



DRAFT

MEMORANDUM

Date: May 23, 2001

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

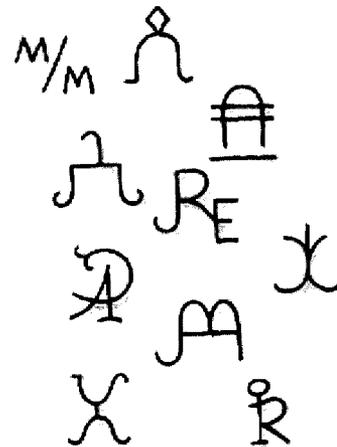
From: C.H. Huckelberry
County Administrator 

Re: **Purchase of Development Rights Program Discussion Paper**

Since 1999 the Ranch Conservation Technical Advisory Team has met on a monthly basis to develop the Ranch Conservation Element of the Sonoran Desert Conservation Plan. Following the publication of the *Preliminary Ranch Conservation Element* in the fall of 2000, the attached study outlining a potential *Purchase of Development Rights Program* was drafted by the Ranch Team and Ms. Linda Mayro of the Cultural Resources Office in order to facilitate discussion of implementation options. Two workshops have been held on the Ranch Conservation Element in 2001. On January 27, 2001 Pima County and the Arizona Open Land Trust held a workshop specifically on purchase of development rights issues. More recently, the Coalition for Sonoran Desert Protection has proposed that discussions begin so that the Ranch Conservation Element is finalized in a way that is mindful of the management needs in core reserve areas. The concepts in the attached report will assist in future planning and implementation discussions that take place over the next months as we finalize the Sonoran Desert Conservation Plan. A purchase of development rights (PDR) program could assist in the funding of open space lands that contribute to the overall conservation reserve. Benefits of a program that would extinguish the development rights but retain an economic use in land that is consistent with conservation values include:

- Purchasing development rights is a less expensive way to conserve land than full purchase.
- PDR retains land that contributes to our community character and sense of place.
- Retention of connected and unfragmented open space.
- PDR is voluntary and retains land in private ownership.
- Owners occupy and make economic use of their land.
- High resource value lands and wildlife can be protected.

Divided into five sections, the *Purchase of Development Rights* study outlines the feasibility and funding of a Purchase of Development Rights program, it makes recommendations for a future program, and a draft ordinance is presented for purposes of discussion. This topic along with other program and funding options will be discussed by the Steering Committee and in workshop settings as we complete the Sonoran Desert Conservation Plan .



Historic Brands, Pima County



Pima County, Arizona
Purchase of Development Rights Program
Sonoran Desert Conservation Plan

May 2001

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Pima County, Arizona

Purchase of Development Rights Program

Sonoran Desert Conservation Plan

I. Executive Summary:

Findings:

- A Pima County Purchase of Development Rights Program (PDR) will facilitate long-term sustainable development embodying the community's vision and values, will retain community character while achieving economic development objectives, and will consider the environmental, social and fiscal impacts of growth and development.
- PDR will provide an effective means of protecting open lands, rural landscapes, natural landforms, important habitat, and scenic vistas, while retaining private landownership and the heritage and character of the county's rural areas.
- PDR will provide a competitive and attractive alternative to the residential and commercial development of rural lands due to rising land values by compensating property owners for that development value while keeping the natural landscape whole.

Background:

- Rapid growth in Pima County is accelerating the rate at which rural lands are being sold, subdivided, and developed for residential and commercial uses.
- Rural land values have more than doubled in the five year period 1992-1997, driving the conversion of rural lands to real estate development.
- Rural lands at the edge of the urban core are at the greatest risk for conversion.
- Rural lands in unincorporated eastern Pima County are comprised of approximately:
 - ▶ 192,000 acres of private ranch lands.
 - ▶ 12,800 acres of private croplands.
 - ▶ 111,000 acres of private, non-ranch, non-crop lands (parcels 40+ acres)

Benefits:

- PDR is entirely voluntary and retains land in private ownership.
- PDR is a less expensive way to conserve land than full purchase.
- PDR allows owners to occupy and make economic use of their land.
- PDR provides property owners with an economically attractive alternative to subdivision and development.
- PDR is flexible and can be tailored to an individual property owner's needs.
- PDR can protect vulnerable lands with sensitive plant and wildlife habitat.
- PDR fosters the retention of connected and unfragmented open space that contributes to our community character and sense of place.
- PDR protects sensitive lands despite future changes in political leadership.
- PDR is a proven method and is growing in popularity as a means of achieving open space protection and preserving private property ownership.

