INITIAL UTILITY EASEMENTS

[SEE NEXT PAGE]

Declaration of Protective Covenants and Restrictions, Page 20 of 22

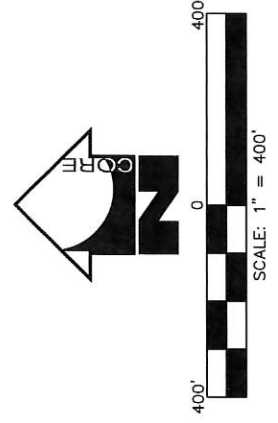
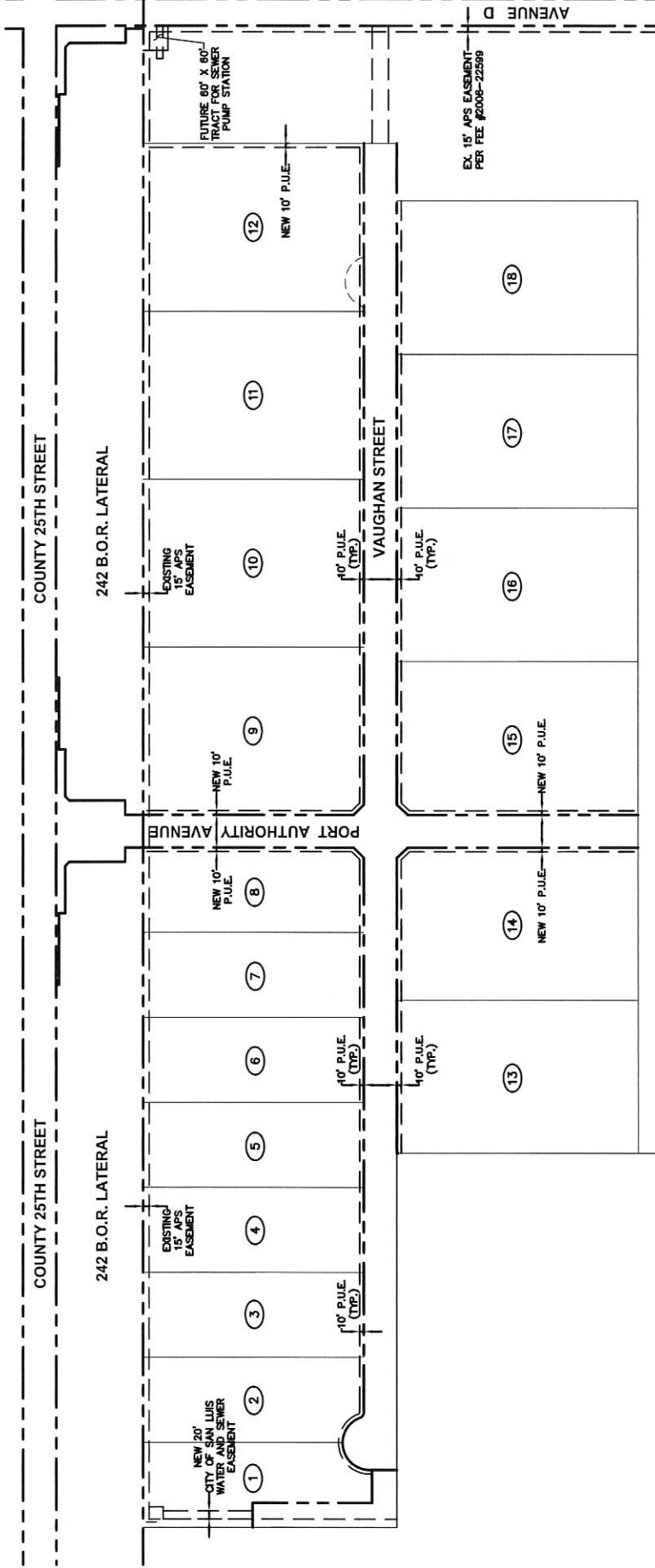


EXHIBIT "B"

**DESCRIPTION OF PROPERTY SUBJECT TO
RESTRICTIONS RELATING TO CATTLE**

Declaration of Protective Covenants and Restrictions, Page 21 of 22

When recorded, mail to

United States of America
General Services Administration
Property Development Division (9PC)
450 Golden Gate Ave. (3W)
San Francisco, California 94102-3434

GRANT OF COVENANTS AND RESTRICTIONS

This Grant of Covenants and Restrictions ("Grant") is made as of this 9 day of November, 2007 ("Effective Date"), by the GREATER YUMA PORT AUTHORITY, INC., an Arizona nonprofit corporation ("Grantor"), for the benefit of the UNITED STATES OF AMERICA ("Grantee"), with respect to the following facts:

A. Grantor is the owner of certain real property located in the County of Yuma, State of Arizona, as more particularly set forth in Exhibit "A," attached hereto and incorporated herein by reference ("Servient Tenement").

B. Grantee is the owner of certain real property adjacent to the Servient Tenement, as more particularly set forth in Exhibit "B," attached hereto and incorporated herein by reference ("Dominant Tenement").

C. Grantor has agreed to grant to Grantee certain covenants and restrictions set forth in this Grant.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Grantor, Grantor grants the FTHL Restriction (as hereinafter defined) and the Livestock Restriction (as hereinafter defined) to Grantee under the following terms and conditions:

1. Grantor, for itself and its heirs, representatives, successors and assigns, covenants that it is lawfully seized in fee simple of the Property by virtue of that certain Quitclaim Deed from the United States of America to Grantor, dated August 30, 2002, recorded in the Official Records of the Yuma County Recorder on September 4, 2002 as Fee No. 2002-25324 ("BOR Deed").

2. FTHL Restrictions. Grantor, for itself and its heirs, representatives, successors and assigns, covenants with Grantee and its successors and assigns, that as to the Servient Tenement:

- a. It has complied with the obligation set forth in paragraph 3.1, page 5, of the BOR Deed.

- b. It will comply with all of the obligations in paragraphs 3 and 3.2, page 5, of the BOR deed with respect to all projects on the servient estate.
- c. With respect to construction on the Dominant Estate, Grantor will comply with those measures required by paragraphs 3 and 3.2 of the BOR Deed, if any, on the Servient Estate, but not the Dominant Estate.

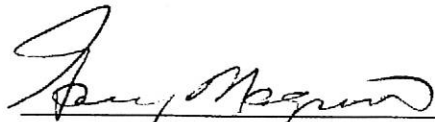
3. Livestock Restriction: Grantor, for itself and its heirs, representatives, successors and assigns, covenants with Grantee and its successors and assigns, that the Property specifically described in Exhibit "C" shall not be used for the purpose of herding, feeding, detention or transportation of cattle or other livestock (excepting any roads which may be used to transport cattle to and/or from parcels not affected by this Restriction). This covenant shall run with the land and be binding upon and inure to the benefit of the parties hereto, and their respective heirs, successors and assigns.

