



# MEMORANDUM

Date: February 26, 2016

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

From: C.H. Huckelberry  
County Administrator

A handwritten signature in black ink, appearing to read "CHH", is written over the printed name "C.H. Huckelberry".

Re: **National Significance of Pima County's Multi-species Conservation Plan (MSCP)**

The Endangered Species Act (Act), as originally enacted in 1973, was written primarily to regulate Federal entities and authorized harm of listed species by non-federal entities only under very limited circumstances. These permitting provisions were not flexible enough to address situations in which a private landowner's otherwise lawful activities might result in limited incidental impacts ("take") of listed species, even if the owner was willing to offset the impacts and promote the conservation of the species. This gap left local agencies and private land owners with no option but to avoid the impact entirely.

In 1983, Congress adopted Section 10 of the Act as a way to promote "creative partnerships between the public and private sectors and among governmental agencies in the interest of species and habitat conservation." Section 10 authorizes states, local governments, and private landowners to apply for an Incidental Take Permit for otherwise lawful activities that may harm listed species or their habitats. To obtain a permit, an applicant must submit a Habitat Conservation Plan (HCP) outlining what they will do to "minimize and mitigate" the impact of the permitted take on the listed species. Pima County's HCP is known as the Multi-species Conservation Plan (MSCP); it will cover 44 species and is considered to be a large HCP in terms of the Permit Area covered.

Since the adoption of the Section 10 of the Act, the number of HCPs and the size and complexity of the areas they cover have increased. More than 500 HCPs have been approved, including several in Arizona. Most of the earlier HCPs were for areas of less than 1,000 acres; now ten HCPs exceed 500,000 acres, with several larger than 1,000,000 acres. The table shows facts about some other large HCPs in the desert southwest.

**Pima County's MSCP is one of the largest HCPs in the Desert Southwest.**

HCP Program	Species Covered	Permit Area	Duration (years)	Covered Activities
Balcones Canyonlands (TX) MSCP	35	500,000	30	Development*PW projects**
Clark County (NV) MSCP	79	728,000	30	Development, PW projects
Coachella Valley (CA) MSCP		1,200,000	75	Development, PW projects
East Contra Costa	28	175,000	30	Development, PW projects

HCP Program	Species Covered	Permit Area	Duration (years)	Covered Activities
County (CA) HCP				
Lower Colorado River (AZ, CA, NV) MSCP	26	Undefined	50	Water development
Orange County (CA)	42	208,000	75	Development, PW projects
<b>Pima County (AZ)</b>	<b>44</b>	<b>&gt; 1,000,000</b>	<b>30</b>	<b>Development, PW projects</b>
San Diego County (CA)	85	582,000	26	Development, PW projects
Santa Clara County (CA)	18	600,000	45	Development, PW projects
Western Riverside (CA)	146	1,200,000	75	Development, PW projects

\*Private Sector Development

\*\*Public Sector Public Works and Capital Improvement Projects

### **The MSCP is Piece of a Larger Landscape Conservation Planning Effort**

When the cactus ferruginous pygmy owl was listed as an endangered species under the Act in 1997, the public had gone through decades of contentious debates and emotional battles over land use. The owl's listing as an endangered species and subsequent court battles left the real estate market, individual developers, and the public sector uncertain about what was needed to comply with the listing and associated rules. This uncertainty basically brought all development – private and public works projects to a halt.

The uncertainty around compliance with the Act is where most communities begin their HCP conversation. What made Pima County's situation—and outcome—different was that the County used the listing decision as a catalyst to transform the conversation from a species-by-species conservation challenge into a regional vision for balancing economic development with the protection of our natural resources and cultural heritage. Perhaps the most valuable outcome of that regional vision, the Sonoran Desert Conservation Plan (SDCP), has been to identify those areas where urban development is most desirable, as well as those areas where conservation of rural landscapes and natural resources is preferred because species and their habitat can be preserved in place in outlying areas while development is encouraged closer to the urban core where services are available and more economically and efficiently delivered. In 2004, this vision resulted in voter-approved bond funding to acquire natural areas and ranchlands that conserve many species and their habitats, sustain ecosystem functions, protect cultural resources, and support the continuation of cattle ranching and recreational enjoyment.

The SDCP has since received numerous accolades as one of the nation's most ambitious and locally-driven plans. These acclaims are quick to point out that the SDCP's trademark incorporation of sound science and community values is what sets it apart from most other community-based conservation plans, including other HCPs. The open and inclusive process used in developing the SDCP also set a new standard for transparent decision-

making in subsequent local planning efforts such as the City-County Water Study, Imagine Greater Tucson, Pima Prospers, and Pima County's MSCP.