Feasibility:

- Costs of a Pima County PDR Program will be determined by the level of private property owner participation, as well as which lands might be considered eligible for conservation purposes. Three PDR strategies are outlined:
 - All ranch, agricultural, and 40+ acre parcels in unincorporated Pima County.
 - All ranch, agricultural, and 40+ acre parcels within the "biologic reserve."
 - All ranch, agricultural, and 40+ acre parcels outside the 25 mile radius.

II. Feasibility of a PDR Program in Pima County, Arizona

People have a natural attraction to pristine landscapes. One of the most frustrating ironies of our time is that this attraction leads to the very destruction of the very qualities we seek. Suburbs become urbanized as growth expands, creating a never-ending game of leapfrog; large segments of the population jump outward and settle on the fringe of developed areas. Soon they are surrounded by houses instead of views. In our most populated areas, people have found that they must be innovative in preserving some open spaces while the opportunity still exists. One of these innovative opportunities is through Purchase of Development Rights (PDR) programs.

PDR programs seek to provide funding to compensate land owners for restricting future uses of their land that are not compatible with its continued use for agriculture/ranching and for open space. These programs provide land owners with an opportunity to cash in a fair percentage of the equity in their land, thus creating a financially competitive alternative to development. PDR programs are completely voluntary, and their purpose is to protect land from inappropriate development while retaining private ownership.

*Mette Brogden and Rick Yarde
Arizona Common Ground Roundtable 1999*

One of the most serious land use problems facing Pima County and the rapidly growing Southwest is the accelerating rate at which rural lands and ranch lands are being sold, subdivided, and developed for residential and commercial uses. In the face of rapid population growth, rising property values, uncertainty of agricultural markets, and increasing uncertainty over access to grazing lands, many ranchers are faced with the difficult choice of either continuing to ranch and risking their financial health or selling out to developers or subdividing or lot splitting their private holdings themselves for sale and development. This conversion of ranch lands to real estate is at the heart of the problem of sprawl, wildcat subdivision, and leap frog development, which degrades and fragments our open space and natural habitat. Ultimately, this kind of growth destroys one of the very essential qualities that defines southern Arizona – its vast natural landscape.

The problem of rural property conversion has resisted conventional solutions. For example, increased agricultural productivity and higher market value, which is the case in Pima County, should be a stabilizing force in the retention of agricultural lands. According to USDA records for 1992-1997, agricultural productivity and the market value of all agricultural products in Pima County grew some 21 percent in this five year period from nearly \$39,000,000 to nearly \$47,000,000. However, what is more critical as a destabilizing factor in the retention of agricultural lands is that land values have more than doubled in this same period.

This growing differential in the lower growth in value of agricultural production and much higher growth in land values is really the key to the conversion of ranch lands to real estate. This real decision point in the transition of ranch lands to real estate is the transition in thinking of how land is valued – land once valued for its productivity now becomes valued instead as a commodity for development.

Another solution often cited as an incentive to retain agricultural lands is the use value assessment of agricultural and ranch lands, which are valued for property tax purposes at their productive values rather than as vacant land ready for development. While legitimate ranchers and farmers typically own lands classified for agricultural use, under current rules, land can continue to qualify for agricultural or ranch use assessment even after it is zoned for development, provided a minimum number of livestock are kept on property. These "rent a cow" operations, as currently allowed, merely make it much less costly for land speculators to buy large private tracts of land at relatively low prices and hold this land for resale at a higher price or for later development.

