



MEMORANDUM

Date: December 16, 2010

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

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to be "C.H. Huckelberry", is written over the typed name and title.

Re: **Sonoran Desert Tortoise and the Pima County Multi-species Conservation Plan**

The United States Fish and Wildlife Service (Service) announced on December 13 that the Sonoran desert tortoise warrants protection under the Endangered Species Act (ESA) but is precluded from imminent federal protection by the need to address higher-priority species. This reptile will be added to the list of candidates for ESA protection, and its status will be reviewed annually. Other species in Pima County that warrant protection under the ESA but are currently precluded from listing include the Northern Mexican garter snake, Tucson shovel-nosed snake, yellow-billed cuckoo, and cactus ferruginous pygmy-owl.

The County's recent submittal of the Multi-species Conservation Plan (MSCP) to the Service for a Section 10 (incidental take) permit includes the Sonoran desert tortoise. This animal has long been a focal species of the Sonoran Desert Conservation Plan because of the scientific community's concern over threats to the tortoise and mounting evidence of its decline in the region.

As with all unlisted species that are proposed for coverage under the County's Section 10 permit, should the tortoise be listed as federally threatened or endangered during the course of the permit, the MSCP would provide an agreed-upon plan that would take effect with the Service upon listing. Listings of species covered in the permit would not change the ESA conservation and mitigation requirements for projects covered under our permit.

Should the County *not* obtain a Section 10 permit and the tortoise is listed under the ESA, County projects and private development would be exposed to liabilities under Section 9 of the ESA, which prohibits "take" of a listed species. Take is defined as harassing, harming or killing a listed species or modifying its habitat to the degree that it would actually injure or kill the species. Without the upfront conservation and mitigation considerations we would provide under the Section 10 permit, each project that has the potential to take a desert tortoise would have to decide how to proceed. Those projects with a federal nexus could

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pursue individual consultations with federal agencies to determine and provide measures to protect the tortoise and mitigate impacts in a way that would be acceptable to the federal agency. Such situations would result in delays and added costs, with unknown outcomes. And, as we saw with the pygmy-owl, federal agencies can change how and where they perform individual consultations over time.

Given the widespread distribution of the tortoise (see Figure 1 attached) and its habit of spending extended periods of time underground (and therefore in harm's way of construction activities), the potential for projects to take desert tortoise is not insignificant. By developing the MSCP and obtaining a Section 10 permit in advance, Pima County can provide the community with more options to conserve populations of the desert tortoise and address legal liabilities than would be possible without the Section 10 permit. With implementation of the conservation and mitigation measures specified in the Final MSCP and Section 10 permit, the community and the Service gain a level of certainty not otherwise possible.

Having received Pima County's application, the Service will rely upon the best and most current science on the desert tortoise, initiate a review of our proposed MSCP and evaluate the effectiveness of our conservation and mitigation measures in providing suitable protection for this species. The Service will also provide the Arizona Game and Fish Department (AGFD) an opportunity to shape the proposal. Any comments from the Service or AGFD regarding the appropriate conservation measures for the tortoise (or other Covered Species) will be addressed in the Public Draft MSCP that will be released later in 2011.

The current draft of the MSCP (Administrative Draft) can be found at: <http://www.pima.gov/cmo/sdcp/MSCP/MSCP.html>. Public comment regarding any aspect of the Administrative Draft MSCP released on December 8, 2010 may be sent to Neva.Connolly@pima.gov or addressed to Ms. Connolly at 201 N. Stone Avenue, Sixth Floor, Tucson, Arizona 85701.

CHH/mjk

Attachment

c: Julia Fonseca, Environmental Planning Manager

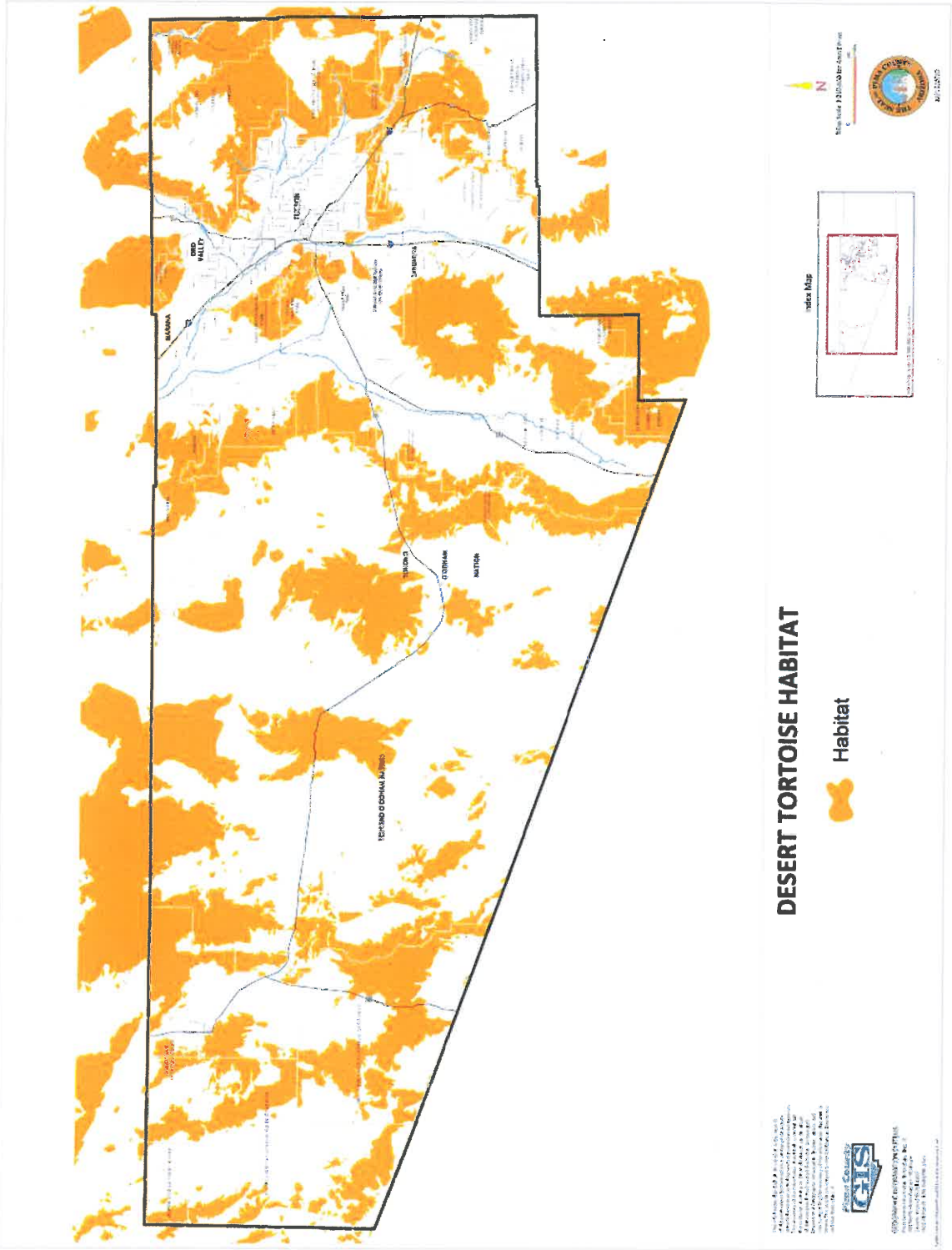


Figure 1. Potentially suitable habitat for Sonoran desert tortoise in Pima County (County model)