The acquiring federal agency is the General Services Administration.

Dated this 9 day of November 2007

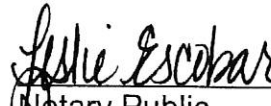
GRANTOR:

GREATER YUMA PORT AUTHORITY, INC.


 By: Gary Magrino
 Its: Chairman of the Board

COUNTY OF YUMA)
) ss.
 STATE OF ARIZONA)

ACKNOWLEDGED to me on this 9th day of November, 2007, by GARY MAGRINO, as Chairman of the Board of Directors of the GREATER YUMA PORT AUTHORITY, INC.


 Notary Public

My Commission Expires:
9/4/2010



EXHIBIT A

DESCRIPTION OF SERVIENT TENEMENT

Parcel B of the AMENDED PLAT OF G.Y.P.A. PARCEL SPLIT, according to Book 23 of Plats, pages 57 and 58, records of Yuma County, Arizona, being a portion of Sections 15, 22, 23 and 24, Township 11 South Range 24 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona;

EXCEPT all mineral, gas, oil and metals as reserved in instrument recorded in Recording No. 2002-25324.

EXHIBIT B

DESCRIPTION OF DOMINANT TENEMENT

Parcel C of the AMENDED PLAT OF G.Y.P.A. PARCEL SPLIT, according to Book 23 of Plats, pages 57 and 58, records of Yuma County, Arizona, being a portion of Sections 15, 22, 23 and 24, Township 11 South Range 24 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona;

EXCEPT all mineral, gas, oil and metals as reserved in instrument recorded in Recording No. 2002-25324.

EXHIBIT C

DESCRIPTION OF RESTRICTIVE COVENANT ON LIVESTOCK AS TO PART OF SERVIENT TENEMENT

That portion of the Servient Tenement which is located north of the Dominant tenement, together with that portion of the Servient Tenement that is located within 2500 feet from a point located on the easterly property line of the Dominant Tenement 925 feet from the southeast corner of the Dominant Tenement.

EXHIBIT "C"

CONFERENCE OPINION

Declaration of Protective Covenants and Restrictions, Page 22 of 22

**United States Department of the Interior
U.S. Fish and Wildlife Service
2321 West Royal Palm Road, Suite 103
Phoenix, Arizona 85021
Telephone: (602) 242-0210 FAX: (602) 242-2513**

2-21-02-F-124

August 29, 2002

Memorandum

To: Director, Resource Management Office, Bureau of Reclamation, Yuma Area Office,
Yuma, Arizona

From: Acting Field Supervisor

Subject: Conference Opinion for the Transfer of 347 Acres of Bureau of Reclamation Land to
the Greater Yuma Port Authority and U.S. General Services Administration

This conference opinion responds to your February 22, 2002, memorandum requesting initiation of formal section 7 conferencing under the Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884), as amended (Act). The conference concerns possible effects of a 347-acre Bureau of Reclamation (Reclamation) land transfer to the Greater Yuma Port Authority (GYPA) and U.S. General Services Administration on the proposed threatened flat-tailed horned lizard (*Phrynosoma mcallii*) (FTHL). Reclamation's Yuma Area Office has determined that the 347-acre land transfer will not jeopardize the continued existence of the FTHL. However, Reclamation has also requested that conferencing be conducted in accordance with the procedures for formal consultation, as provided in 50 CFR §402.10 (d), and has determined that the above action is likely to adversely affect the proposed threatened FTHL.

This conference opinion was prepared using information from the following sources:

- Your February 22, 2002, memorandum requesting conferencing
- Final Environmental Assessment for the San Luis, Arizona, Commercial Port of Entry Project
- Maps and other documents associated with the proposed action
- A site visit and informal FTHL survey on June 19, 2002
- Informal discussions among our staffs and the project proponent

Literature cited in this conference opinion is not a complete bibliography of all literature available on the species of concern, the effects of construction and operation of Port of Entry (POE) facilities, or

on other subjects considered in this opinion. A complete administrative record of this conference is on file at our Arizona Ecological Services Field Office.

Conference History

- February 23, 2002: The Fish and Wildlife Service (Service) received Reclamation's February 22, 2002 memorandum requesting formal conference.
- March 20, 2002: The Service sent a memorandum to Reclamation confirming initiation of formal conferencing.
- June 19, 2002: The Service met with Reclamation personnel at the project site to discuss the proposed action, conduct additional informal FTHL surveys, and remove and relocate any lizards from harm's way. For further discussion, please see the Environmental Baseline below.
- May 14, 2002: An electronic copy of the EA was transmitted via electronic mail to the Service and two survey maps of the proposed project site were transmitted via facsimile to the Service.
- June 15, 2002: The Service sent a memorandum requesting a 60-day extension of the conferencing period.
- July 9, 2002: The Service received Reclamation's July 5, 2002 memorandum concurring with our request for extension, with the exception that the period of extension be limited to 45 days to allow Reclamation to complete the land transfer on or before August 30, 2002.
- August 22, 2002: The Service issued the conference opinion.
- August 23, 2002: Reclamation and GYPA requested that the term and condition in the conference opinion be omitted, and included as a proposed conservation measure.

DESCRIPTION OF THE PROPOSED ACTION

The land disposal is anticipated to occur at the conclusion of formal conferencing and issuance of our conference opinion. The 347-acre parcel of land is located at the United States/Mexico border approximately five miles east of the existing POE in San Luis, Arizona. The project site is bordered on the north by an irrigation canal and adjacent agricultural lands, on the west by Yuma County Avenue E and adjacent Reclamation lands, on the south by the United States/Mexico border, and on the east by the Yuma Desert FTHL Management Area (MA). The MA is managed by the US Marine Corps, Reclamation, and the Bureau of Land Management (BLM). The project site is undeveloped, with the exception of an international animal crossing facility currently under lease with Reclamation, which occupies approximately 25 acres along the border. The legal description for the land to be transferred is as follows:

- (A) T. 11 S., R. 24 W., sec. 23, Lots 1-4, NE 1/4, N 1/2, NW 1/4, excluding lands located within the 60-foot border strip.
- (B) T. 11 S., R. 24 W., sec. 22, East 300 feet of Lot 1, excluding lands located within the 60-foot border strip.
- (C) T. 11 S., R. 24 W., sec. 24, West 300 feet, excluding lands located within the 60-foot border strip.
- (D) T. 11 S., R. 24 W., sec. 15, SE 1/4, East 300 feet.
- (E) The right to use lands in the 60-foot border strip excluded under (A), (B), and (C), for ingress to and egress from the international boundary between the United States and Mexico.