Finally, there is large lot subdivision, which is an option for many rural property owners who are seeking to cash out some equity in a portion of their agricultural or ranch land. At first view, splitting a parcel into 40 acre ranchettes might appear to be an acceptable means to preserve the rural character of open range lands; however, recent studies demonstrate these large lot splits rarely stay intact and often proliferate into many more unregulated splits, resulting in wildcat subdivisions. These unregulated subdivisions fragment the landscape, often accelerate adjacent ranch land conversion, contribute greatly to sprawl, often devalue property, and can create significant hardships for its residents. Moreover, once ranch lands are split, these parcels frequently no longer qualify for agricultural or ranch classification making them subject to significantly higher property tax rates. Consequently, there is no incentive for large lot property owners to own these parcels for conservation purposes; instead, there is only an incentive for further lot splits until the minimum lot size is reached for residential property tax status under current zoning.

Throughout the United States, issues of sprawl, low density development and accompanying high infrastructure and service costs, and loss of agricultural lands and open space have forced citizen groups and local and state governments to develop more creative and effective means of preserving open space. One of the most effective, flexible, and proven tools is "purchase of development rights" programs, or PDR programs, which are operating in numerous locations throughout the nation at both state and local levels of government.

Simply put, PDR programs involve only the purchase of development rights, leaving the land in private ownership. When the development rights to a farm or ranch are sold and extinguished, the property owner receives payment equal to the difference between the fair market value of the land (if the land were to be purchased for development) and the price of the land for its agricultural use or productivity. A conservation easement is placed on the property that details the terms of the development restrictions.

Five important features of PDR programs should be emphasized:

- ▶ Property owner participation in PDR programs is entirely voluntary.
- ▶ Private land stays in private ownership.
- ▶ Property owners retain the right to occupy and make economic use of the land.
- ▶ The specific terms of the PDR transaction and conservation easement are negotiable and can be tailored to meet the needs of the landowner.
- ▶ Land remains protected despite future changes in political leadership.

To provide some context for the PDR discussion, the results of earlier studies on the extent and distribution of Pima County ranch and agricultural lands, areas with greatest development pressure, and areas with the greatest potential for long-term conservation are summarized

II-1. Existing Ranch and Farm Lands in Pima County

As noted in other recent reports on ranch and farm lands in Pima County, ranching still comprises a significant land use in its own right, with the base units of agricultural production – the family ranches, scattered across the landscape – the result of early homesteading claims made in the 1800s. Farming, however, is much reduced, and most remaining farms in the Marana and Green Valley areas today lie in the path of development

According to USDA statistics from 1992 and 1997, there was a significant decline or loss of more than one-half million acres in total farm and ranch land in Pima County to real estate conversion and other uses. However, despite these conversions, ranching remains a significant land use that, unlike farming, has retained the natural form of the land serving to preserve the natural landscape. Recent analysis suggests there are about 1.6 million acres of ranch lands throughout Pima County, and about 1.4 million acres in eastern Pima County. Most ranches are family owned enterprises consisting of a patchwork of ownership with about 211,000 acres of private lands committed to ranching. Grazing leases comprise some 818,000 acres of State Trust lands, 324,000 acres of BLM land, and 254,000 acres of Forest Service lands.

II-2. Distribution of Private Ranch Lands in Pima County

As also noted in earlier reports, ranch lands are a mosaic of private, state, and federal lands, which is the result of historical events that defined land ownership, various homesteading laws, the establishment of Forest Reserves and the Arizona Enabling Act. Consequently, private ranch lands tend to be scattered throughout the region, but are found typically along the major stream channels or along mountain foothills at spring sites where water could be tapped. As a consequence of the history of private land claims, private ranch lands and farms have tended to correspond with areas of greatest ecological and environmental sensitivity – riparian areas, spring sites, and along the floodplains of rivers and streams. Subareas with the highest amounts of private land dedicated to ranching are shown in Table II-2.1.

