

## Frequently Asked Questions about the Pima County Multiple Species Conservation Plan (MSCP) and Section 10 Permit

### **Q1: What is the Multiple Species Conservation Plan (MSCP) and do we really need it?**

**A1:** As new development occurs some species listed in the Endangered Species Act will be impacted. Such impacts, whether they occur intentionally or unintentionally, may be illegal unless the U.S. Fish and Wildlife Service (Service) approves a plan to mitigate for these impacts. This approval requires the Service to issue a 'Section 10 permit', so called for its reference to the section of the Endangered Species Act.

The MSCP is the County's application for a Section 10 permit and is our locally-developed plan, that once formalized, will generate benefits for the County and its regulated development community for a period of 30 years. By adhering to the commitments in the MSCP, we will gain regulatory certainty for a recovering economy. Over this 30-year period, no additional environmental commitments on the part of Pima County will be needed in the event that the Service decides to include additional species on the endangered species list. In return for this certainty, Pima County is responsible for protecting, managing, and monitoring lands under County management, which include some of the lands previously acquired under the 2004 bond election.

Without a Section 10 permit, Pima County and its development community would have to continue to rely on an inefficient species-by-species and project-by-project compliance process. History tells us this approach frequently results in costly delays and unexpected requirements that vary from project to project.

The status quo is also costly and inefficient from a species protection standpoint. The kinds of mitigation that can be attained on a project-by-project basis for a species are seldom sufficient to address the broader issues that affect conservation of the species. A landscape-level, locally supported plan like Pima County's MSCP can provide more effective benefits to more species. Coordinated mitigation for multiple species can also provide other public benefits like new and expanded outdoor recreation areas, clean water, and lower flood insurance premiums which are unlikely to occur when mitigation is done on a piecemeal basis.

### **Q2: Why is it taking so long to get the Section 10 permit?**

**A2:** As a result of the Service's removal of the cactus ferruginous pygmy-owl from the

Endangered Species list in 2006, the sense of urgency in getting a permit waned. However, when it became apparent that more species in the region were being actively listed and that this trend would continue into the foreseeable future, Pima County moved forward and submitted the official application for a Section 10 permit in 2010. Since then, the local Service office reviewing the County's application for the permit has been slow to complete its reviews of our application due to other higher priority needs. Because a Section 10 permit is voluntary, there are no Congressional or court-mandated deadlines for the federal reviews. Many of the Service's other projects and associated time commitments, like the Rosemont Copper mine and the decision regarding the potential listing the Sonoran desert tortoise have been given priority.

**Q3: How is the Multiple Species Conservation Plan (MSCP) different from the Sonoran Desert Conservation Plan (SDCP)?**

A3: The [SDCP](#) is Pima County's plan for balancing the conservation and protection of our cultural and natural resource heritage with our efforts to maintain an economically vigorous and fiscally responsible community. The SDCP takes a broad perspective and focuses on aspects of life in Pima County that make us who we are: our unique relationship with deep cultural roots, past and present; the importance of our natural surroundings for their biological and aesthetic values; our efforts to live sustainably for the benefit of future generations; and our sense of place.

The [MSCP](#) is a specific component of the SDCP that allows Pima County and Pima County Regional Flood Control District to comply with the Endangered Species Act. It is a legally binding regulatory document that describes development activities (including development by private property owners in unincorporated Pima County) that will be covered by the permit; their impacts to species protected by the Endangered Species Act; how Pima County will mitigate for those impacts; and how Pima County will manage covered species on its land holdings to ensure the persistence of these species over time.

The SDCP is not required by any federal entity and has no expiration date. By contrast, the MSCP will persist for up to 30 years unless the County and the Service decide to renew for additional time.