The GYPA is the project proponent and applicant and will own the land and pay for the construction and operation of the facilities. The facility will also be used by the Arizona Department of Motor Vehicles, the U.S. Federal Inspection Agency (U.S. Customs Service), the Department of Justice Immigration and Naturalization Service, U.S. General Services Administration, and the U.S. Department of Agriculture Animal and Plant Health Inspection Service. Each of these agencies will use the facility for governmental purposes including the inspection of people and vehicles entering and leaving the United States. The United States Border Patrol (USBP) will have access to the site at all times and will maintain a 150-foot strip of patrol area north of the border. This strip of patrol area was recently extended from 60 feet to 150 feet, and will be made permanent through an easement with Reclamation.

Currently, both commercial trade vehicles and private vehicular traffic use the existing POE in San Luis, Arizona. The proposed project would create a new commercial POE on the 347-acre parcel located approximately five miles east of the existing facility. As part of the proposed action, the commercial facilities at the San Luis POE would be deactivated, and the San Luis POE would be used exclusively as a non-commercial POE. Thus, this conference opinion considers Reclamation's legal transfer of the 347-acre parcel, as well as the indirect effects of the GYPA's proposed use of the parcel after its transfer. The latter will be further discussed in the following "Effects Analysis" section of this conference opinion. Reclamation will maintain discretion and compliance responsibility for the parcel until transfer occurs. After transfer, the GYPA will maintain responsibility for the construction, operation, and management of the CPOEF and the property itself.

Proposed Conservation Measures

The GYPA has agreed to implement the following conservation measures with respect to the parcel acquisition, the construction and subsequent operation of the proposed CPOEF, and the paving and subsequent use of the Yuma County Avenue E access road.

- 1) The GYPA will compensate the FTHL Strategy Fund the sum of \$235,000, coincidental with the completion of the land transfer, to compensate for the loss of FTHL habitat.
- 2) Prior to project initiation, an individual from the GYPA shall be designated as a Field Contact Representative. The Field Contact Representative shall have the authority to ensure compliance with protective measures for the FTHL and will be the primary agency contact dealing with these measures. The Field Contact Representative shall have the authority and responsibility to halt activities that are in violation of these conservation measures.
- 3) Prior to project initiation, a worker education program shall be developed and implemented, and will be available in both English and Spanish. Wallet-sized cards summarizing this information shall be provided to all construction, operation, and maintenance personnel. The education program shall include the following aspects at a minimum:
 - biology and status of the FTHL,
 - protection measures designed to reduce potential impacts to the species,
 - reporting procedures to be used if a FTHL is encountered in the field, and
 - importance of exercising care when commuting to and from the project area to reduce mortality of FTHL on roads.
- 4) Before the construction of the CPOEF commences, a FTHL-proof barrier (fenceline) will be constructed. Fenceline specifications will include using 0.25 inch mesh hardware cloth; 1) 36 inches high (net height, after installation, will actually be 30 inches); 2) buried to a depth of approximately 6 inches; 3) permanently attached to t-posts and two barbed wires with metal clips or ties (the 3rd and uppermost barbed wire will not be attached to the mesh); and, 4) 12-foot fence projections at 45° relative to the main fence at openings. Where a junction (end of one hardware cloth roll and the beginning of another) occurs, the hardware cloth will be supported and fastened together with wire clips or ties to an additional t-post to prevent the formation of gaps. The FTHL fenceline will be constructed around all portions of the parcel that will be developed, including portions utilized for construction, operation, and maintenance of all three construction phases of the CPOEF. Should it become necessary to alter the fenceline specifications or design, the Service and the GYPA must agree on these alterations prior to construction of the barrier fence. The GYPA may also choose to attach the barrier directly to a chainlink fence following the specifications as stated in Item 6 below.

A FTHL-proof barrier fenceline shall also be constructed along the portions of Avenue E which adjoin FTHL habitat. The FTHL fenceline shall be constructed along the southern 3/4 mile of the west side of Avenue E, and along the southern 1/2 mile of the east side of

Avenue E. Fenceline specifications will be the same as those used for construction of the fenceline around the CPOEF. The FTHL fenceline may be attached directly to a right-of-way fence where applicable. Connectivity will be maintained between FTHL populations on the east and west sides of Avenue E through the unfenced portions of Avenue E, Reclamation lands to the north of County 23rd Street, and lands south of the border in Sonora, Mexico.

- 5) After completion of Item 4 above, an experienced biologist(s), approved by Reclamation, will conduct a thorough search within the fenced area in an attempt to capture and relocate as many FTHLs as possible prior to construction activities. Searchers will spend a minimum of one person-hour per acre of enclosure as required for reasonable success in locating FTHL specimens. The Service will provide expertise and person-hours for this purpose. Search efforts will only occur after the lizard-proof fenceline discussed above has been installed and only when conditions are suitable for surface activity of FTHLs. These conditions are as follows:

- a. April through September.
- b. Surface temperatures, exposed to sunlight, must be below 122°F.
- c. For tracking purposes, field work must not occur immediately after precipitation events or when wind speed has equaled or surpassed 20 mph in the area.

Reclamation has agreed to allow the relocation of FTHLs out of harm's way to nearby suitable habitat in the Yuma Desert FTHL MA east of the project site. Relocated FTHLs shall be placed in the shade of a large shrub in undisturbed habitat. If surface temperatures in the sun are less than 86° F or exceed 122° F, the biologist or Field Contact Representative, if authorized, shall hold the FTHL for later release. Initially, captured FTHLs shall be held in a cloth bag, cooler, or other appropriate clean, dry container from which the lizard cannot escape. Lizards shall be held at temperatures between 77° F and 95° F and shall not be exposed to direct sunlight. Release shall occur as soon as possible after capture and during daylight hours when surface temperatures range from 89.6° F to 104° F. If such conditions do not occur within 48 hours of capture, the lizard(s) shall be transferred to a terrarium containing at least 2 inches of sand from the project area. The terrarium shall be maintained between 77° F and 95° F until conditions at the site are appropriate for release. Lizards shall be allowed to acclimate to higher surface temperatures prior to release. The biologist shall be allowed some judgement and discretion to ensure that survival of FTHLs found in the project area is likely.

- d. Persons that handle FTHLs shall first obtain all necessary permits and authorization from the Arizona Game and Fish Department (AGFD). If the species is listed, only persons authorized by both AGFD and the Fish and Wildlife

Service under the auspices of this opinion shall be permitted to handle FTHLs.

