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# MEMORANDUM

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Date: December 17, 2009

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 read "C.H. Huckelberry", is written over the printed name and title.

Re: Pima County Multi-Species Conservation Plan

## Introduction

Attached is the Multi-Species Conservation Plan (MSCP) which, upon direction from the Board, Pima County will submit to the U.S. Fish and Wildlife Service (the Service) for a 30-year Section 10 permit. I am very pleased to transmit this report to the Board at this time. It represents an approximately ten-year study effort of land use and the environment in Pima County. Our planning process and plan products have been nationally acclaimed as leading science in regional bio-planning and how best to mitigate the adverse affects of regional growth and development on our natural ecosystem. The plan process included unprecedented public involvement and science-based analysis.

Pima County's permit submittal package will also contain an Implementation Agreement that delineates the County's obligations in a phased approach and an Environmental Impact Statement (EIS), which is the Service's document. Earlier drafts of the MSCP have been published in 2003, 2005, in January and September 2006, and 2008 as part of the extensive process of developing scientific information and inviting public review and comment. The attached plan responds to the public's comments and presents the County's best option for providing Endangered Species Act (ESA) protection for development activities (Covered Activities) while advancing the goals of the adopted Sonoran Desert Conservation Plan (SDCP).

Since the publication of the first draft in 2003, Pima County's need for a Section 10 federal endangered species permit has diminished. Other jurisdictions have annexed lands where development-related activities are most likely to impact Pima pineapple cactus. In April 2006, the Service removed the cactus ferruginous pygmy-owl (CFPO) from protection under the ESA. However, in the last few years, a number of species have been proposed for endangered species listing, including the Mexican garter snake, Tucson shovel-nosed snake, the desert tortoise, and a re-listing petition for the CFPO. Should these or other species gain protected status under the ESA, development in Pima County would, once again, be faced with a need for a federal endangered species permit.

The Honorable Chairman and Members  
Pima County Board of Supervisors  
Re: Pima County Multi-Species Conservation Plan  
December 17, 2009  
Page 2

A few questions to keep in mind as the County finalizes the permit application include:

- What do County residents gain from the federal endangered species permit that they have not already achieved through implementation of the SDCP?
- How can our plan avoid the problems that have led to criticism of regional Section 10 permits?

This memorandum summarizes the draft plan and provides answers to these questions.

### The Difference Between the SDCP and the MSCP

Very often, the concepts of the SDCP and MSCP are confused or intermingled. These plans are separate, yet interdependent. The MSCP is the federal compliance component of the SDCP; it is a subset of the plan. The SDCP contains elements of community values and conservation significantly beyond federal compliance with the ESA. The MSCP species by species approach is an important component of the SDCP, but it is not in itself the vision of community conservation embodied in the SDCP, which seeks to protect our history, culture, ecological integrity, and unique natural environment.

In a recent Gallup poll conducted within Arizona and reported by the Center for the Future of Arizona in "The Arizona We Want," it was stated that "the State's natural beauty and open spaces are seen by citizens as our greatest asset. Arizona landscapes matter on both economic and emotional levels. It's important that growth and development in the future respect the passion that citizens feel for their environment." The report by the Center for the Future of Arizona indicates that one of the greatest strengths of Arizona is our aesthetics and natural environment and that all citizens, when reviewing 14 quality of life features, indicate the most important aspect of their community is its beauty or physical setting. Pima County's SDCP and MSCP parallel and reinforce the sentiments expressed by Arizona residents.

### MSCP, Chapter 1: Introduction

The first chapter of the MSCP covers topics typically found in other MSCPs, including a discussion of the purpose and need for the plan and presentation of the alternatives that we have explored with the community since 2003. The "no-action" alternative would mean continuing to rely on separate Section 7 consultations for those individual projects with the potential to impact threatened and endangered species. Each of the action alternatives would provide coverage against future listings for a number of Covered Species and for differing sets of activities. Pima County's preferred alternative, discussed at length in this document, covers the greatest range of species and maximizes the Board of Supervisor's control over the impacts

The Honorable Chairman and Members  
Pima County Board of Supervisors  
Re: Pima County Multi-Species Conservation Plan  
December 17, 2009  
Page 3

of Covered Activities.