**Q4: What species are included in the Multiple Species Conservation (MSCP) and the Section 10 permit?**

A4: The MSCP and Section 10 permit address impacts to [44 species](#). These 'covered species' include plants and animals (4 plants, 7 mammals, 8 birds, 5 fish, 2 amphibians, 6 reptiles, and 12 invertebrates). Of these, the Service lists 9 species as threatened or endangered (Pima pineapple cactus, Huachuca water umbel, lesser long-nosed bat, southwestern willow

flycatcher, yellow-billed cuckoo, Gila chub, Gila topminnow, northern Mexican gartersnake, and Chiricahua leopard frog). The remaining species have the potential to be listed under the ESA during the course of the permit

**Q5: Why Does the Multiple Species Conservation Plan (MSCP) include species that are not currently listed as Threatened or Endangered.**

A 5: The advantage of including currently unlisted species in the permit is that should they be listed during the course of the permit, no additional conservation measures will be imposed upon those development activities whose impacts are mitigated under the MSCP. Such development activities are also referred to as ‘covered activities’. Finally, it is hoped that the significant conservation measures that have been—and will continue to be—implemented will lessen the need for future listings; a win for the species, a win for Pima County residents.

**Q6: What private development activities are included, or covered, by the Pima County Multiple Species Conservation Plan (MSCP) and Section 10 permit?**

A6: Only those impacts from certain development activities by private property owners meet the requirements to be covered under the County’s Section 10 permit. Only two types of private development are eligible; in both cases, the decision to receive coverage is voluntary and rests solely with the property owner:

Development on individual, private lots. When development on an individual, private lot requires Pima County Development Services to issue a building permit authorizing the grading of 14,000 square feet or more, the property owner will be able to decide whether to participate in the County’s Section 10 permit during the building permit application process. These activities will be covered in the Section 10 permit unless the property owner specifically informs the County *not* to cover them. There are no additional fees or requirements necessary to receive coverage under the County’s Section 10 permit. Pima County will be responsible for providing mitigation for impacts to species habitat on the lot. This is generally referred to as the Opt-out Provision.

Development of a subdivision or commercial/industrial facility. When development of a subdivision or commercial/industrial facility requires Pima County Development Services to issue a site construction permit, the property owner must specifically request coverage and must make the request within the time period that begins with the submittal of a site construction permit and closes when Development Services issues the site construction permit. Impacts from this type of development will be excluded from the Section 10 permit unless the property owner specifically informs the County to cover them. This is generally referred to as the Opt-in Provision. Certain fees are required under this provision and are predicated on a fee-for-service principle. In

exchange for these fees, the County will process applications, provide mitigation for impacts to species' habitat, and monitor mitigation lands in accordance with permit requirements. Also, certain natural areas that are set aside through development processes will become Section 10 permit mitigation land. Such areas are limited to those natural open space areas created by: (1) complying with Board of Supervisors'-imposed requirements to satisfy CLS conservation guidelines; or (2) protecting certain types of riparian areas in order to comply with the riparian protection and mitigation requirements of Title 16.30. More information on the fee-for-service can be found in the [MSCP](#).

For development activities not discussed above or for eligible development projects that decline coverage, impacts to species' habitat will not be covered by the County's Section 10 permit and will not be included. Please contact the [U.S. Fish and Wildlife Service](#) directly for further guidance about habitat disturbance and the Endangered Species Act outside the County's Section 10 permit.

**Q7: Is private development required to participate in Pima County's Section 10 permit?**

A7: No. For those types of private development that are eligible to be included under the County's Section 10 permit (see Q6, above), the decision to be included or not is entirely voluntary and rests solely with the property owner.

**Q8: Are there limits to the number of acres that can be impacted under the Multiple Species Conservation Plan (MSCP) and the Section 10 permit?**

A8: Yes. The maximum number of acres that can be impacted under the Section 10 permit is 36,000 acres, of which 5,000 acres is being reserved for activities - primarily capital improvement projects - of Pima County and Pima County Regional Flood Control District. The remaining 31,000 acres are available on a first-come, first-served basis to privately-developed properties that elect to be included, or covered, under the County's Section 10 permit. If it appears that more than 36,000 acres of Covered Activities are needed before the end of the 30-year permit period, Pima County would be required to seek a major permit amendment, which would require a public review process.