Table II-2.1 Distribution of Private Ranch Lands

<u>Rank:</u>	<u>Subarea:</u>	<u>Acres (Sq. Miles)</u>
1	Altar Valley	ca. 64,000 ac (100 mi ²)
2	Upper Santa Cruz	57,000 ac (89 mi ²)
3	Empire-Cienega	32,000 ac (49 mi ²)
4	San Pedro	19,000 ac (30 mi ²)
5	Tortolita Fan	19,000 ac (30 mi ²)
6	Avra Valley	17,000 ac (27 mi ²)
7	Middle Santa Cruz	3,000 ac (5 mi ²)
	TOTAL	211,000 ac (330 mi²)*

* Assessor data July 2000

Current Assessor records (April 2001) indicate a loss of about 2,150 acres of private ranch lands over the last year to a current total of approximately 209,090 acres (327mi²) comprised of approximately 1700 parcels classified as ranch use. Of these total ranch lands, about 192,000 acres (300 mi²) are located in unincorporated Pima County and 17,000 acres (26.5 mi²) are located within the incorporated limits of the Pima County cities and towns. There are currently about 27,000 acres occur in about 800 parcels largely along the Santa Cruz River in Marana and Sahuarita and the Green Valley areas. Table II-2.1 below illustrates these updated figures.

Table II-2.2 Assessor Records for Current Private Ranch, Farm, and Rural Lands

	<u>Ranch Use</u> (1913 parcels)	<u>Farm Use</u> (833 parcels)	<u>Non-Ag.Use</u> [40+ ac] (1682 parcels)
Unincorporated	192,051 ac (1695* parcels)	12,785 ac (137 parcels)	110,636 ac (848 parcels)
Incorporated	<u>17,039</u> ac (264* parcels)	<u>14,912</u> ac (687 parcels)	<u>48,344</u> ac (303 parcels)
TOTAL:	209,090 acres	27,697 acres	158,980 acres

If the aggregate of the number of subdivided land parcels is examined by size, it is clear that the vast majority of subdivided lands are small parcels representing private lands in residential and small commercial uses. Larger parcels comprise both privately and institutionally held lands in both incorporated and unincorporated areas. These may be ranch lands, agricultural crop lands, institutional reserves, vacant land not used in agriculture, or large private parcels in residential use. Given the goal of natural open space conservation, it is likely that the larger parcels would be most appropriate for a County PDR program.

While the actual numbers of small and large parcels will change, these data are included at this point to give some indication of the relative proportions of small and large parcels. Current data on parcels over 20 acres suggest that perhaps less than 3 percent of all parcels might be considered in a Pima County PDR program. If only parcels over 40 acres are considered, less than 2 percent might be eligible. Further refinements of these data in terms of ownership, conservation values, cost, current and planned uses, and other factors by which parcels would be considered for inclusion in a PDR program will be accomplished in later phases of program development.

Table II-2.3 Number of Subdivided Parcels by Size

<u>Parcel Size:</u>	<u>*Numbers of Parcels:</u>	<u>Percent of Total:</u>
0 - 5 acres	329,211	95%
5 - 10	6,859	2
10 - 20	3,759	1
20 - 40	2,577	<1
40 -160	2,251	<1
160 +	2,737	<1

*Note: These parcel numbers are preliminary and are included to indicate relative size frequencies.

II-3. Development Pressure, Land Values, and Agricultural Land Conversion

It was noted above that between 1992-1997, Pima County experienced a substantial decline of farm and ranch land, as a consequence of significant population growth and development in the greater Tucson area and the low density patterns that much of this growth takes. In addition to regulated development, lot splitting or wildcat development is unfortunately becoming more prevalent in the areas outside the urban metropolitan area, and it is estimated that more than 40 percent of all recent residential units in unincorporated Pima County are not part of platted subdivisions. Some of these areas include Picture Rocks, Catalina, Robles Junction, Twin Buttes, areas west of the Tucson Mountains, the Empire Mountains, and Vail area, among others.

Because private lands are more readily converted for real estate development, large parcels of private lands in non-ranching or non-agricultural use, which are adjacent to the urbanizing Tucson area, are the most vulnerable to development pressure. Moreover, these areas also tend to have the highest full cash value (FCV) and a higher property tax rate than residential classification, making these private lands even more attractive to lot-split, subdivide, or sell for development. This is especially true in portions of the Middle Santa Cruz Valley, the Tortolita Fan, Avra Valley, and the Upper Santa Cruz Valley where there are high percentages of private land in non-ranch use and relatively high land valuations.