## **Chapter 2: Background Planning**

The second chapter describes the development of the SDCP, with particular emphasis on the design of Pima County's regional biological reserve, the Maeveen Marie Behan (MMB) Conservation Lands System. The MMB Conservation Lands System is the primary mechanism used to identify those lands that could be utilized to fulfill mitigation commitments.

## **Chapter 3: Impacts**

This chapter describes the impacts within unincorporated Pima County (Permit Area) that are anticipated as the result of those Covered Activities presented in the preferred alternative. The Permit Area covers over 750,000 acres, most of which is in eastern Pima County. As defined in the preferred alternative, Covered Activities are principally private, unincorporated lands under jurisdiction of the Pima County Board of Supervisors. The Permit Area also includes certain State Trust lands managed by Pima County, as well as those State Trust lands where land use planning efforts have occurred (e.g., Arroyo Grande, Mission Peaks) anticipating that these planned communities will be released to the private sector for development. It should be noted the previous State Land Commissioner asked that the proposed Statement Land development activities be covered by our permit. During the next decades, the Permit Area will be reduced due to annexations, and our obligations under the permit will reduce proportionally.

**Covered Species.** The permit will provide mitigation for impacts to a subset of the SDCP's 56 Priority Vulnerable Species. These Covered Species include a total of 49 species: four plants, eight mammals, eight birds, six fish, two amphibians, seven reptiles, and 14 invertebrates. A key difference between this draft and the last draft is the addition of 14 species of talus snails. Eight of the 56 Priority Vulnerable Species (species that were used for planning purposes and were originally all thought to require permit coverage) are not proposed for coverage under the County's permit, since they generally occur outside the permit area or are not likely to be affected by development activities.

**Covered Activities.** Pima County is seeking endangered species protection for County activities, specifically: capital improvement projects, maintenance and operations, and land management activities. Development on private property will be covered for those properties rezoned after permit issuance. There is also an optional Certificate of Inclusion Program which would, pursuant to a request from the property owner and approval by Pima County, extend endangered species protection to development on properties within the MMB Conservation Lands System that were rezoned between 2002 and the time the Service issues the permit.

The Honorable Chairman and Members  
Pima County Board of Supervisors  
Re: Pima County Multi-Species Conservation Plan  
December 17, 2009  
Page 4

The projected impacts associated with construction of Covered Activities over the 30-year permit period for which Pima County would assume mitigation obligations approach 36,000 acres. These impacts were largely derived from updated land-use projections consistent with the ongoing City-County Water Study.

#### Chapter 4: Mitigation Program

Chapter 4 describes those practices that avoid and minimize potential impacts to Covered Species. It also discusses how Pima County will provide mitigation for impacts that cannot be avoided. Strong avoidance and minimization measures are already in place because of actions the Board has already adopted; for example, the MMB Conservation Lands System, the new riparian habitat maps, and environmentally sensitive roadway design standards.

For the projected 36,000 acres of impact, Pima County will acquire, manage, monitor and protect approximately 125,000 acres of mitigation by the end of the 30-year permit period. We offer to offset impacts of covered activities within the Permit Area, regardless of whether impacts occur inside or outside the MMB Conservation Lands System; however, mitigation obligations will vary based on whether impacts are, or are not, within the MMB Conservation Lands System. Pima County is also proposing a methodology whereby, for purposes of satisfying the permit, partial mitigation credit will be granted for MMB Conservation Lands System set-asides resulting from the Board's approval of a rezoning application, as well as for lands leased as part of our ranch program and for improving conditions on these and other lands under the County's management and/or ownership.

Despite not yet having a Section 10 permit, Pima County has acquired over 71,000 acres of fee-owned lands, and manages over 130,000 acres of leased lands. This is in keeping with prior agreement with the Service, whereby properties secured post-1999 are eligible to serve as mitigation lands. Provided that Pima County is granted partial mitigation credit for leased lands, the current set of mitigation lands provide approximately 82 percent of the mitigation that we are likely to need over the life of the permit.

County-owned mitigation land will be encumbered by conservation easements in order to ensure long-term protection against changes in the land-use purpose. The timing of such commitments will be affected by the rate and location of impacts.