**Q9: Why are the [Maeveen Marie Behan Conservation Lands System \(CLS\)](#) mitigation ratios different in the Multiple Species Conservation Plan (MSCP) from the ones used for rezonings and comprehensive plan amendments?**

A9: In keeping with its implementation of the [Sonoran Desert Conservation Plan](#), the Pima County Board of Supervisors (Board) continues to use the CLS map and mitigation ratios described in Pima Prospers – Pima County Comprehensive Plan 2015 Update when considering requests for discretionary land use changes, especially rezonings and comprehensive plan

amendments (Table 1). However, even though the MSCP utilizes the same map and same category names as the CLS, the MSCP mitigation ratios are different and are only applicable for determining the amount of mitigation land that the County must provide in order to stay in compliance with the Section 10 permit. MSCP ratios are not relevant to private development seeking a discretionary land use change from the Board. To reiterate, it is Pima County—not developers or property owners—that is responsible for fulfilling mitigation obligations required by the Section 10 permit. By providing mitigation at higher ratios under the Section 10 permit, the County ensures that acreages of those lands essential to the health and long-term survival for species listed in the Section 10 permit accrue in a timely manner and in amounts that provide meaningful habitat resources.

**Table 1. Maeveen Marie Behan Conservation Land System (CLS) Mitigation ratios for the SDCP and the MSCP. The Board of Supervisors applies SDCP ratios to private development requiring a discretionary land use decision (i.e., rezonings and comprehensive plan amendments). The County applies MSCP ratios to comply with requirements of the Section 10 permit.**

CLS Category	SDCP ratio	MSCP ratio
Important Riparian Area	4:1	5:1
Biological Core Management Area	4:1	5:1
Special Species Management Area	4:1	5:1
Multiple Use Management Area	2:1	3:1
Agricultural Lands within the CLS	None	2:1
Lands Outside the CLS	None	2:1

**Q10: How does the County provide mitigation for the Section 10 permit?**

A10: Since 1999, Pima County and Pima County Flood Control District has been acquiring open space or flood prone lands through voter-approved bond programs. Many of these lands will be used to fulfill mitigation land requirements of the Section 10 permit. The properties which will be designated as Section 10 permit mitigation lands are depicted in the [MSCP](#). The amount of open space land the County currently has, along with some of the flood prone land owned by the District, appears to be sufficient to provide mitigation for at least the first 20 years of the Section 10 permit. Additionally, as property owners exercise the Opt-in Provisions, privately owned natural open space will be converted to mitigation land. Although they are likely to be used more infrequently, there are other opportunities to accrue mitigation including enhancing conditions of natural resources on lands that the County leases from the Arizona State Land Department for ranch conservation purposes.

**Q11: How does Pima County determine the amount of mitigation required by the Section 10 permit?**

A11: Please see the [MSCP](#) Appendix Q for a more detailed explanation. The following, however, provides a general description of the process Pima County uses to determine how much mitigation is owed.

Each year Pima County will add up the total number of acres of land impacted by County capital improvement projects and private development that received coverage under the Section 10 permit. These acres are then categorized according to which Maeveen Marie Behan Conservation Lands System (CLS) category they fall within and multiplied by the [corresponding MSCP mitigation ratio](#) (see Table 1). Once the number of mitigation acres is determined for each CLS category, the County will designate a corresponding amount of open space properties located within the CLS as Section 10 mitigation lands. For example, if projects for a given year disturb a total of 100 acres within the Multiple Use Management Area category, the County must identify 300 acres within county-controlled mitigation lands and manage, monitor and protect that land in perpetuity according to requirements specified by the Section 10 permit.

**Q12: Will the Multiple Species Conservation Plan (MSCP) mitigation ratios be applied to private development if the development is included in, or covered by, the Section 10 permit?**

A12: No. Only the SDCP [CLS ratios](#), as defined by the Pima County Comprehensive Plan 2015 Update (Pima Prospers), will be applied irrespective of whether the development project is covered by the Section 10 permit. SDCP CLS ratios, however, are only applied to private development that requires a discretionary land use approval from the Board of Supervisors (e.g., rezonings, comprehensive plan amendments). The County will use the MSCP mitigation ratios only for determining its land mitigation obligations.

