



MEMORANDUM

Date: May 20, 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 be "CHH", is written over the printed name "C.H. Huckelberry".

Re: **Changes from the Public Draft Multi-species Conservation Plan to the Final**

As you know, the U.S. Fish and Wildlife Service (Service) recently announced its decision to issue a Section 10(a)1(B) (herein Section 10) permit to Pima County and Pima County Regional Flood Control District for impacts to species protected under the Endangered Species Act (ESA). The Multi-species Conservation Plan (MSCP) and Environmental Impact Statement (EIS) documents were reviewed by three federal agencies; the Service, U.S. Army Corps of Engineers (Corps), and the U.S. Environmental Protection Agency (EPA), and are now considered final. The documents can be accessed through www.pima.gov/mscp.

During the review process, we heard from our constituents and Federal partners about a number of issues with the MSCP and associated documents. As a result, changes were made that reflected those issues and concerns. Many of these changes were previously discussed in a 2013 Board memorandum. This memorandum continues that discussion and elaborates on those more recent modifications that have been made.

Programmatic Consultation on Clean Water Act Section 404 Permits

Both EPA and private sector commenters asked for improved coordination of federal activities between the Service, the Corps, Pima County, and the District to streamline the Clean Water Act Section 404 permitting process. In response, the Service and the Corps agreed to employ a programmatic approach that relies on the final MSCP's Biological Opinion as the means for accomplishing the endangered species consultation process for certain Corps Section 404 permits. This programmatic approach to consultation is intended to abbreviate the overall time it takes for the Corps' to issue certain Section 404 Nationwide permits for covered activities—including those of the private sector. The list of applicable Nationwide permits listed in Section 3.5.1 of the MSCP.

Additionally, the Public Draft MSCP contained language that would have prevented additional, future streamlining opportunities with other federal agencies. This language has been removed and was the result of comments submitted by the Southern Arizona Homebuilder's Association and others.

Covered Activities

No major changes to the breadth of either public or private coverage were made, but the Final MSCP does reflect minor changes and clarifications needed principally by the Service

and the Corps to support the programmatic consultation (though this was also requested by members of the public). These minor changes and clarifications included:

- The nomenclature for private-sector activities was changed to be consistent with Development Services' names for permits it issues.
- Coverage for private land was clarified to specify that an application and polygons are required as part of the Opt-in process.

Though not a covered activity, grazing was the subject of concerns and questions raised by Western Watersheds organization. In response, the EIS now provides additional information about grazing management on County-owned ranches, and the MSCP is more explicit in describing covered activities on ranches.

Permit Area

The permit area map was updated to delete inadvertent inclusions of land within National Park Service and tribal lands. The text was also revised to describe how the Permit Area will be adjusted due to annexations.

Covered Species and Impacts

The biggest change to this part of the MSCP is the addition of an effects analysis to support the Service's and the Corps' programmatic endangered species consultation approach referenced earlier in this memorandum. Other changes include:

- Update to some species names (to reflect most recent nomenclature) and ESA listing status.
- Removal of one talus snail species due to lack of anticipated take, and addition of another due to the potential for covered activities to affect the species.
- Revisions to Appendix A (species accounts) to provide more details on the relationship of habitat to take of the species.
- An appendix from a previous draft MSCP was reinstated, addressing how future revisions of species' Priority Conservation Areas and Conservation Lands System will be handled.

A number of similar public comments referenced the use of species models as described in a 2001 Priority Vulnerable Species Report. Except for the Tumamoc globeberry, specific habitat values used in the MSCP are based on a different and updated set of information, not the 2001 Priority Vulnerable Species models. Although it is not a substantive change, new language has been included to clarify what information was used to determine habitat values.

Mitigation, Monitoring, Management

Several changes and clarifications were made to these sections to address public comments including:

- Adding a process that allows for downgrading the number of credits for stewardship of State grazing leases, should conditions improve then worsen.
- Clarifying that a fee is not required for coverage of private-sector activities authorized through a building permit (Opt-out Program).
- Clarifying that any subdivision or non-residential development receiving coverage through the Opt-in Program could be assessed a fee of no more than \$5,000 per development pending Board authorization.
- Clarifying the distinction between Clean Water Act Section 404 (waters of the U.S.) and MSCP (species conservation) mitigation credits when provided by the same land.
- Adding new appendices that provide a template for the annual report (to the Service) and clarify the calculation of mitigation obligations.
- Adding provisions to address what would happen if the amount of available mitigation land is insufficient to compensate for impacts and what the County's obligations are when mitigation lands are compromised by outside forces.
- Replacing previous methodologies to monitor soils and uplands vegetation with those that are used by the National Park Service.

Funding

Several comments, including those from the Service, related to the County and the District's ability to provide a secure funding source to support the MSCP. Revisions were made to this section to clarify the use of bond funds, general funds, and Flood Control tax levy. Specific language was added to provide additional history regarding the use of general funds as a source of revenue for MSCP management and monitoring.

Although the 2015 open space bond question was not successful, bond funds would never be used for management or monitoring, which are the principal obligations of the County under the Section 10 permit for mitigation lands. A combination of general funds and Flood Control tax levy is currently used for management of open space lands in the future, and this would continue with or without the Section 10 permit.

CHH/dr

- c: John Bernal, Deputy County Administrator for Public Works
Nanette Slusser, Assistant County Administrator for Public Works Policy
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