Pima County's MSCP is nationally significant for a number of other reasons beyond its size, scope and inclusive public process. Pima County's MSCP is remarkable for:

- Mitigation ahead of development. Funded in large part by the 2004 Open Space bonds, the County now owns or leases a land portfolio sizeable enough to mitigate (offset or compensate) for the habitat loss caused by those public and private development activities that are covered under the permit. By contrast, all other large-scale HCPs have a pay-as-you-go approach that requires private sector developers and public works departments to purchase suitable land for mitigation for their projects. This frequently leads to shortfalls in fulfilling promised mitigation because suitable mitigation lands are not available at the time when they are needed to compensate for development impacts. Pima County has created, by virtue of past voter-approved bonds and County actions, a sizeable mitigation "bank" against which future credits may be drawn.
- Broad-based financial support. Pima County's MSCP is also different from most HCPs in the way its mitigation lands are funded. Most HCPs are funded primarily by fees imposed on private development at the time of development. This creates a situation where funding fluctuates over time in response to the ebb and flow of the housing market. Pima County's MSCP will not be subject to this type of volatility largely because it relies on the entire community's previous financial investments to acquire and protect natural areas and flood-prone lands. These mitigation lands will now be used to provide additional benefits, in the form of regulatory streamlining under the Endangered Species Act, for individual lot owners, as well as larger land developers, and Pima County.
- Voluntary coverage for private development. Most other HCPs mandate developer participation. Based on stakeholder input, participation in Pima County's MSCP is entirely voluntary and at the land owner's discretion. We know of no other HCP that offers this degree of freedom to the private sector to gain coverage under a Section 10 permit.
- Nominal fees to cover private development. Fees for some HCPs are extremely costly. One HCP charges an individual homeowner \$230,000 per acre to mitigate for impacts and, in Las Vegas, there is a \$500 mandatory roof-top fee. Largely because of our community's previous investment in securing the land portfolio that will be used as the MSCP mitigation bank, any fees that private development may be asked to pay will be nominal. Under Pima County's MSCP, the property owner will not be charged for Section 10 coverage of individual private lots. However, if

authorized by the Board, payment of fees will be required of those subdivisions and non-residential developments that elect to receive coverage under the Section 10 permit. Fees would include an application fee, and a monitoring fee if natural open space is set aside within the development. These fees, would be applied *per development* - not per rooftop or per acre. Even if both fees were assessed, the total is estimated to be less than \$4,000 per development. In addition to making coverage more affordable for the development community, the MSCP will also enhance the overall efficiency of the development process: no longer will developers or land owners need to worry about how long it will take or whether they can afford to comply with endangered species issues.

- Minimization measures already implemented. As part of implementing the SDCP, the County made significant changes to certain practices, rules and regulations (e.g., Environmentally Sensitive Roadway Design, Site Analysis Requirements, Riparian Protection and Mitigation Requirements) to minimize impacts to species and important habitats. Because these measures have already been implemented, no new habitat protection requirements will be imposed on land owners as a consequence of receiving coverage under the County's Section 10 permit.
- Streamlining other federal regulatory processes. Previous HCPs have struggled, most unsuccessfully, to utilize their mitigation requirements to streamline other federal regulatory processes, especially the Section 7 consultation element of Clean Water Act Section 404 permits. Pima County's MSCP brings unprecedented opportunity to the regulated community when their activities are covered under the Section 10 permit. The U. S. Army Corps of Engineers will streamline the endangered species aspects of 18 of their most commonly issued Section 404 permits (16 nation-wide permits and 2 regional general permits). This will facilitate faster issuance of these permits for activities of the public and private sectors that are covered under the Section 10 permit, and potentially reduce costs.
- Efficient and robust ecological monitoring. Most HCPs focus on tracking fluctuations in species abundance. This kind of monitoring can be more expensive, and does not necessarily provide managers with the information they need to determine whether conservation measures are working. Instead, Pima County will adopt the Science and Technical Advisory Team's recommendations to track populations of a few individual key species, and to monitor changes in habitat conditions, ecological threats, and landscape characteristics. By monitoring these elements over time, we can determine the status of multiple covered species and their habitats with greater resource efficiencies (financial, time, personnel, etc.), while providing actionable information for more robust land management. More information on Pima County's Ecological Monitoring Program will be provided in a future memorandum.

The Honorable Chair and Members, Pima County Board of Supervisors  
Re: **National Significance of Pima County's MSCP**  
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I will continue to provide the Board with updates on the benefits of the Pima County MSCP and a refined schedule for the issuance of the Section 10 Permit by the US Fish & Wildlife Service once this agency publishes the Notice of Availability of the Final Environmental Impact Statement and Record of Decision. At this point, we anticipate the NOA will be published later this spring, possibly in March or April, 2016.

CHH/mjk

c: John Bernal, Deputy County Administrator for Public Works  
Nanette Slusser, Assistant County Administrator for Public Works Policy  
Linda Mayro, Director, Sustainability and Conservation