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# MEMORANDUM

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Date: August 28, 2009

To: The Honorable Chair and Members  
Pima County Board of Supervisors

From: C.H. Huckelberry  
County Administrator 

Re: **Difference Between Open Space and Mitigation Land for MSCP Credit**

As we prepare to release the Multi-Species Conservation Plan, this brief paper is presented to describe how Pima County must make sure that our open space acquisitions count to the extent possible as credit to offset take under the federal permit.

In the world of federal permits, open space must have four characteristics to count toward federal Multi-Species Conservation Plans. These characteristics are:

- Mitigation land must not have been acquired with federal funds;
- Mitigation lands must be managed for biological protection;
- Mitigation lands must be monitored for biological protection; and
- Mitigation lands must gain a legal status that ensures conservation.

In the Multi-Species Conservation Plan, the program to manage and monitor is proposed, as it was in the prior draft.

CHH

Attachment

c: Maeveen Behan, Director, Office of Conservation Science and Environmental Policy

# **Pima County Mitigation Lands: Commitments for Multi-Species Conservation**

Prepared by Neva Connolly and Julia Fonseca  
Office of Conservation Science and Environmental Policy

## Summary

In 1999, the U. S. Fish and Wildlife Service (USFWS) recognized that advance purchase of open-space lands under the Sonoran Desert Conservation Plan (SDCP) could also assist Pima County in achieving mitigation compliance under the Section 10 of the Endangered Species Act (ESA). Since then, Pima County has selected and acquired thousands of acres of open-space property in a manner designed to reduce the long-term effects of urbanization upon various imperiled species of plants and animals. A subset of these lands will serve as mitigation offered in Pima County's Section 10 permit application, otherwise known as Multi-Species Conservation Plan (MSCP).

Mitigation Lands are embedded in a larger preserve network that includes natural open space areas for which no habitat mitigation credit is available or applied. Such preserves include the Coronado National Forest lands, as well as other federal, state and County- protected areas. Most of the preserve network, in turn, is located within the Conservation Lands System (CLS), the regional blueprint for land conservation under the SDCP.

The USFWS supports Pima County's advance efforts to secure land for mitigation. Obtaining Mitigation Lands prior to applying for or receiving the Section 10 permit benefits endangered species and reduces the overall cost of acquisitions over the 30-year life of the permit. The USFWS will review the mitigation strategy offered in the MSCP permit application and they will grant mitigation credit commensurate with the level of land protection that Pima County provides on each parcel. In order for USFWS to grant full credit for mitigation, the lands must: (1) be acquired without the use of federal funds; (2) be managed and monitored for biological protection and trend assessment; and (3) have an enduring legal status that prevents future incompatible uses. Partial credit for Mitigation Lands that do not have the full measure of protection may also be possible.

## **Endangered Species Protection: Why We Need Mitigation Lands**

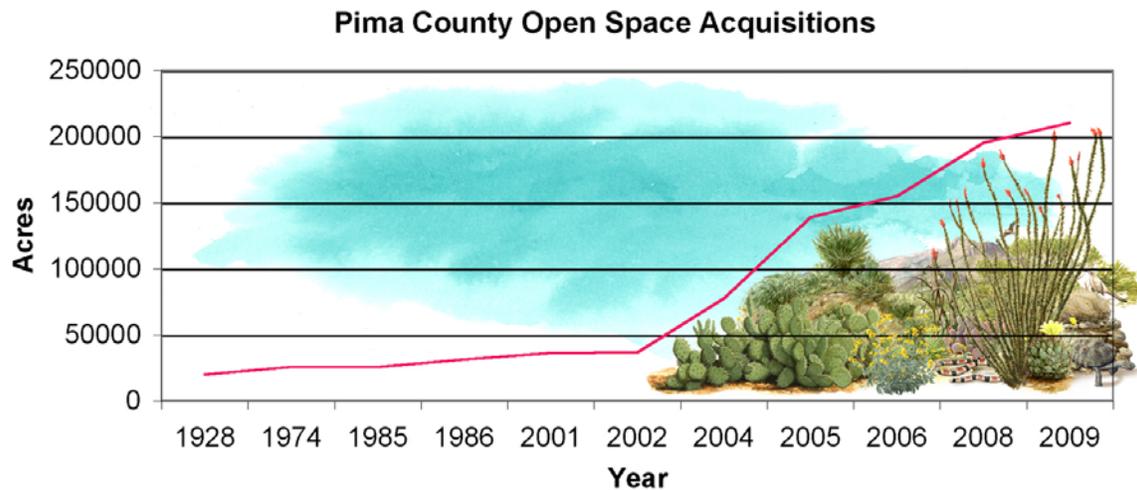
The [SDCP](#) seeks to address multiple conservation needs in the rapidly urbanizing Pima County, Arizona, including cultural resources, riparian, and ranch conservation, and maintenance of wildlife habitat. The SDCP was primarily driven by an ambitious biological goal: “To ensure the long-term survival of the full spectrum of plants and animals that are indigenous to Pima County through maintaining or improving the habitat conditions and ecosystem functions necessary for their survival” (Pima County 2000).

