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# Board of Supervisors Memorandum

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December 15, 2020

## **Amendments to the MSCP Master Restrictive Covenants and Conservation Land Master Restrictive Covenants**

### Background

In October 2016, the Board of Supervisors (BOS) and the Regional Flood Control District (District) Board of Directors each placed a Master Restrictive Covenant (Covenant) on select properties to reserve them as either conservation lands or as mitigation lands for our Multiple-Species Conservation Plan (MSCP) and Section 10 Incidental Take Permit #TE84356A. It was recognized then that amendments would be needed in the future to account for future needs. The first set of amendments occurred in 2019 when approximately 523 acres were encumbered and 3.3 acres were unencumbered thus producing the present 91,962-acre total of Covenant restricted lands (64,736 acres under the MSCP Covenant and 27,226 acres under the Conservation Land Covenant).

Staff has since identified the need to make further Covenant amendments in order to: encumber new properties; remove and re-apply Covenants to align with current County and District ownership; and create a new exception to explicitly allow maintenance of watercourse flow carrying capacity on properties encumbered by the Covenants. The attached regional map shows the new properties to be encumbered and those where Covenants need to be removed and re-applied in relationship to all other previously restricted Covenant properties (Attachment 1).

According to the terms of the Covenants, it is necessary to secure approvals from the Arizona Land and Water Trust (ALWT) as the Beneficiary and in the case of the MSCP Covenant, also the U.S. Fish and Wildlife Service (FWS). ALWT and FWS approvals have been received.

### Encumbering New Properties

Periodically, County- and District-owned property is evaluated to identify candidate properties that warrant either encumbrance under or un-encumbrance from the Covenants. Staff's recent evaluation identified eight properties appropriate for Covenant encumbrance; six (22 parcels) under the MSCP Covenant and two (6 parcels) under the Conservation Land Covenant.

This will add approximately 2,017 acres to Covenant protected properties bringing the new total to approximately 93,979 acres. MSCP Covenant protected properties will increase by 1,861 acres raising the total to approximately 66,597 acres. Conservation Land Covenant protected properties will increase by approximately 156 acres bringing a new total of approximately 27,382 acres.

These eight properties are of similar character and natural resource value as other previously encumbered properties. The properties to be encumbered under the MSCP Covenant also support habitat for MSCP Covered Species. Protecting habitat for these species offsets impacts covered by the MSCP and our Incidental Take Permit.

Table 1. Summary table of new properties to be encumbered.

<b>Property</b>	<b>Acres</b>	<b>Covenant Type</b>
Agua Caliente (6 parcels)	31.4	District MSCP
Continental Ranch/Avra Wildlife Corridor (2 parcels)	15.2	County MSCP
Hufault (2 parcels)	133.8	District MSCP
Kidwell (1 parcel)	119.7	County MSCP
Bajada (1 parcel)	65.4	County MSCP
Tesoro Nueve Ranch (10 parcels)	1495.7	County MSCP & District MSCP
Starr Pass (4 parcels)	145.4	County Conservation
Tucson Mtn Park (2 parcels)	10.4	County Conservation
<b>2017</b>		

Removing and Re-Applying Covenants to Align with Current County and District Ownership

The County and District recently engaged in a land trade to compensate the District for lands involved in the Sunset Road extension. As a result of this ownership change, Covenants need to be removed and re-applied. Six properties previously owned by the County are now owned by the District. Four are to be un-encumbered from the County MSCP Covenant and re-encumbered by the District MSCP Covenant; two are to be un-encumbered from the County Conservation Land Covenant and re-encumbered by the District Conservation Land Covenant. The boundaries where Covenants apply will remain the same except for the Ina Preserve property.

Removing and re-applying the MSCP Covenant to Ina Preserve allows for adjusting the boundaries of the restricted area to exclude portions along the northern and western peripheries that contain existing infrastructure and an anticipated right-of-way dedication. Wastewater conveyance and flood control infrastructure elements, some of which have been in place since the mid-1980s, lie in the northern part of Ina Preserve. There is also a 100' portion paralleling Silverbell Road that will be excluded to accommodate right-of-way dedication for future roadway improvements that have been envisioned since 2011. Presence of the existing infrastructure, need for maintenance and system improvements, and the right-of-way dedication were not accounted for in 2016 when the area subject to Covenant restrictions was originally delineated. Upon reconfiguration, the restricted area will encompass more of the Santa Cruz River riparian corridor resulting in a slight increase (0.1 acre) of Covenant protected lands at Ina Preserve; it will not adversely impact the ability to mitigate under the Incidental Take Permit.