Table II-3.1 Areas with Highest Development Pressure

<u>Rank:</u>	<u>Subarea:</u>	<u>Private Non-Ranch/Ag. Land:</u>	<u>Land FCV/Ac:</u>
1	Mid. Santa Cruz	98%	\$68,000
2	Tortolita Fan	82%	25,000
3	Avra Valley	76%	2,000
4	Upper Santa Cruz	64%	4,000

Not only are private non-ranch lands vulnerable to development, but agricultural croplands in the Marana area are rapidly being converted to residential and other uses. According to data provided by the Marana Development Services Department, there are numerous proposed and planned developments in the agricultural area north and west of the Tucson Mountains and in the Tortolita Fan that together comprise approximately 5300 acres of new development. These proposed developments include: San Lucas, Anway Farms, Rancho Marana, Gladden Farms, Calmat, and Saguaro Springs. Virtually all of this acreage west of I-10 is currently being farmed, and much of it is considered prime agricultural lands according to the USDA.

Development pressure is also highest where private lands are in close proximity to the urban core. Another way to conceive of development pressure is to envision a 25 mile radius from the intersection of Interstate Highways 10 and 19. Within this radius is the metropolitan Tucson area, and at its edges, fragmentation of rural lands and open space is greatest. This area has the highest amounts of private lands not used in ranching, the highest number of subdivided and lot split parcels, and the greatest acreage of State Trust land reclassified for commercial sale or lease. Moreover, the agricultural lands undergoing conversion in Marana

are also within this 25 mile radius. Driving this conversion are access to major transportation corridors and rising land values where agricultural returns are significantly outstripped by potential returns from sale and development.

In previous analyses, those valleys with the greatest integrity of open space and the lowest development pressure lie largely outside the urban core. These were also essentially the same eastern Pima County valleys that were assessed to have the highest land use stability and ranch conservation potential.

Table II-3.2 Areas with Highest Ranch Use & Conservation Potential

<u>Rank:</u>	<u>Subarea:</u>	<u>Private Ranch/Ag. Land:</u>	<u>Land FCV/Ac:</u>
1	San Pedro Valley	74%	\$ 782
2	Altar Valley	44%	1,300
3	Empire Cienega Valley	42%	1,500
4	Upper Santa Cruz	36%	4,000
5	Avra Valley	24%	2,000

When lowest average FCV and rank of valley with the highest ranch land and open space conservation potential are considered, the valleys that would provide the greatest conservation value at the lowest cost for consideration in a PDR program can be ranked, with Altar Valley first, San Pedro Valley second, Empire Cienega third, Upper Santa Cruz fourth, and Avra fifth.

Table II-3.3 Lowest Average FCV/Acre & Highest Conservation Value

	<u>San Pedro:</u>	<u>Altar:</u>	<u>Empire-Cienega:</u>	<u>Upper Santa Cruz:</u>	<u>Avra:</u>
<u>Lowest FCV/Ac.</u>	\$ 782(1)	\$1,300 (2)	\$1,500 (3)	\$4,000 (5)	\$2,000 (4)
<u>Highest Cons.*</u>	3	1	2	3	5
<u>PDR Potential</u>	2	1	3	4	5

* See "Our Common Ground - Ranch Lands in Pima County, 2000"

Detailed assessments of the potential costs of conservation are beyond the current scope of this document and will be considered in future documents; however, factors that will affect the cost of the program include: proximity of the land to the urban core; which lands might be considered eligible for the PDR program; rate of private property owner voluntary participation; and program length of time.

Although it is too early in the development of this program to make any assertions or assumptions about these factors, three strategies for maximizing the effectiveness of a PDR program at the lowest costs are presented in later sections for consideration and discussion.

II-4. Conservation of Working Landscapes and Biological and Cultural Values

A principal goal of the Pima County Sonoran Desert Conservation Plan is to protect and conserve the natural environment using long-range planning to ensure that our natural and urban environments not only coexist but develop an interdependent relationship where one enhances the other.

As a keystone to the effective implementation of the Sonoran Desert Conservation Plan, a Pima County PDR program will provide a competitive and attractive alternative to the conversion of ranch and agricultural land due to rising land values by compensating property owners for that development value while keeping the natural landscape whole and keeping the same working landscape in production.