To help ensure this goal is realized and to provide regulatory certainty, Pima County drafted a MSCP that embodies the scientific principles of the SDCP biological goal and specifies mechanisms for addressing legal conservation requirements of the ESA. The current draft Pima County MSCP lists 48 species proposed for coverage in County’s forthcoming Section 10(a)(1)(B) permit application from USFWS.

The MSCP planning process began with the evaluation of approximately 2.7 million acres in the County as part of a biological reserve design assessment. Through the collection and synthesis of biological data and anticipated land-use and economic impacts, the County and its scientific advisors developed the CLS, which represents the County’s core habitat protection strategy for the MSCP. The CLS was then adopted by various jurisdictions. The CLS embodies our region’s long-held values for protection of flora and fauna, water, soil, scenic beauty, and cultural heritage. Focused primarily in the eastern portion of the County, the CLS cuts across federal, state, and local jurisdictions and provides the blueprint for reserve design. More than 80% of the CLS is managed by the state and federal land management agencies. Within the CLS, lands are categorized based on their biological value and land-use type (the principal category designations being Biological Core Management Areas, Important Riparian Areas, and Multiple Use Areas). For each designation, conservation targets were set, ranging from 66% in Multiple Use Areas to 95% in Important Riparian Areas.

## **Land Acquisition for the MSCP and SDCP**

Pima County embarked on open-space acquisitions in 1928, long before the SDCP, and acquisitions have increased significantly in recent decades (Figure 1). During this time, bond funds, which have consistently received voter support since the 1970s, have been used to acquire key parcels. In the 1986, floodplain land acquisitions and dedications from developers began to contribute to the County’s open space preserve system. In 2004, voters approved \$174 million in open-space bonds, thereby enabling a rapid expansion of the County’s system in the last few years. In 2005, Pima County began entering into formal agreements with local ranchers for cooperative management of those working ranches acquired by the County, including the state and federal grazing leases associated with those open-space lands acquisitions.



**Figure 1.** Pima County has a long tradition of protecting open space. This schematic chart depicts the acreage of all County open space at various times since inception of the program. Dates correspond to important voter or Board authorization dates

As noted, Pima County will soon be applying for a Section 10 permit as a tool to continue building the CLS and to comply with ESA when incidental, negative impacts occur to species listed as threatened or endangered under the ESA. To this end, Pima County has been acquiring certain open-space lands within the CLS as compensatory mitigation to offset development-related impacts associated with covered activities for the life of the permit (30 years).

Lands used to compensate for the impacts of covered activities are known as Mitigation Lands—they are a subset of lands in the County Preserve Network, but also include lands owned by other entities.

Lands which have been protected specifically for biological purposes are eligible for consideration for mitigation credit by virtue of a USFWS letter (Appendix 1). The purpose of USFWS' advance authorization was to encourage Pima County to commit land to biological conservation in advance of any formal application for a Section 10 permit. The 1999 commitment of the undeveloped portion of Arthur Pack Park was the first formal reservation of land for the MSCP.

In 2003, Pima County staff first screened all County-owned lands to see which lands met criteria for designation as Mitigation Lands. Pima County Regional Flood Control District (RFCD) a separate taxing authority from Pima County, also own many lands outside the Preserve Network, lands which were originally acquired for purposes other than protection of biological and cultural resources. These too were evaluated for their potential to contribute to mitigation of urban impacts under the Section 10 permit. Most County- or District-owned lands were eliminated due to potentially conflicting development or infrastructure (e.g., turf parks, roads, bridges, bank protection, etc.) identified by the managing departments.