- 6) After the completion of both the aforementioned FTHL relocation efforts and the subsequent construction of the CPOEF, a chainlink fence will be constructed around the development boundary. At this time, the previously constructed FTHL-proof barrier (fenceline) shall be removed from its previous location and retrofitted and affixed to the constructed chainlink fenceline to limit accessibility and subsequent injury or mortality of lizards occupying adjacent habitats which may stray onto the project site. At the access points to the CPOEF, the FTHL barrier fenceline shall be modified to help prevent migration of FTHLs onto the project grounds. These modifications shall consist of four-foot sections radiating outwards at a 45° angle away from the facility at each junction point with the fenceline and the access points/gates. The remainder of the FTHL barrier fenceline specifications shall remain the same as those used during initial construction of the FTHL barrier fenceline. However, should it become necessary to alter the fenceline specifications or design, the Service and GYPA must agree on these alterations prior to construction of the barrier fence.
- 7) The FTHL barrier fenceline shall be periodically inspected, with routine maintenance performed to sustain effectiveness as a lizard-proof barrier.
- 8) If a FTHL is discovered on-site after the lizard-proof fence is constructed, the following measures will be implemented:
 - a) A facility site plan map, of appropriate scale, shall be maintained and posted in the office trailer (during construction) or the CPOEF's central office (post construction) or in an otherwise central location on-site, for the sole purpose of recording FTHL observations. The location of each FTHL observation shall be noted on the map for sighting trend analysis and for troubleshooting the effectiveness of the FTHL fence. Each observation shall be given a reference number (to be included on the map) and logged into a database or other information storage system (record book, etc.). FTHL observation information to be recorded will include the date, time of day, temperature, name of observer, physical condition of the specimen, any behavioral observations made (was it basking, resting in shade, etc.), and the ultimate disposition of the specimen.
 - b) Immediately after a FTHL is observed on-site, GYPA will perform an inspection of the entire FTHL fenceline to assess whether there are any visible breaches or noteworthy structural problems.
 - c) Temporary captivity standards and subsequent relocation protocols shall be followed as specified in Item 5 above.

- 9) Within 90 days after completing the intensive survey and removal of FTHLs, the GYPA shall supply to us a report summarizing the number and locations of FTHLs found, relocated, killed, injured, or otherwise taken as a result of activities authorized by this opinion. The summary report shall also be provided to us yearly, due the January following completion of construction, and due every January thereafter. The report shall also make recommendations, as needed, to refine or modify the conservation measures and this term and condition to enhance protection of the FTHL.

STATUS OF THE SPECIES

The FTHL is a small, cryptically colored, phrynosomatid lizard restricted to flats and valleys in the western Sonoran Desert, including the Coachella, Borrego, and Imperial valleys in California; the Yuma Desert in extreme southwestern Yuma County, Arizona; and adjacent portions of Baja California Norte and Sonora, Mexico (Funk 1981, Johnson and Spicer 1985, Rodriguez 2001). The diet of the FTHL consists primarily of ants, particularly from May to July (Parker and Pianka 1975; Turner and Medica 1982; Mark Fisher, Deep Canyon Desert Research Center, Palm Desert, California, pers. comm. 1992; Young and Young 2000). The species is active primarily from mid-February to mid-November (Muth and Fisher 1992, Mayhew 1965) and juveniles may be active throughout the winter on warm days (Muth and Fisher 1992). Mean home ranges of telemetered FTHLs in Imperial County, California was 4.7 acres (Muth and Fisher 1992). In the Yuma Desert, mean annual home ranges for FTHLs ranged from 1.7-25.5 acres for males and 2.4-12.6 acres for females (Young and Young 2000).

In Arizona, the range of the FTHL is approximately bounded by the Gila River on the north, urban and agricultural development along the Colorado River on the west, and to the east by bajadas and relatively coarse, alluvial, granitic soils immediately west of the Gila and Butler mountains (Rorabaugh *et al.* 1987, Hodges 1995). In this area, most records for the species are from areas of fine, often windblown, silica sand dominated by sparse stands of white bursage, creosote, and galleta grass (Rorabaugh *et al.* 1987, Hodges 1995). The species shows a preference for and may be more abundant on sandy substrates as compared to desert pavement or hardpan surfaces (Muth and Fisher 1992, Rorabaugh *et al.* 1987), and in Arizona is most often found in areas of silica sand, rather than granitic sands and gravels (Hodges 1995).

Limited information exists to quantify densities of FTHLs; however, estimates have ranged from 0.06 to 2.0 per acre (Turner *et al.* 1978, Muth and Fisher 1992, Rorabaugh 1994, Wone and Beauchamp 1995, Young and Young 2000). Daily movements decline as density of lizards increase and as forage resources decline (Young and Young 2000).

Females produce one or two clutches of eggs that hatch in July through September (Turner and Medica 1982, Muth and Fisher 1992, Howard 1974). FTHLs construct burrows in which they hibernate in winter and escape high temperatures in summer (Muth and Fisher 1992, Rorabaugh

1994, Young and Young 2000). Mean cloacal temperature of active FTHLs in California was 100° F (Mayhew 1965). Maximum and minimum voluntary body temperatures are 106° F and 85° F, respectively (Brattstrom 1965). Individuals become stressed when cloacal temperatures reach 113° F or more (Mayhew 1965).

Predators of the FTHL include a number of birds, the sidewinder (*Crotalus cerastes*), leopard lizard (*Gambelia wislizenii*), round-tailed ground squirrel (*Spermophilus tereticaudis*), coyote (*Canis latrans*), and fox (*Vulpes macrotis* or *Urocyon cinereoargenteus*) (Young 1999, Duncan *et al.* 1994, Muth and Fisher 1992, Funk 1981). Eighty-two percent of FTHLs approached by researchers at Ocotillo Wells State Recreational Vehicle Area crouched low and remained motionless (Wone and Beauchamp 1995). FTHLs were more likely to run when approached by a vehicle than by someone on foot (Wone and Beauchamp 1995).

On November 29, 1993, we published a rule in the *Federal Register* proposing the FTHL as a threatened species [U.S. Fish and Wildlife Service (USFWS) 1993]. The proposed rule was withdrawn in a *Federal Register* notice dated July 15, 1997. However, on July 31, 2001, the 9th Circuit Court of Appeals remanded the withdrawal for further consideration. In a *Federal Register* notice dated December 26, 2001, we reinstated the proposed rule. A final listing decision is due one year after the reinstatement notice, December 2002 (USFWS 2001).