Any PDR program must acknowledge that natural resource protection and economic progress must strike a balance to achieve a sustainable system. By compensating landowners for their development rights in order to protect the natural values of the land, a PDR program would make it financially feasible to keep productive open space in use and would serve as an incentive to property owners to maintain the productive health of their land.

When the development value of the land has been realized, the land will again be valued for its open space values and natural productivity, serving as an incentive to protect the inherent biological and cultural values of an undeveloped landscape.

II-5. Benefits to Rural Property Owners

In addition to conserving important natural and cultural values, the property owner, too, achieves important values. Money earned from selling development rights can be used to retire debt, improve the productivity of the land under easement, invest in other land or financial instruments, or otherwise plan their estates. Moreover, PDR makes farm and ranch lands more affordable for future agricultural uses or to retain as open space since the development potential is removed. Some of the key benefits of a PDR program to property owners can be summarized as follows:

- ▶ PDR is entirely voluntary and retains property in private ownership.
- ▶ PDR compensates ranch and rural property owners for the development value of their property.
- ▶ PDR allows owners to occupy and make economic use of their land.
- ▶ PDR is flexible and can be tailored to an individual's needs.
- ▶ PDR can be implemented over time and in phases.
- ▶ PDR provides cash assets/working capital to help ensure financial stability.
- ▶ PDR can provide tax relief for property owners by lowering assessments.
- ▶ PDR can assist the property owner in planning for retirement without having to sell the family ranch or farm.

II-6. Benefits to the Greater Pima County Community

By protecting rural open space and ranch land, it is not just the property owner who benefits from a PDR program but the community and the region. If it is the goal to retain and protect our natural open spaces, not only will natural lands and their biological values be protected, but the essential natural, scenic, economic, and social values inherent in the land that have defined Pima County's natural and cultural heritage, distinctive character, and sense of place will also be preserved and maintained, and our quality of life will be enhanced. Some of the key benefits of a PDR program that can be achieved for the community include:

- ▶ PDR protects open lands, natural land forms, rural landscapes, and scenic vistas that create and define our community character.
- ▶ PDR can protect vulnerable lands with irreplaceable plant and wildlife habitat.
- ▶ PDR can protect agricultural and rural lands from development conflicts.
- ▶ PDR retains quality of life values and the heritage and character of the county.
- ▶ PDR fosters the retention of connected and unfragmented open space.
- ▶ PDR can help achieve growth management objectives.
- ▶ PDR can serve to integrate growth with the protection of sensitive landscapes.
- ▶ PDR can save county tax expenditures by avoiding costs of future development related infrastructure and facility expansion.
- ▶ PDR protects land despite future changes in political leadership.
- ▶ PDR can facilitate a long-term strategy of sustainable development that embodies the community's vision and values; achieves both community character and economic development objectives; and considers the environmental, social, and fiscal impacts of growth and development.

II-7. Authority for a Pima County PDR Program

As noted in the Introduction to the Final Report of the Growing Smarter Commission in 1999,

The lifestyles of the people of Arizona are as diverse as the landscapes they live in. Traditions run deep, Arizonans, whether native or newcomer, have a great love for the State and the quality of life they enjoy. The Arizona landscape is comprised of bustling metropolitan regions, working ranches, and agricultural districts, rural communities, and magnificent natural open spaces. Arizona's quality of life and vibrant economy has made it one of the fastest growing states in the nation. To sustain this economic prosperity without irrevocably damaging the State's natural resources and degrading the quality of life, it is clear that growth must be better planned and managed The conservation of meaningful open spaces in urban and rural areas is often the overriding concern of those citizens frustrated by rapid growth.

In response to this concern, the Commission strongly recommended PDR as a growth management tool, which is consistent with existing Arizona authorities. Under current state law, agricultural and open space conservation easements are allowed, and counties have a specific authority to purchase land and agricultural and open space conservation easements. Development of a Pima County PDR program would be entirely consistent with state law.