Parcels outside of the CLS were further screened for contiguity to other reserves and high biological resource values. Lacking these, parcels outside of the CLS were not recommended for inclusion in the reserve system. Similarly, lands serving as mitigation

under other programs, such as Section 404 of the Clean Water Act, were excluded from consideration of commitments to protect them as Mitigation Lands. Finally, parcels acquired using federal funds were excluded from consideration.

From this analysis, Pima County's Geographic Information Services (GIS) created a GIS layer representing potential mitigation land commitments. After passage of the 2004 bonds, this information became an attribute of the "[Preserves](#)" GIS layer. The information is updated as new lands are acquired. One can view the current selection of MSCP Mitigation Lands using the SDCP Mapguide tool at <http://www.dot.co.pima.az.us/cmo/sdcpmaps/> by checking the "MSCP Committed lands" layer on the left column.

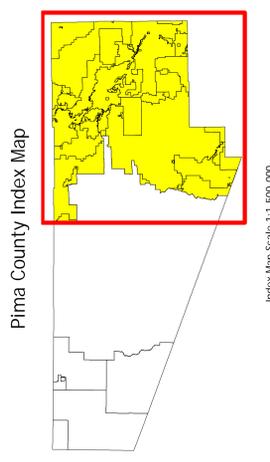
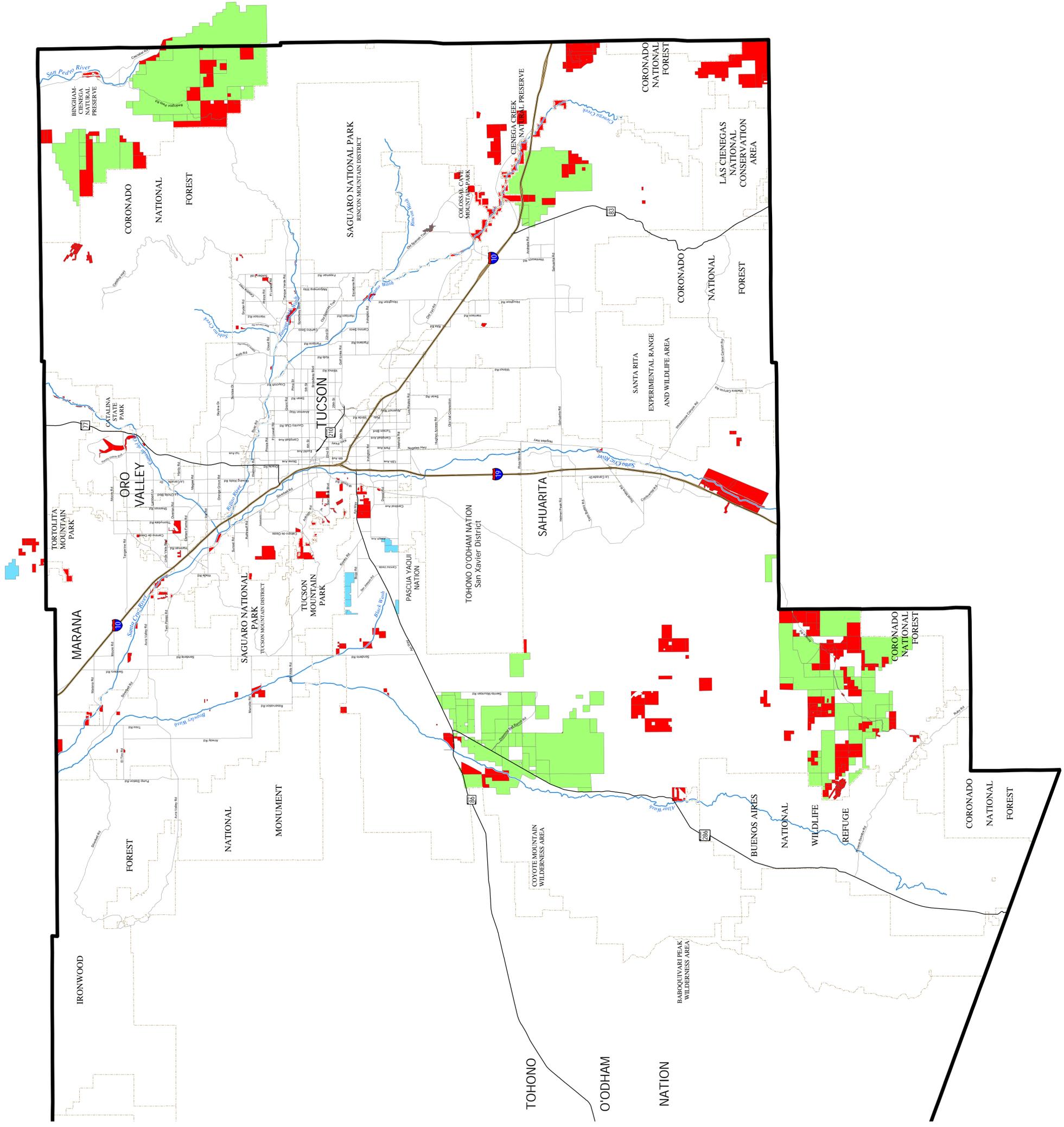
Mitigation Lands range from ranches that cover thousands of acres, to smaller parcels that are scattered throughout the metropolitan area (Figure 2). These smaller parcels tend to be located along Important Riparian Areas, which are intrinsically linear features. Nearly all of the Mitigation Lands are located within the CLS. Exceptions to this are mitigation parcels which are located outside of Pima County.