The permit would be phased in ten-year increments to secure mitigation commitments commensurate with the rate of impacts. This will create checkpoints to monitor the plan's implementation and effectiveness, but no permit renewal would be needed for this phased approach.

The Honorable Chairman and Members  
Pima County Board of Supervisors  
Re: Pima County Multi-Species Conservation Plan  
December 17, 2009  
Page 5

### **Chapters 5 and 6: Implementation of Resource Monitoring and Management**

Chapters 5 and 6 address how Pima County will manage the land and resources we commit to mitigation and how we intend to monitor the condition of these important resources over time. Management plans will be developed primarily for those lands owned or controlled by Pima County or the Regional Flood Control District. Programs already in place, such as invasive species management, will be included in these plans.

Ecological effectiveness monitoring, which is designed to track how well our mitigation program is providing for the wellbeing of Covered Species, will concentrate on assessing aquatic and riparian species and habitats and the condition of upland vegetation resources. Any management or monitoring activities that require on-the-ground activities will be limited to those mitigation lands owned or leased by Pima County or the Regional Flood Control District. Compliance monitoring, which is intended to demonstrate that Pima County is in conformance with the requirements of the permit, includes annual reporting of habitat loss and any lethal take, as well as updates on implementation of permit terms.

The plan also sets out a phased approach to management and monitoring in an effort to allow the expert community to continue to develop information so that we can grow into a conservation program that works, rather than make commitments that cannot be met. Monitoring and management programs will be reviewed periodically to ensure they are providing timely and relevant information.

### **Chapter 7: Changed and Unforeseen Circumstances**

In this required section, Pima County discusses efforts we could pursue to address circumstances that may change after the Service issues the Section 10 permit. "Changed Circumstances" include foreseeable effects on Covered Species due to continued climate change, changes in development and groundwater pumping patterns, and changes in other areas that are largely beyond our regulatory control. Our response to many of these scenarios is to continue with our leadership role in regional science and management much as we have done since the beginning of the SDCP planning process. "Unforeseen Circumstances" are those situations that could result in adverse impacts to Covered Species but which Pima County can not reasonably anticipate. These are scenarios for which Pima County will not be held responsible for rectifying or mitigating under this permit.

### **Chapter 8: Funding**

Pima County has spent approximately \$150 million on land acquisitions since 2004 to satisfy the mitigation requirements of the forthcoming permit. These monies came primarily from bond funds that were approved by voters in 2004. Most of the management and enforcement functions associated with our mitigation obligations are already occurring as fundamental elements of managing those lands secured through the SDCP's open-space acquisition

The Honorable Chairman and Members  
Pima County Board of Supervisors  
Re: Pima County Multi-Species Conservation Plan  
December 17, 2009  
Page 6

program. Monitoring is the main new program element that requires funding. Estimates suggest that the annual cost for each of the first three years would be no more than \$550,000.

#### **Chapter 9: Reporting and Public Participation**

Public participation and expert oversight have been hallmarks of the development of both the SDCP and the MSCP. We anticipate continuing this successful approach as we enter the implementation stages of the MSCP. We will pursue reviews by stakeholders and outside peer scientists at appropriate junctures and will reconstitute the Science Technical Advisory Team with a membership heavy on monitoring and management expertise. In addition to public participation, Pima County will adhere to annual and decennial reporting of take and mitigation activities to the Service.

#### **The Importance of Obtaining a Section 10 Permit**

Pima County is not now facing substantial federal ESA compliance or take issues at the present time, but as new listings are perpetually on the horizon, it is prudent for us to move forward with this Section 10 permit. Even before the permit is issued, we expect to exceed the mitigation requirements for the first twenty years. We are, therefore, in an exceedingly strong position to make our Section 10 permit successful.

Returning to the questions posed at the beginning of this memorandum: What are County residents gaining from the federal permit that they have not already achieved through the local plan? First, a local-federal partnership such as this MSCP could prevent future listings of endangered species and the disruption these listings cause to local plans and investments. Second, the permit will provide predictability for both public and private development so that projects can move forward in a timely and least disruptive manner. Third, the permit would enable assured funding for conservation programs that, while consistent with our conservation priorities as expressed in the SDCP, might otherwise go underfunded or not be funded at all. Fourth, implementing the permit will ensure additional legal status for lands already acquired, most importantly through the application of conservation easements and other protective measures.