We proposed the FTHL as a threatened species because of documented and anticipated population declines and loss of habitat associated with widespread habitat loss, fragmentation, and degradation due to human activities such as agricultural and urban development, off-highway vehicle use, energy developments, sand and gravel mining, construction of roads and canals, and military activities (USFWS 1993). Based on a 1997 analysis, roughly 48.6 percent of the historical habitat of the FTHL in the United States had been converted to other uses, particularly urban development and agriculture, and by filling of the Salton Sea (Hodges 1997). Remaining habitats are threatened by continued habitat conversion, off-road vehicles, pesticide applications, and invasion of nonnative plants. Insecticide applications in FTHL habitat to control an agricultural pest may have reduced ant populations, the primary prey of the FTHL (USFWS 1993, Bolster and Nicol 1989); although that practice has been discontinued on BLM lands (Foreman 1997). Invasion of nonnative plants, such as split grass (*Schismus barbatus*) and Sahara mustard (*Brassica tournefortii*) may alter the prey base of the FTHL. High stem densities of these species can perhaps impede the movement of FTHLs. Furthermore, nonnative plants can carry fire that eliminates native shrubs (Foreman 1997).

From 1994 to 1997, representatives from 10 State and Federal agencies worked with herpetologists to develop a comprehensive conservation strategy for the FTHL. The agency representatives comprised the FTHL Rangewide Strategy Working Group. The Working Group was responsible for preparing the *FTHL Rangewide Management Strategy* (Strategy) with the help of the FTHL Conservation Team. The Conservation Team was composed of conservation biologists and herpetologists familiar with the FTHL. A draft Strategy was completed and made available for public comment in January

1997. The Strategy was finalized (Foreman 1997) and a conservation agreement was signed in June 1997, committing signatory agencies to implementation of the Strategy. Agencies signing the agreement included the USFWS (Regions 1 and 2), BLM (Arizona and California), Reclamation (Lower Colorado Region), Marine Corps Air Station - Yuma, El Centro Naval Air Facility, AGFD, California Department of Fish and Game, and California Department of Parks and Recreation (Rorabaugh *et al.* 2000).

The purpose of the agreement and Strategy was to maintain viable populations of FTHLs in five MAs, including the Yuma Desert MA in Yuma County, Arizona; and the East Mesa, West Mesa, Yuha Desert, and Borrego Badlands MAs in Imperial and eastern San Diego counties, California. These MAs range in size from 42,400 to 136,100 acres and total 485,200 acres. Also established was a research area at the Ocotillo Wells State Recreational Vehicle Area in California where the effects of human activities and other studies of the lizard would be supported. The Strategy's format was that of a USFWS recovery plan, summarizing the biology, status, threats, and current management of the species; a management goal and objectives; planning actions; an implementation schedule that identified each task needed to meet the management goal; parties responsible for implementing tasks; schedules; and cost estimates. The Strategy also included standard mitigation and compensation formulas and an interim survey protocol that all signatory agencies would use, and suggested techniques for restoration of degraded FTHL habitat (Foreman 1997).

Key planning actions included establishing the MAs and, within MAs, limiting cumulative new disturbance to one percent of each MA, limiting vehicle use to designated routes only, reducing route densities, acquiring inholdings, law enforcement and public education, rehabilitating degraded habitats, and prohibition of competitive recreational events, long term camping, and use of pesticides. The planning actions also included research needed to promote conservation of the lizard and its habitat, inventory and monitoring of FTHL populations and habitats, and maintenance of habitat corridors between MAs. A technical team (the Interagency Coordinating Committee [ICC]) and a management team (the Management Oversight Group [MOG]), modeled after similar groups for the desert tortoise, coordinate and track implementation of the Strategy.

The ICC compiles an annual report that tracks implementation of the Strategy. Compliance with the Strategy has been very good thus far, particularly in regard to establishing MAs, regulating recreation and pesticide use, mitigation and compensation of project impacts, conducting research, monitoring of habitat conditions, and acquiring inholdings in Arizona. Plans are in place or in preparation to fully implement the Strategy, and the ICC and MOG meet regularly. Off-road vehicle activity by the USBP in some MAs is an increasing problem; we have begun discussions with the USBP about limiting this activity. To date, no method of monitoring populations of FTHLs has been devised; thus this task is incomplete. However, testing of trapping webs to monitor regional population densities began in May, 2000.

Further information on the range, biology, and ecology of the FTHL can be found in Young and Young (2000), Rorabaugh *et al.* (2000, 1987), Beauchamp *et al.* (1998), Hodges (1997, 1995), Wone and Beauchamp (1995), Rorabaugh (1994), Muth and Fisher (1992), Turner and Medica (1982), Turner *et al.* (1980), Norris (1949), and Mayhew and Wright (1971).

Past Conference Opinions

A number of formal conference opinions have been issued for projects proposed throughout the FTHL's distribution within California and Arizona. In all of the aforementioned conference opinions we found that the proposed actions were not likely to jeopardize the continued existence of the FTHL. The following summarizes formal conference opinions and associated take issued for projects involving the FTHL in Arizona:

Date	Log Number	Project Type	Take Authorized
2/17/94	2-21-92-F-414	Construction of a Natural Gas Pipeline	Harm: Unknown number of lizards from construction activities 2 lizards per year from operation and maintenance activities Harass: 30 lizards from relocation during construction
6/01/94	2-21-95-F-348	Construction of a 69 Kilovolt Powerline	Harm: 3 lizards from construction activities 2 lizards per year from maintenance activities Harass: 6 lizards from relocation during construction
4/17/95	2-21-95-F-114	Marine Corps Use of the Barry M. Goldwater Range	Harm: 23 lizards from training activities 10 lizards per year from habitat loss and degradation Harass: Unknown number from relocation during field exercises
6/28/95	2-21-94-F-359	Construction of a 34.5 Kilovolt Powerline	Harm: 2 lizards from construction activities 1 lizard every two years from maintenance activities Harass: 3 lizards from relocation during construction
2/08/96	2-21-96-F-144	Reclamation Land Transfer of 160 Acres to Yuma for County Office Construction	Harm or Harass: 65 lizards from construction and relocation activities
7/12/96	2-21-96-F-445	Construction of Roads, Landfill and State Prison	Harm: 6 lizards from road construction activities 15 lizards from moving onto the new road pavement 1000 lizards from construction of Landfill and State Prison Harass: Unknown number from road construction relocation efforts
4/30/97	2-21-95-F-216	Reclamation Lower Colorado River Operations and Maintenance Project	Harm: 8 lizards from moving onto travel routes or project sites and being crushed or injured by moving vehicles or equipment Harass: Unknown number from relocation efforts during project implementation
6/26/02	2-21-95-F-216R1	Reclamation Drilling of Two Observation Well Clusters	Harm and Harass: 6 lizards from construction and relocation activities Harm: 2 lizards per year from operation and maintenance 5 lizards per year from crushing by project-related vehicle traffic on access roads

7/12/02	2-21-02-F-070	BLM Land Disposal of 80 Acres to Yuma for Construction of a Water Pollution Control Facility	Harm and Harass: 13 lizards from construction, environmental site assessment, and relocation activities Harm: 1 lizard per year from moving onto the facility and being crushed or injured by moving vehicles or equipment 3 lizards per year from crushing by project-related vehicle traffic on access roads
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ENVIRONMENTAL BASELINE

The environmental baseline includes past and present impacts of all Federal, State, or private actions in the action area, the anticipated impacts of all proposed Federal actions in the action area that have undergone formal or early section 7 consultation, and the impact of State and private actions which are contemporaneous with the consultation process. The environmental baseline defines the current status of the species and its habitat in the action area to provide a platform to assess the effects of the action now under consultation.