Figure 2

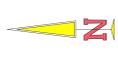
# PROJECTED MSCP MITIGATION LANDS

## Mitigation Lands by Tenure

- Fee Simple (68,818 ac)
- State Grazing Lease (122,900 ac)
- RPPA (2402 ac)



Index Map Scale 1:1,500,000



Scale 1:152,000

The information depicted on this display is the result of digital analyses performed on a variety of databases provided and maintained by several governmental agencies. The accuracy of the information presented is limited to the accuracy of the data provided. The Pima County Department of Transportation Geographic Information Services Division makes no claims regarding the accuracy of the information depicted herein.

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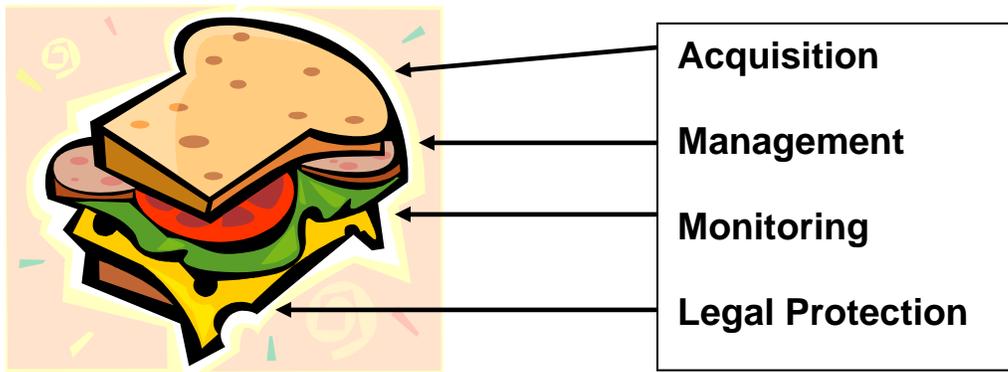


**Mitigation Credit**

The need for mitigation credits will be determined by how many, what, and where impacts have occurred over the 30-year life of the permit. Pima County already has banked Mitigation Lands against future impacts. Pima County will mitigate impacts that occur within and outside the CLS by acquiring lands in the CLS, along with other actions needed for species conservation. The mitigation ratios have not yet been finalized, and are subject to approval by the U. S. Fish and Wildlife Service.

It is foreseeable that some amount of mitigation acreage may be impacted by various activities which are not controllable by Pima County. Where that happens, the lands may no longer be biologically suitable for mitigating impacts to the species covered in our plan. Examples might include mining and utility construction across County lands. In such cases, the total acres of Mitigation Lands lost will need to be replaced with lands that have a conservation value that is equal to or exceeds those lands lost to impacts. Therefore, it is the intent of the County to obtain more Mitigation Lands than is currently projected as necessary.

The USFWS will grant mitigation credit that is proportional to level of land protection achieved on each mitigation parcel. In order for USFWS to grant full credit for mitigation to a parcel, the land must not only be acquired without the use of federal funds, it must be managed and monitored with biological protection in mind, and have an enduring legal status that prevents future incompatible uses. This standard has been colloquially called the “mitigation sandwich”.



**Figure 3.** The mitigation “sandwich” according to U. S. Fish and Wildlife Service

Most Mitigation Lands do not yet provide all four levels of protection. Monitoring and legal protection satisfactory to USFWS will be required to meet with terms of the Section 10 permit.