II-7.1 Uniform Conservation Easement Act - ARS § 33-271 to 276

Section 33-271 Definitions:

1. *Conservation easements are defined as "a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations for conservation purposes or to preserve the historical, architectural, archaeological, or cultural aspects of real property."*
2. *Conservation purposes means any of the following activities which yield a significant public benefit:*
 - (a) *preserving land areas for outdoor recreation by, or education of, the general public.*
 - (b) *protecting a relatively natural habitat of fish, wildlife, or plants or similar ecosystem.*
 - (c) *preserving open space, including farmland and forest land, if the preservation is either:*
 - (i) *for the scenic enjoyment of the general public.*
 - (ii) *pursuant to a clearly delineated federal, state or local governmental conservation policy.*

Section 33-272 Creation, conveyance, acceptance and duration:

A. Except as otherwise provided in this article, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements. For the purposes of this article, conservation easements shall be voluntarily created and shall not be required by a political subdivision or governmental entity

II-7.2 Open Space Land Acquisition - ARS § 11-935.01

This Arizona statute gives counties the explicit authority to acquire open space, either through outright purchase of land or through purchase of easements. This statute not only allows the acquisition of natural open space but also allows agriculturally productive lands to be considered for acquisition.

Section 11-935.01 Open Space Land Acquisition:

The acquisition of interests or rights in real property for the preservation of open spaces or areas constitutes a public purpose for which public funds may be expended or advanced. For the purposes of this section, "open space lands or open area" means any space or area characterized by great natural scenic beauty or whose existing openness, natural condition or present state of use, if retained, would maintain or enhance the conservation of natural or scenic resources, or the production of food and fiber.

II-8 Arizona Growing Smarter Plus

In addition to the above legislation, Growing Smarter approved in 1998 and Growing Smarter Plus approved in 2000 are significant state-level planning and growth management legislation in Arizona. While Growing Smarter Plus basically provides a set of amendments to the first Growing Smarter Act, it also included a ballot initiative (Proposition 100), which was defeated in November 2000. Had this been approved, it would have amended the State Constitution to allow up to 270,000 acres of State Trust lands to be preserved as permanent open space, and it would have allowed for long-term grazing leases for sound stewardship, among other provisions. Despite the failure of Proposition 100, all other portions pertaining to land use planning remain in effect.

Included in the current Growing Smarter Plus legislation is the provision for a state-wide purchase of development rights program. Among the findings of the Arizona Growing Smarter Commission in 1999 was the recommendation for the establishment of a state-wide PDR program:

Across Arizona, working landscapes are being fragmented. This is often due to the economic difficulty of sustaining a viable ranching or farming operation and the resulting pressure to sell agricultural land for development. Developing a program to help economically viable farming and ranching operations would provide buffers for our military bases and training ranges, support our watersheds and create habitat and wildlife corridors. They also play a strong role in maintaining the culture and heritage of Arizona.

Therefore, the Commission recommends that a statewide Purchase of Development Rights program be created with a statewide dedicated funding source which would be used to purchase or lease the development rights on private land with existing agricultural or ranch uses from willing landowners.

Based on the Commission's and citizens' recommendations, Growing Smarter Plus included the establishment of a statewide PDR program and the establishment of the Development Rights Retirement Fund. This fund will be administered through the Arizona State Parks Board as a granting entity, but funding and administration have not yet been developed. Excerpts from this legislation are included below:

Purchase, Lease, or Transfer of Development Rights; Development Rights Retirement Fund
ARS §41-511.15

A. The development rights retirement fund is established consisting of monies appropriated by the legislature, gifts, grants, and any other monies received for that purpose. The Arizona State Parks Board shall administer the fund ...

B. Monies in the fund are appropriated to the Arizona State Parks Board for the exclusive purpose of granting monies to applicants to purchase, lease, or transfer the development rights of private land in this state.

C. The Board may accept applications for grants ... from:

- 1. Agencies of this state.*
- 2. Political subdivisions of this state.*
- 3. Nonprofit organizations ... that have the purpose of preserving open space.*
- 4. Private individuals.*

D. ... the State Parks Board shall prescribe the ... process for applying for grants.... An applicant is not required to supply matching monies ..., but the Board shall give priority to applicants that do offer to match the grant monies.