Due to the indirect effects from the 347-acre land transfer [see discussion of Commercial Port of Entry Facility (CPOEF) below], the action area includes the parcel proposed for transfer, and Yuma County Avenue E from the border to the intersection of Yuma County 23rd Street. Avenue E is the main access road to the proposed CPOEF.

Geophysical Description and General Vegetation Communities

The proposed action area is situated in the lower Colorado River Valley subdivision of Sonoran desertscrub, the largest and most arid subdivision of Sonoran desertscrub (USFWS 1996). Dominant perennial plant species in the more xeric examples of this vegetation community, such as the project site, include creosote bush (*Larrea tridentata*), white bursage (*Ambrosia dumosa*), and big galleta grass (*Hilaria rigida*) (Turner and Brown 1982, USBOR 2000). The average elevation within the project area is approximately 125 feet above mean sea level. The site is essentially flat from compacted sand, with no known mineral deposits (USBOR 2000). The main geographic features near the site are the Colorado River to the west, the remainder of the Yuma Mesa to the east and south, and the Yuma Valley to the north (USBOR 2000). Soils in the action area are classified as Rositas sand, which consists of deep, excessively drained soils on terraces, alluvial fans, and sand dunes. These soils formed in mixed, sandy, windblown material, and have slopes of 0 to 20 percent. A seasonal aqueduct (242 Drainage Channel) is located along the existing dirt road that borders the parcel near the northern boundary of the project site and is the only source of surface water in the project vicinity.

Threats to FTHLs and Their Habitat Specific to the Action Area

Anthropogenic impacts in the action area include a small Wildcat dump, a USBP drag road along the International border, numerous vehicle tracks (likely due to USBP and illegal entry activities), and

past cattle presence (likely associated with the International Cattle Crossing). The project area and surrounding areas also experience a high level of illegal entry and USBP activity daily. Approximately 100 persons attempt an illegal entry each day in addition to the many vehicles attempting illegal entry in this area. Therefore, the area is heavily patrolled 24 hours a day by at least two USBP vehicular units (USBOR 2000). Much of the habitat along the border in the Yuma area has been adversely affected by off-road-vehicle activity. Many new roads and routes have been created in recent years. In addition, much of the State and private land adjacent to the action area has been developed for agriculture.

Status of the Species within the Action Area

The entire site contains suitable habitat and the Yuma Desert FTHL MA is located immediately adjacent to the eastern border of the site (USBOR 2000). Four FTHLs were sighted during a September 3, 1999, survey at the project site by Reclamation biologists. The survey was conducted by walking four transects of the project site. Although no sightings occurred in transects 1 and 4, scat was observed. One male was observed in transect 2 and one female was observed in transect 3. Two FTHLs were observed during a driving survey along the USBP Drag Road.

Three live FTHLs and one deceased individual were sighted during a project clearance survey of the Yuma County right-of-way corridor centered on the Avenue E alignment from County 23rd Street to two miles south of County 23rd Street (at the US/Mexico Border). The surveys were conducted by Logan Simpson Design Inc. from October 10-13, 2000, under a contract from the Arizona Department of Transportation. Walking surveys were conducted, and covered a 200-foot wide swath on either side of Avenue E. Scat was also found (Logan Simpson Design 2001).

On June 19, 2002, additional FTHL survey efforts were conducted by our biologists with the assistance of Reclamation personnel. Several sets of probable FTHL tracks were observed on-site. FTHLs can be found more readily by following the tracks, however the frequent presence of hardpan made tracking difficult. Additional evidence of FTHL presence on the project site included nine probable FTHL scat and two FTHL body impressions; however, no FTHLs were observed during the informal surveys.

EFFECTS OF THE PROPOSED ACTION

"Effects of the action" refers to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action (50 CFR 402.02). "Interrelated actions" are those that are part of a larger action and depend on the larger action for their justification. "Interdependent actions" are those that have no independent utility apart from the action under consideration (50 CFR 402.02).

Indirect effects are those that are caused by the proposed action and are later in time, but are still reasonably certain to occur. Indirect effects are expected to result from the proposed construction, operation, and maintenance of the CPOEF. In accordance with 50 CFR §402.02, the indirect effects of such actions must be considered herein as effects of the action and are the focus of the following discussion.

Effects of CPOEF Construction, Operation, and Maintenance on Habitat and FTHLs

The proposed CPOEF project includes three phases of construction, spread out over a period of at least 10 years, to allow for expansion to meet demands as they alter with time. The first phase includes the initial construction of the CPOEF, and improvements to the main access road County Avenue E. The latter is discussed in the “Effects of Access Road Improvements on FTHL and their Habitat” section below. The first phase of the CPOEF will occupy approximately 80 acres of the 347-acre parcel. The remaining land will be available for lease or sale by the GYPA for port-related facilities, or will be used to expand the new CPOEF during the third phase of construction. The GYPA anticipates utilization of the entire parcel in the future by the CPOEF and related facilities.

The second phase would transform the existing San Luis POE, so that non-commercial vehicles and pedestrians could better access the facility. The commercial facilities would be decommissioned and any transferable equipment, fixtures, or furnishings would be re-established in the new CPOEF. No FTHLs or their habitat exist in the vicinity of the existing San Luis POE due to the urbanized nature of the site. Implementation of the proposed conservation measures and reasonable and prudent measure at the San Luis POE is not necessary due to the absence of FTHLs and their habitat at this urbanized site.

The third phase is expected to occur at least 10 years after the initial phase is completed. Expansion facilities would be built and roads would be widened, based on need and tailored to traffic, inspection, and programming needs. Expansion would also take place at the non-commercial San Luis POE during this phase. If expansion is needed, Yuma County 23rd and Avenue E would each be expanded to four lanes to accommodate the increase in shipping activity. The widening of Yuma County Avenue E and 23rd Street will be a future Federal action considered in a formal consultation for the Area Service Highway, and is therefore not considered in this consultation.