The following sections explain each of the components of mitigation in greater detail.

## **Acquisition**

Most mitigation land acquisitions have been in “fee simple”, in other words, the highest level of land ownership rights was acquired (excluding mineral rights). Over 68,000 acres of fee-simple Mitigation Lands will be acquired with 2004 bonds (red areas, Figure 2). Included in this amount are small areas where Pima County purchased conservation easements from private ranch owners. Mitigation Lands also include approximately 5,000 acres that have been set aside by property developers since 2002, consistent with the county’s land use plan. These lands remain in private ownership, with restrictions on the use of the land. Pima County holds or will soon hold 10-year grazing leases on over 122,000 acres of primarily State Trust Lands, shown in green on Figure 2. Finally, Pima County has applied to take ownership of 2400 acres of federal lands through the Recreation and Public Purposes Act (RPPA, shown in blue on Figure 2). These lands would be managed similarly to other Mitigation Lands.

Mitigation Lands come from several sources of funding, including the 2004 Open Space Bond Acquisition Program, land trades, the Flood Control tax levy, donations, non-federal grant funds, and land dedications by developers via plats and plans. Lands which are obtained from the federal government through land trades or RPPA are eligible as mitigation because these are lands that the federal government considers “disposable”. The acquisition cost of RPPA is negligible.

The bulk of the Mitigation Lands are acquisitions authorized by voters under the 2004 Bond Program. These lands are purchased from willing sellers from priority acquisitions determined by [Habitat Protection Priorities](#) (HPP). The HPP were developed by the Arizona Land and Water Trust and the Nature Conservancy of Arizona, using the biological reserve design developed by Pima County Science and Technical Advisory Team.

## **Management and Monitoring**

Most Mitigation Lands are managed by Pima County departments, including Cultural Resources, Natural Resources Parks, and Recreation, Regional Flood Control District, and the Regional Wastewater Reclamation Department. Each department may have different overall land management objectives, but Mitigation Lands must be managed to ensure that their biological value is maintained. Lands set aside by developers may remain in private ownership, but these lands must also be managed and maintained as natural open space, either by homeowner’s associations or through restrictions on private lot owners. State Trust grazing leases held by Pima County are also proposed as Mitigation Lands, where managed for habitat conservation.

Pima County has made a significant commitment to the management of Mitigation Lands. For example, in FY2009, the Natural Resources, Parks, and Recreation Department, which is the primary department in charge of managing mitigation properties, spent approximately \$1.8 million managing Mitigation Lands. This and other departments focus on management activities to ensure that the biological values of the

Mitigation Lands are maintained or enhanced over time. MSCP management goals are to:

- Ensure the long-term viability and sustainability of native ecosystem structure and function and natural processes throughout the Mitigation Lands;
- Protect the biological resources from threats and other disturbance activities within and adjacent to the Mitigation Lands while accommodating compatible public uses;
- Enhance and restore conservation targets in appropriate locations to improve habitat for covered (and other) species;
- Respond to monitoring information in a timely manner and use adaptive management where and when such an approach is needed.

Management activities can include invasive species management, restoration and enhancement, compatible public recreation, and removal of trash and illegal dumps. If the lands are grazed, the Natural Resource, Parks, and Recreation department is currently developing ranch management plans, known as Coordinated Resource Management plans.

Ecological monitoring activities will likewise occur on MSCP Mitigation Lands. This part of the “mitigation sandwich” is not yet funded, but will need to be in order to meet the terms of the Section 10 permit. Over time, management activities will be informed by the monitoring and adaptive management program. The primary focus of this program will be to detect changes in populations and habitat of covered species and provide tools for responding to changes in these parameters.

### **Long-term Legal Protection**

The USFWS will not grant full mitigation credit without protection of the land in “perpetuity”. Legally enforceable protection in perpetuity will ensure the Mitigation Lands will not be sold for future development or allocated to other public uses, despite changes in administration priorities or budget shortfalls. Most of the Mitigation Lands lack enduring legal protection. Pima County intends to place legal restrictions on the Mitigation Lands it owns.

Legal instruments such as restrictive covenants, reversionary clauses, or reciprocal conservation easements to other entities can act to prevent use of land for non-conservation purposes. USFWS has in the past accepted 99-year leases from State Land Department as “perpetuity” and has also recognized reciprocal easements held by Pima County Regional Flood Control District on land owned by Pima County. The USFWS is an intended third party beneficiary to these reciprocal easements, so that it can ensure compliance with the terms of the easement.