**Q13: If natural open space set-aside areas on private property are counted as Section 10 permit mitigation, is the property owner obligated to comply with special requirements or make special concessions?**

A13: Yes, but only if the property owner elects, through the [Opt-in Provision](#), to participate in the County's Section 10 permit. Under the Opt-in Provision, certain natural areas that are set aside through development processes will become Section 10 permit mitigation land. Such areas are limited to those natural open space areas created by: (1) complying with Board of Supervisors'-imposed requirements to satisfy CLS conservation guidelines; or (2) protecting certain types of riparian areas in order to comply with the riparian protection and mitigation requirements of Title 16.30. In order to count these natural area set-asides as Section 10 mitigation land, it must remain undeveloped and protected in perpetuity by a legally-enforceable instrument approved by the Board of Supervisors.

**Q14: Will there be different regulatory requirements placed on developments that are included in, or covered by, the Section 10 permit?**

A14: No. Regulatory requirements pertaining to private developments that are included in, or covered by, the Section 10 permit through the Opt-in and Opt-out Provisions do not vary from those established in Pima County Code. The County has not created a two-tiered development process where different regulations apply to those developments that are covered by the County's Section 10 permit versus those that are not. In keeping with current practice, any changes to the Pima County Code will be made through the public hearing processes utilized by the Board of Supervisors.

**Q15: The Section 10 permit requires Pima County to implement a management and monitoring program. Will County staff be conducting management or monitoring activities on private property?**

A15: On-the-ground management and monitoring activities will not occur on private property. On-the-ground monitoring and management actions will be on open space or flood prone properties that are owned or leased from the State by the County and District, respectively. However, where natural areas on private property that are set aside through development processes become Section 10 permit mitigation land through the Opt-in Provisions, Pima County is responsible for monitoring to ensure they remain undeveloped and in compliance with the legally-enforceable instrument approved by the Board of Supervisors. Pima County will use remote sensing tools such as aerial photography to verify the mitigation property remains undeveloped unless the private property owner grants the County permission to carry out on-the-ground monitoring and management activities.

**Q16: Cattle graze on many of the County lands that will be used as Section 10 permit mitigation. Why does the Multiple Species Conservation Plan (MSCP) and Section 10 permit not include habitat loss and species impacts potentially related to grazing?**

A16: The MSCP and Section 10 permit address the maintenance and construction of County ranch infrastructure, but not the physical act of cattle consuming plants or walking across the land. The physical act of cattle grazing is excluded because (1) the MSCP Steering Committee did not recommend it; (2) monitoring such impacts are extremely difficult; (3) the County's analysis of these impacts indicated that the potential impact on species listed in the MSCP and Section 10 permit is minimal; and (4) if such impacts are found to be significant, the Section 10 permit can be amended to include cattle grazing. Alternatively, potential impacts to species protected by the Endangered Species Act can be addressed through a Section 7 consultation on a species-specific basis, if deemed necessary.

**Q17: When will the Multiple Species Conservation Plan (MSCP) and the Section 10 permit expire?**

A17: Section 10 permit coverage will expire either in 30 years or when impacts total 36,000 acres, whichever comes first. However, the Section 10 permit requires that all mitigation lands remain as natural open space in perpetuity. Regardless of which trigger causes expiration, the MSCP and Section 10 permit can be renewed, but renewal will require new reviews by U.S. Fish and Wildlife Service as well as a new round of public notice and comment.

**Q18: If the community decides it does not want the Section 10 permit anymore, can we get out of it?**

A18: Yes, the Section 10 program is voluntary, so a community can decide to suspend its involvement. However all covered activities must be fully mitigated for in accordance with the permit conditions.

**Q19: How much will implementation of the Multiple Species Conservation Plan (MSCP) and compliance with the Section 10 permit cost and where will the money come from?**

A19: Costs are primarily driven by the need to acquire mitigation lands in addition to managing and monitoring these lands and the listed species. Most of these costs are already accounted for. Using voter-approved bond funds for the acquisition of open space (1997 and 2004), the County spent nearly \$135 million and has acquired approximately 50,000 acres of fee lands and 137,000 acres of leased lands, which will fulfill mitigation obligations for approximately 20 years into the life of the Section 10 permit. Management and enforcement activities required by the MSCP and Section 10 permit are largely in place and on-going as part of County operations to implement the Sonoran Desert Conservation Plan. The level of monitoring required by the Section 10 permit to assess the condition of mitigation lands and the status of select species necessitates establishment of new monitoring efforts and allocations of general fund dollars.