Habitat within the project area will be lost in its entirety. FTHLs are known to occur in the action area, and any individuals which have not been captured and relocated or otherwise migrated out of the action area at the time construction commences will suffer direct mortality or injury as a result of operation of heavy earth-moving machinery and destruction of foraging and sheltering habitat within the action area. Specifically, animals could be crushed by vehicles or equipment while in their underground, shallow burrows, or while on the surface. Additionally, although the lizard-proof barrier is believed to be 99% effective in deterring lizards from gaining access to enclosed areas, there remains the risk of an occasional lizard gaining access from an undiscovered breach in the

fenceline or from one or more of the vehicular access points to the CPOEF. Employing their cryptic color and pattern, FTHLs often freeze, rather than flee, when approached. This defensive behavior may enhance the odds of FTHLs being crushed by vehicles or equipment. In addition to increased vehicular activity on the CPOEF site during construction, day-to-day operation of the CPOEF will sustain increased vehicular use. The increased, continuous use of the CPOEF may result in higher mortality levels for FTHLs due to crushing.

Effects of Access Road Improvements on FTHLs and their habitat

FTHLs are known to occur in habitat adjacent to the Avenue E portion of the action area and may migrate onto Avenue E during paving of the roadway due to the occasional penetration of the lizard barrier discussed immediately above, and due to FTHLs bypassing the fenced portions of the roadway. Avenue E will experience increased vehicular activity during this construction, however the lizard fenceline should reduce road kills to near zero, with only a few animals going around the fence. Reduced mortality levels for FTHLs are expected due to crushing by vehicles and heavy equipment.

Some habitat disturbance and loss will occur as a result of road construction and equipment/materials storage and staging areas. Road construction is expected to occur directly over the existing unpaved roadway minimizing these effects. The paved roadway will be no wider than the existing unpaved road. We estimate that approximately 0.25 acre of habitat disturbance would occur as a result of equipment/materials storage and staging. Staging and storage areas would slowly recover. Recovery would be more rapid if the area is not cleared and shrubs are crushed rather than excavated. Crushed shrubs often resprout from the base.

Effects of Access Road Use and Maintenance on FTHLs

Increased vehicle traffic on the proposed paved portion of Avenue E, as a result of improved access and a need to access the new CPOEF, is expected to result in ongoing mortality and injury to lizards due to FTHLs penetrating the barrier fenceline, and due to FTHLs bypassing the fenced portions of the roadway. However, as stated above, the lizard fenceline should reduce road kills to near zero, with only a few animals going around the fence.

Periodic maintenance of the roadway could also result in occasional mortality or injury of FTHLs. During resurfacing of roadways, lizards and other small animals may become entrapped in drying asphalt or on oiled surfaces. Regrading of road shoulders could result in crushing of animals in burrows or on the surface.

It has been shown that roads can act as mortality sinks for small animals (Boarman *et al.* 1992, Rosen and Lowe 1994). For example, over a four-year period, mortality of snakes along a 27.4 mile section of Route 85 in southern Arizona equaled the estimated snake population in a 1.93 mi² area (Rosen

and Lowe 1994). They also found this to be equivalent to eliminating all snakes within 213 feet of the road. Furthermore, desert tortoise populations are depleted up to a mile or more on either side of roads for which average daily traffic is greater than 180 vehicles (Nicholson 1978a, 1978b). Evidence suggests that FTHL populations are depleted within 0.5 mile of Highway 98 in California (G. Wright, pers. comm. 2002). Young and Young (2000) suggested populations would be affected within 0.3 mile of a road, with severe impacts within 0.15 mile. Recent analysis suggests that FTHL population viability is particularly sensitive to the effects of mortality (Flat-Tailed Horned Lizard Conservation Team 1998). Thus, the lizard fence line along the proposed paved portion of Avenue E should significantly reduce mortality of FTHLs for significant distances from the roadway.

Hodges (1997) estimated that 219 mi² of FTHL habitat occurs in Arizona. The total habitat directly affected by the proposed action, including its indirect and cumulative effects, represents less than 0.1 percent of available habitat in Arizona. As discussed earlier, the project area is outside the Yuma Desert FTHL MA and is therefore not considered necessary to preserve viable populations of FTHLs in Arizona. Compensation funds proposed, as discussed in the Proposed Conservation Measures, will assist in the management of the Yuma Desert MA.

Limited information exists to quantify densities of FTHLs; however, estimates have ranged from 0.06 to 2.0 per acre (Turner *et al.* 1978, Muth and Fisher 1992, Rorabaugh 1994, Young and Young 2000). Assuming moderate densities of FTHLs (0.8 per acre), then approximately 278 FTHLs may currently occupy the action area that would be lost, disturbed, or displaced as a result of Reclamation's land transfer.

Cumulative Effects

Cumulative effects are those impacts of future non-Federal (State, local government, and private) actions that are reasonably certain to occur in the project area. Future Federal actions will be subject to the consultation and conferencing requirements established in section 7 of the Act and, therefore, are not considered cumulative to the proposed project.

Because much of the FTHL habitat in the vicinity of the project area is managed by Reclamation, BLM, and the Department of Defense, many of the activities likely to occur in this area will be Federal actions subject to section 7 of the Act. However, continued development of non-Federal lands that support the FTHL is anticipated to the west and north of the action area. Continued development of non-Federal lands for residential, industrial, and agricultural purposes is occurring at a rapid rate. If the FTHL is subsequently listed, the effects of non-Federal actions, including residential and other development, may be addressed through the section 10(a)(1)(B) permit process.

Of particular concern are increasing illegal entry activities. Numbers of illegal crossings and subsequent response by USBP have increased dramatically over the last 15 years. Increased presence of USBP in the area of Yuma, and other large Arizona border towns (Operation Gatekeeper), as well

as southeastern California, have pushed undocumented migrant traffic into remote desert areas, such as Cabeza Prieta National Wildlife Refuge, Organ Pipe Cactus National Monument, Barry M. Goldwater Range, and the Yuma Desert. Illegal activities result in habitat damage in the form of route proliferation, off-road vehicle tracks, and discarded trash. These activities are likely to continue into the future and may continue to increase.

CONCLUSION

After reviewing the current status of the FTHL, the environmental baseline for the action area, the anticipated effects of the proposed action, and the cumulative effects, it is our biological opinion that the proposed action is not likely to jeopardize the continued existence of the FTHL. Our conclusion is based on the following reasons:

- 1) The proposed action would affect less than one tenth of one percent of the available habitat in Arizona, and would not affect the Yuma Desert MA;
- 2) Reclamation and the GYPA have proposed conservation measures to help offset impacts of the proposed action by reducing direct take of FTHLs through relocation and other efforts, and monetary compensation that will be used to enhance the management of the Yuma Desert MA; and
- 3) The small footprint of the action area in relation to the large, contiguous FTHL habitat east of the action area (the Yuma Desert FTHL MA) lessens the effect of the project to the population in the surrounding area.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act prohibits the take of listed species without special exemption. Taking is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, collecting, or attempting to engage in any such conduct. "Harm" is defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering (50 CFR §17.3). "Harass" is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns that include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). "Incidental take" is any take of a listed animal species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or the applicant. Under the terms of sections 7(b)(4) and 7(o)(2) of the Act, taking that is incidental to and not intended as part of the agency action is not considered to be prohibited under the Act provided that such taking is in compliance with this incidental take statement.