Pima County is also leasing State Trust Lands as a means of biological conservation and is therefore seeking mitigation credits for those lands. State law does not provide a long-term mechanism to protect the biological resources of State Trust Lands, yet many of Pima County’s plants and animals occur primarily on those lands. This can be problematic because State Trust Lands not only lack legal protection, most of them are vulnerable to uses which degrade biological resources. Long-term protection for State Trust land could be provided by state trust reform legislation or outright sale to Pima County. Even then, a conservation easement to another entity in perpetuity would be

needed to complete the full mitigation “sandwich”. Because of the interconnected nature of the fee simple ranch purchases and their associated state grazing leases, Pima County has a long-term goal of acquiring in fee simple the State Trust Lands that we currently lease. Additional priorities for acquisition of State Trust Lands were established by the 2004 bond ordinance.

## **Conclusion**

Pima County has made an extraordinary commitment to the long-term conservation of open space—and by extension the habitat of species covered in the forthcoming Section 10 permit. Despite not having a permit, Pima County has acquired over 60,000 acres of private lands to mitigate for impacts that are likely to occur in the next 30 years, and manages over 100,000 acres of State Trust Lands. Projections using the current set of covered activities and current rate of growth of these activities indicates that Pima County’s mitigation is currently 13 years ahead of impacts if the current mitigation ratios (as stated in Version 5 of the County’s MSCP) and lands stewardship levels remain unchanged. By increasing stewardship levels through added conservation measures such as improvement of conditions on State Trust Lands or retrofitting existing roadways to allow for wildlife-friendly passage, mitigation could be further ahead. How Pima County will obtain credits for these types of “good deeds” remains an issue that will be negotiated with the USFWS on a case-by-case basis.

Key challenges remain to ensure the long-term success of the mitigation program. First, State Trust Land reform would be necessary to ensure that Pima County has the opportunity to unite many of the ranchlands into contiguous parcels with the same high level of management protection and long-term conservation. Second, it will be important for the various Pima County departments and private entities in charge of managing mitigation properties that management of those lands are consistent with the MSCP commitments. Finally, the long-term conservation of Mitigation Lands requires that sufficient resources be devoted to management and monitoring to ensure that they maintain the characteristics that made them valuable Mitigation Lands in the first place.

## References

Fonseca, Julia, David Scalero, and Don Ward. 2003. Identification of County-owned Lands for a Section 10(a) Permit. Prepared for the Pima County Administrator’s Office. Sonoran Desert Conservation Plan.

Fonseca, Julia. 2009. “How Effectively Have County Acquisitions Addressed SDCP and MSCP Goals?” Draft analysis for the Pima County Multi-species Conservation Plan.

Pima County. 2000. Draft preliminary Sonoran Desert Conservation plan. Draft report to the Pima County Board of Supervisors for the Sonoran Desert Conservation Plan, Tucson, AZ.



**United States Department of the Interior**  
**U.S. Fish and Wildlife Service**  
**Arizona Ecological Services Field Office**  
2321 West Royal Palm Road, Suite 103  
Phoenix, Arizona 85021-4951  
Telephone: (602) 242-0210 Fax: (602) 242-2513



In Reply Refer to:

AESO/SE

May 14, 2002

Mr. C.H. Huckleberry  
County Administrator, Pima County  
130 West Congress, 10<sup>th</sup> Floor  
Tucson, Arizona 85701-1317

Dear Mr. Huckleberry:

This letter responds to your March 11, 2002, correspondence regarding receipt of credit for implementation of pro-active conservation actions that contribute toward the goals of Pima County's Sonoran Desert Conservation Plan (SDCP), prior to submission of your application for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973. Such conservation actions may include acquisition, restoration, and the adoption and enhancement of regulations related to the SDCP. Examples include land acquired in pygmy-owl habitat, the creation of a native plant nursery, credits remaining in the Pima pineapple cactus mitigation bank, and the adoption of numerous comprehensive plan policies and ordinances. We have reviewed the Endangered Species Act, regulations for issuance of incidental take permits (50 CFR 17.22), and Fish and Wildlife Service guidance related to those regulations in developing our response to your request, as outlined below.