Table 2. Summary table of properties where County Covenant is to be removed and District Covenant re-applied.

<b>Property</b>	<b>Acres</b>	<b>Covenant Removed</b>	<b>Covenant Applied</b>
Cienega Creek Natural Preserve (1 parcel)	5.2	County MSCP	District MSCP
San Domingo FPA (2 parcels)	14.4	County MSCP	District MSCP
Tanque Verde (2 parcels)	77.7	County MSCP	District MSCP
Ina Preserve (1 parcel)	54.2	County MSCP	District MSCP
Canoa Ranch (1 parcel)	49.8	County Conservation	District Conservation
Los Morteros (25 parcels)	29.0	County Conservation	District Conservation
<b>230.3</b>			

The Honorable Chairman and Members, Pima County Board of Supervisors

**Re: Amendments to the MSCP Master Restrictive Covenants and Conservation Land Master Restrictive Covenants**

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New Exception to Allow Maintenance of Watercourse Flow Capacity

In fulfilling their mandated responsibilities including Pima County Code Title 16, Flood Plain Management, the Regional Flood Control District is required to reduce potential flood damage and protect public safety. It frequently maintains and repairs constructed flood control facilities, removes vegetation and sediment to preserve flow carrying capacity, responds to post-flood and post-fire conditions, and removes sediment, trash, and homeless camps. The existing Covenants' exemptions regarding health and safety and pre-existing uses could be interpreted to provide implicit permission, but a new exception is being added to Section 5 of the Covenant that clarifies that these activities are in fact allowed and removes the obligation to bring each project intended to maintain flow capacity to the Board for a finding of necessity.

Recommendation

The proposed amendments will add 2,017 acres to Covenant protected lands bringing the new total of all restricted properties to approximately 93,979 acres. MSCP Covenant protected properties will increase by 1,861 acres with a new total of approximately 66,597 acres. Conservation Land Covenant protected properties will increase by approximately 156 acres with a new total of approximately 27,382 acres. Additionally, Covenants will align with current County and District ownership and maintenance of flow capacity in watercourses on restricted properties will be explicitly allowed.

It is recommended that the Board approve the two MSCP Master Restrictive Covenant Amendments and the two Conservation Land Master Restrictive Covenants as presented to encumber new properties, remove and re-apply Covenants to align with current County and District ownership, and create a new exception to explicitly allow maintenance of watercourse flow carrying capacity on properties encumbered by the Covenants.

Sincerely,



C.H. Huckelberry  
County Administrator

CHH/dym – November 30, 2020

Attachment

c: Carmine DeBonis Jr., Deputy County Administrator for Public Works  
Yves Khawam, Ph.D., Assistant County Administrator for Public Works  
Chris Cawein, Director, Natural Resources, Parks and Recreation  
Linda Mayro, Director, Office of Sustainability and Conservation  
Suzanne Shields, Director, Regional Flood Control District  
Jeffrey Teplitsky, Manager, Real Property Services

# ATTACHMENT 1

<b>Property Name</b>	<b>Acres</b>	<b>Map_ID</b>	<b>Covenant Type</b>
Agua Caliente Wash Donation	31.4	1	MSCP
Continental Ranch (Avra Wildlife Corridor)	15.2	2	MSCP
Hufault	133.7	3	MSCP
Kidwell	119.7	4	MSCP
Oracle Ridge (Bajada)	65.4	5	MSCP
Tesoro Nueve Ranch	1495.7	6	MSCP
Starr Pass TMP	145.4	7	Conservation Land
Tucson Mountain Park	10.4	8	Conservation Land
Cienega Creek Natural Preserve	5.2	9	Transfer County MSCP to District MSCP
San Domingo FPA	14.4	10	Transfer County MSCP to District MSCP
Tanque Verde	77.7	11	Transfer County MSCP to District MSCP
Ina Preserve	54.2	12	Transfer County MSCP to District MSCP
Canoa Ranch	49.8	13	Transfer County MSCP to District MSCP
Los Morteros	29.0	14	Transfer County MSCP to District MSCP

# Proposed Changes for MSCP & Conservation Land Restrictive Covenants

(November 2020)



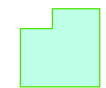
Proposed MSCP  
Restrictive Covenants  
( ~ 1861 acres )



Proposed Conservation Land  
Restrictive Covenants  
( ~ 156 acres )



Transfer County MSCP  
to District MSCP Covenants  
( ~ 230 acres )



Existing  
Restrictive Covenants



PIMA COUNTY