The next question is how does Pima County's MSCP avoid the problems that have plagued many other regional Section 10 permits, most notably their difficulty in (1) implementing conservation and monitoring programs, and (2) sustaining funding? The short answer is that our unique planning and implementation approach to date has been to stand the process on its head! A more nuanced answer starts with the fact that we have developed a grassroots, community plan—the SDCP—that is based on a broad array of local values and which deals with fundamental questions of land use and growth. Through this process came an acquisition and land management program that is unprecedented in breadth and spatial scope. These initiatives and programs accomplish many of the required permit commitments in advance of obtaining a permit. Other jurisdictions have postponed addressing these difficult fiscal and

The Honorable Chairman and Members  
Pima County Board of Supervisors  
Re: Pima County Multi-Species Conservation Plan  
December 17, 2009  
Page 7

organizational challenges until well into their permit. Therefore, for Pima County, there is little question of our plan's feasibility.

Other plans have also struggled with the monitoring component, and we have been fortunate to have learned from the challenges they faced. A number of planning components are complete for the monitoring program, and it shows many of the hallmarks of the SDCP process: it is broad in scope and purposefully flexible in its implementation process to invite the best science and public input to the table.

Finally, the issue of funding is one that the County has largely addressed through the extraordinary commitment to open space purchase and lease and the host of ongoing management, regulatory, and law enforcement programs. The only unfunded component of the MSCP is the monitoring program.

Even though Pima County is not currently facing substantial take issues, the extraordinary biological diversity of our unique desert ecosystem means that new species listings will perpetually be on the horizon. Given the likelihood of these listings, along with our proven ability to fulfill our anticipated commitments as part of this permit, it is logical for us to move forward and make our Section 10 permit a success.

The next step in this process involves updates to the Draft EIS to reflect the current proposal and the considerable public process that has occurred since release of the last version of that impact statement in 2006.

We anticipate publication by the Service of the revised Draft EIS, Implementing Agreement, and the MSCP in the Federal Register in summer 2010. At that time, the Service will open a 90-day public comment period on the entire set of documents. The permit decision would follow after the Service reviews those comments, completes its findings, publishes a record of decision, and reviews any appeals.

#### **Present Schedule for Processing the MSCP**

Outlined below is the timeline for processing the Pima County MSCP. Major milestones appear in bold.

<b><u>Timeframe</u></b>	<b><u>Activity</u></b>
December 2009	<b>Release MSCP; extend Service and RECON contracts.</b>
January 2010	<b>Review other Implementing Agreements (IAs); identify County preferences and County legal assistance for IA.</b>

The Honorable Chairman and Members  
Pima County Board of Supervisors  
Re: Pima County Multi-Species Conservation Plan  
December 17, 2009  
Page 8

January 2010 – February 2010	Conduct OCSEP briefings about MSCP/EIS process for stakeholders. Update EIS analyses and turn over to RECON.
March 2010	Submit MSCP/DEIS with IA template to Service for review.
June 2010	Make final adjustments to MSCP/DEIS after Service's administrative review is complete
July 2010	Draft MSCP/EIS complete with draft IA is published in Federal Register.
September 2010	90-day public comment period ends.
March 2011	Final EIS and Record of Decision are ready for publication in the Federal Register.
April 2011	Service decision on Section 10 permit; this is the earliest that a permit would issued to Pima County.

This timeline provides realistic time periods for finalizing and developing the plan and obtaining the Section 10 ESA permit from the Service in compliance with federal law.

#### Continued Public Review and Comment

The public review and comment on this plan has been unprecedented and continuous. However, there comes a time when the review and comment period must end, and the process must move forward to develop a plan for approval and implementation. The plan I am transmitting to the Board today is a plan that has undergone literally hundreds of public review and comment from all interested parties. This is the plan I propose the Board forward to the Service for processing. Any agency, interest group, or individual who has information or would like to provide comments on the submitted product may do so to the County, and we will consult with appropriate federal agencies for review and modification of the submitted document, if appropriate. Interested parties may also provide input during the lengthy federal review and 90-day comment process that will occur at the time of publication of the Federal Register notice, once the draft EIS for the MSCP has been completed. This formal public review and comment period is now scheduled to begin in July 2010 and end in September 2010.