We support the efforts of Pima County to be pro-active in conservation efforts for vulnerable species and their habitats, and we recognize the value of implementing many of these actions early in the planning process, as there can be substantial benefits in terms of cost and conservation. During the section 10 permit review process, we will evaluate the results of each of your documented pro-active conservation measures funded and implemented by the County and its partners. We will conduct this evaluation in concert with that of your permit application and assign the appropriate level of conservation credit. This approach will allow Pima County to initiate early implementation of conservation efforts while the SDCP is in development and realize the accrual of conservation benefits prior to a permit decision. We will consider these pro-active conservation measures in our effects analysis, as appropriate, in accordance with the ESA and its implementing regulations.

To credit the specific pro-active conservation actions, the action must be described in terms of how its implementation contributes to the conservation plan goals, objectives, and needs, and include reports or other documentation that the action was completed and its anticipated benefits were realized. The level of credit applied will be commensurate with the level of benefits

Mr. C.H. Huckleberry

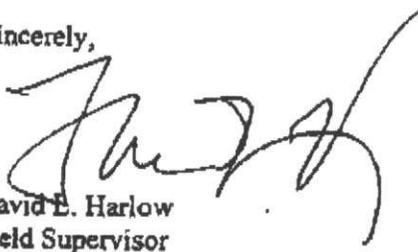
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realized. If no benefits are realized that correspond to conservation plan needs, assigning credit may not be possible. We recommend that Pima County produce a ledger of actions for which credit is requested, which outlines the information described above. We can then mutually agree on the appropriateness of the types of activities included and determine a starting date from which such actions should be considered. Future conservation activities could be added to this ledger, so that we can ensure accurate tracking of your pro-active conservation actions.

As you are aware, we cannot prejudge the outcome of future section 10 permits. Therefore, implementing pro-active conservation measures prior to submission of the permit application does not guarantee or imply any particular outcome under the section 10 permit process.

We hope this guidance is helpful in addressing issues and concerns about credit for pro-active conservation actions in Pima County. Your regional planning process constitutes an important opportunity to benefit vulnerable species and their habitats in Pima County, and we appreciate the many actions that you are taking toward conservation. If there are any questions, please contact Sherry Barrett in our Tucson Office at (520) 670-4617.

Sincerely,

  
for  
David E. Harlow  
Field Supervisor

cc: Assistant Regional Director, Ecological Services, Albuquerque, NM (ARD-ES)  
(Attn: Leslie Dierauf)  
Director, Arizona Game and Fish Department, Phoenix, AZ  
Regional Supervisor, Arizona Game and Fish Department, Tucson, AZ

W:\Sherry Barrett\Barrett, S - Huckleberry for proactive cons actions.wpd:egg



COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER  
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(520) 740-8661 FAX (520) 740-8171

C. H. HUCKELBERRY  
County Administrator

March 11, 2002

David Harlow, Field Supervisor  
United States Fish and Wildlife Service  
2321 W. Royal Palm Road, Suite 103  
Phoenix, AZ 85021-4951

Dear Mr. Harlow:

Pima County has been working with the United States Fish and Wildlife Service since 1998 to develop a multi-species habitat conservation plan. On December 3, 1998 the Board of Supervisors and the Secretary of the Interior signed a *Resolution to Uphold the Endangered Species Act through Regional Multi-Species Habitat Conservation Planning*. On December 12, 2000, Pima County entered into a formal Cooperative Agreement with the United States Fish and Wildlife Service as part of the on-going planning process. Since 1998 the County has taken conservation actions in the form of acquisition, restoration, and the adoption and enhancement of regulations which contribute to the goals of the Sonoran Desert Conservation Plan. Examples include land acquired in pygmy-owl habitat, the creation of a native plant nursery, and the adoption of numerous comprehensive plan policies and ordinances. In addition, Pima County has an active and ongoing process designed to identify unique, sensitive and critical habitats for long-term plant and animal community viability. We are in a position to conserve properties and would like to receive credit for such proactive conservation actions when Pima County's multi-species habitat conservation Section 10 permit is formally approved, to the extent such actions are applicable.

With this letter I would like to request your concurrence in the concept that conservation actions taken by Pima County during this planning process be topics that we discuss as potential contributions to the Section 10 permit itself, and to inquire as to how you would like these actions documented. It has been a privilege to work with the United States Fish and Wildlife Service and Pima County is looking forward to a lasting successful partnership. Thank you for your outstanding assistance to date.

Sincerely,  
  
C.H. Huckelberry  
County Administrator