The prohibitions against taking in section 9 of the Act do not apply to proposed species, such as the FTHL. By incorporation of the conservation measures, impacts of the proposed action will be minimized.

AMOUNT OR EXTENT OF TAKE

This conference opinion anticipates the following forms of take would occur as a result of the proposed action:

- 1) All FTHLs inhabiting the action area, including the 347-acre proposed CPOEF site and the paved roadway of Avenue E. Take is anticipated to be in the form of direct mortality or injury, including crushing or injury as a result of construction activities, and in the form of harassment resulting from moving lizards out of harm's way. We anticipate that, after capture and relocation efforts have concluded, up to 278 FTHLs may be taken incidentally to the construction activities of the proposed action.
- 2) Three FTHLs per year as a result of animals moving onto the facility grounds from adjacent habitats and being crushed or injured by the operation of on-site machinery and/or vehicle movements.
- 3) Four FTHLs per year as a result of animals moving onto the new pavement of Avenue E from adjacent habitats and being crushed or injured by passing vehicles.

If this conference opinion is adopted as a biological opinion, we will only authorize forms of take (see above) that are incidental to the disposition of the 347 acres of Reclamation land transferred to the GYPA and subsequent activities as described in the Description of the Proposed Action. If adopted as a biological opinion, take will be authorized for the construction, operation, and maintenance of the proposed CPOEF and Avenue E by GYPA so long as the proposed action is carried out as described herein.

EFFECT OF THE TAKE

In this conference opinion, we find that this level of anticipated take is not likely to result in jeopardy to the FTHL.

REASONABLE AND PRUDENT MEASURES

We believe that the proposed action incorporates sufficient measures that reasonably and prudently minimize the effects of incidental take of FTHLs. All reasonable and prudent measures to minimize take have been incorporated into the project description. Thus, no reasonable and prudent measures are therefore included in this incidental take statement.

If the FTHL is listed and, during the course of the action, this level of incidental take is exceeded, such incidental take would represent new information requiring reinitiation of consultation. Reclamation would be required to immediately provide explanation of the causes of the taking and review with us the need for possible modification of the proposed conservation measures.

DISPOSITION OF DEAD, INJURED, OR SICK FLAT-TAILED HORNED LIZARDS

If the species is listed, and if a dead, injured, or sick FTHL is found at the project site, initial notification must be made to our Law Enforcement Division, Federal Building, Room 108, 26 North McDonald, Mesa, Arizona, 85201 (Telephone: (480) 835-8289) within three working days of its finding. Written notification must be made within five calendar days and include the date, time, and location of the finding, a photograph of the animal, and any other pertinent information. The notification shall be sent to the Division of Law Enforcement with a copy to the Arizona Ecological Services Office. Care must be taken in handling sick or injured animals to ensure effective treatment and care, and in handling dead specimens to preserve biological material in the best possible state. If possible, the remains of intact FTHLs shall be placed with educational or research institutions holding appropriate State and Federal permits. If such institutions are not available, the information noted above shall be obtained and the carcass left in place.

Arrangements regarding proper disposition of potential museum specimens shall be made with the institution prior to implementation of the action. Injured animals should be transported to a qualified veterinarian by an authorized biologist. Should any treated FTHLs survive, we should be contacted regarding the disposition of the animals.

Conservation Recommendations

Sections 2(c) and 7(a)(1) of the Act direct Federal agencies to use their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of listed species. Conservation recommendations are suggestions regarding discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, or regarding the development of information. The recommendations provided here do not necessarily represent complete fulfillment of the agency's section 2(c) or 7(a)(1) responsibilities for the FTHL, should it be listed. In furtherance of the purposes of the Act, the Service recommends implementing the following actions:

1. Reclamation work with the Marine Corps Air Station in Yuma and AGFD to support research necessary to: a) improve our knowledge of the ecology and life history of the FTHL, particularly in regards to demographic parameters needed to better understand population dynamics and viability; b) determine the relationship between scat/lizard counts and lizard densities; and c) improve upon survey techniques, protocols, and recommendations to enhance statistical confidence of survey efforts.

2. Reclamation acquire Yuma County rights of way on section lines in the Yuma Desert FTHL MA and close these routes as appropriate in coordination with the Fish and Wildlife Service and the USBP.
3. Reclamation continue to pursue efforts to minimize impacts to the FTHL and its 16,000 acres that are within the Yuma Desert FTHL MA.
4. The GYPA preserve portions of the parcel for FTHL habitat, maintaining a minimal footprint for their facilities, and focusing development in the western half of the parcel away from the Yuma Desert FTHL MA.
5. Reclamation and the GYPA minimize impacts to the FTHL and its habitat in the vicinity of the CPOEF.

We request notification of the implementation of any conservation recommendations so we can be kept informed of actions that either minimize or avoid adverse effects, or that benefit proposed species or their habitats.

CLOSING STATEMENT

This concludes the conference for the transfer of 347 acres of Reclamation land to the GYPA. Reclamation may request that we confirm this conference opinion as a biological opinion through formal consultation if the FTHL is listed. This request must be made in writing. If we review the proposed action and find that there have been no significant changes in the action as planned, or in the information used during the conference, we will confirm the conference opinion as a biological opinion and no further section 7 consultation will be necessary.

After listing of the FTHL as threatened and any subsequent adoption of this conference opinion, Reclamation shall request reinitiation of consultation if: 1) the amount or extent of incidental take is exceeded; 2) new information reveals effects of the agency action that may adversely affect listed species or critical habitat in a manner or to an extent not considered in this opinion; 3) the agency action is subsequently modified in a manner that causes an effect to a listed species or critical habitat that was not considered in this opinion; or 4) a new species is listed or critical habitat designated that may be affected by this action (50 CFR 402.16).

The incidental take statement provided in this conference opinion does not become effective until the species is listed and the conference opinion is adopted as the biological opinion issued through formal consultation. At that time, the project will be reviewed to determine whether any take of FTHL has occurred. Modifications of the opinion and incidental take statement may be appropriate to reflect that take. No take of the FTHL may occur between the listing of the FTHL and the

adoption of the conference opinion through formal consultation, or the completion of a subsequent formal consultation.

Any questions or comments should be directed to Allen Taylor (928) 226-8002 or Sherry Barrett (520) 670-4617 of my staff.

/s/ Brian Hanson

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