#### Board Approval to Transmit the MSCP to the U.S. Fish and Wildlife Service

I will place this matter on the Board's agenda of January 19, 2010 to ask the Board to accept

The Honorable Chairman and Members  
Pima County Board of Supervisors  
Re: Pima County Multi-Species Conservation Plan  
December 17, 2009  
Page 9

the plan as written and to transmit it to the Service for processing as indicated in the timeline of activities summarized previously in this memorandum.

### **Acknowledgments**

I would like to acknowledge the hard work and dedication of staff in the Office of Conservation Science to complete this seemingly impossible task in a manner that credits their patience, expertise, and sophistication in developing a plan that I believe will benefit existing and future residents of Pima County for generations. We all love the beauty and diversity of the Sonoran Desert. This plan protects this asset for future generations to occupy this place. Staff that deserve special recognition for making this plan possible are:

Maeveen Behan, Director, Office of Conservation Science & Environmental Policy, deceased  
Julia Fonseca, Environmental Planning Manager, Office of Conservation Science &  
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I would also like to thank the U.S. Fish and Wildlife Service and the Arizona Game and Fish Department for their funding contributions in support of Pima County's MSCP.

It is also important to acknowledge the important contributions of all our federal, state, and local partners who participated in the MSCP development process:

### **MSCP Cooperators [MSCP-related Intergovernmental Agreements (IGAs)]**

Arizona Game and Fish Department  
U.S. Fish and Wildlife Service  
The University of Arizona

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The Honorable Chairman and Members  
Pima County Board of Supervisors  
Re: **Pima County Multi-Species Conservation Plan**  
December 17, 2009  
Page 10

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The Honorable Chairman and Members  
Pima County Board of Supervisors  
Re: **Pima County Multi-Species Conservation Plan**  
December 17, 2009  
Page 11

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Harris Environmental Group (Riparian Mapping)  
SWCA (Species Accounts)  
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Neale Allen, Mountain View Homeowners Association  
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The Honorable Chairman and Members  
Pima County Board of Supervisors  
Re: Pima County Multi-Species Conservation Plan  
December 17, 2009  
Page 12

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Tim Blowers, Developer/Landowner  
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Carolyn Campbell, Coalition for the Sonoran Desert Protection Plan  
Joe Cesare, Hotel Property Owner  
Sue Chilton, Chilton Ranch  
Sue Clark, Pima Trails Association  
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Hector Conde, Oro Valley Coalition  
Cindy Coping, Avra Valley/Silverbell Conservation Alliance  
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Gay Lynn Goetzke, Property Rights  
David Goldstein, Real Estate Developer  
Bruce Gungle, Tucson Mountain Association  
Trevor Hare, Sky Island Alliance  
Richard Harris, McGee Ranch, Sierrita Mountain Coalition  
Lynn Harris, Sierrita Mining and Ranching  
Gayle Hartmann, Buffers  
Deborah Hecht, Tucson Mountains Association  
David Hogan, Southwest Center for Biological Diversity  
Gerald Juliani, Pure Water Coalition  
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The Honorable Chairman and Members  
Pima County Board of Supervisors  
Re: Pima County Multi-Species Conservation Plan  
December 17, 2009  
Page 14

The Nature Conservancy (Bingham management)  
Pinal County (Tortolita Mountain Park, Anza Trail)  
State of Arizona (Cortaro Mesquite funding)  
Town of Marana (Willow Ridge funding, Tortolita wildlife study)  
Town of Oro Valley (Big Wash restoration project; Steam Pump historic project)  
U.S. Bureau of Land Management (Empirita fencing project)  
U.S. Bureau of Reclamation (Rancho del Cielo management)  
U.S. Department of the Army, Corps of Engineers (Rillito, Kino restoration projects)  
The University of Arizona (services, Tumamoc acquisition)

CHH/mjk

Attachment