E. As a condition of granting monies ... the Board shall:

- 1. Determine that the potential seller ... of development rights is fully informed as to the effects on the value of the land.*
- 2. In the case of purchase of development rights, require the purchaser to agree in perpetuity not to exercise the development rights and require the seller to agree that the land shall remain as open space.*

Supplementing the Development Rights Retirement Fund, Senate Bill 1389, the Arizona Agricultural Heritage Act, was introduced in the Arizona Legislature in January 2001, and specifically addresses agricultural farm and ranch lands. This bill seeks to purchase agricultural easements in perpetuity, or for a minimum renewable term of 25 years, and establishes an Arizona Agricultural Heritage Fund appropriating an unspecified sum from the State General Fund for granting purposes. Proposed criteria for awarding grants include:

- 1. Important natural, cultural, or public values found on the farm or ranch lands.*
- 2. The threat of conversion of the property from traditional agricultural use.*
- 3. Positive impacts on long-term agricultural productivity and perpetuation both within and beyond the boundaries of the proposed agricultural easement.*
- 4. Landscape and watershed integrity to conserve water quality and natural resources.*
- 5. Habitats for native wild species, including habitats for important, rare, or sensitive species.*
- 6. Potential for leveraging state monies allocated to the program with additional public or private monies.*
- 7. Provisions for compensating landowners who agree to allow public access on the agricultural easement, but an agreement to allow public access is not a requirement for an agricultural easement and does not afford higher funding priority.*

The bill further adds: " ... obligations regarding the types of activities that are permitted or prohibited shall be negotiated on a case by case basis but must be consistent with at least one of the following core values:"

- 1. Conservation of farm or ranch land.*
- 2. Conservation of open space on the fringe of growing urban areas.*
- 3. Conservation of native wild species and their habitat.*
- 4. Conservation of large tracts of undeveloped land beyond the urban fringe that are at risk of being divided into large tract lots, such as 40 acre ranchettes or smaller lots.*

Momentum in Arizona for approval of purchase of development rights programs that address open space and agricultural land protections is clearly growing as an increasingly popular and proven tool for protecting working landscapes and areas of high natural and cultural values. Moreover, should the State move forward to implement the existing and proposed legislation detailed above, it is clear that future additional funding sources could become available to supplement a locally funded PDR program in Pima County that would be implemented as part of a long-term land use and development planning process.

II-9. Potential Strategies for a Pima County PDR Program

It was noted above that detailed assessments of the potential costs of conservation will have to consider a range of factors that will affect the cost of the program. These include: proximity of the land to the urban core; which lands might be considered eligible for the PDR program; rate of private property owner voluntary participation; and program length of time.

To begin the discussion, three strategies are presented for consideration that essentially address the maximum area that might be considered for a PDR program, environmentally sensitive lands that maximize the effectiveness of the biological reserve, and proximity of the area to the urban core. Because these alternatives affect the size of the conservation area eligible for a PDR program, there is an obvious cost implication for each of the strategies.

In all strategies discussed below, three assumptions are operative:

- ▶ Only lands in unincorporated Pima County are included.
- ▶ Eligible lands include private ranch and farm land, private parcels over 40 acres.
- ▶ Approximately 2.9 million acres are included in the maximum biological reserve, including 1.6 million acres of existing reserves and 1.3 million acres of private and state trust lands.

II.9.1 Maximum PDR Lands Program

In this alternative, all private ranch and agricultural lands and all private parcels 40 acres in size or greater that are located in unincorporated Pima County are eligible. This maximum program is the largest in size with approximately 321,000 acres considered eligible. In this scenario, all parcels were considered without regard for biological sensitivity or existing disturbances that would diminish its habitat value. As is true with each alternative, ranch lands comprise the largest proportion or about 62% of the total. The following table details the scope of this strategy, and Figure 1 illustrates the distribution of these parcels.

Table II-9.1 Maximum PDR Lands: Current Private Ranch, Farm, and Rural Lands

	<u>Ranch Use</u>	<u>Farm Use</u>	<u>Non-Ag.Use</u> [40+ ac]
Unincorporated Pima County	192,051 ac (1695 parcels)	12,785 ac (137 parcels)	110,636 ac (848 parcels)

TOTAL ACRES: 315,472
TOTAL PARCELS: 2,680

II.9.2 PDR Lands Program Defined by the Maximum Biological Reserve

Unlike the maximum PDR program, this alternative is defined by the maximum land base defined for the Sonoran Desert Conservation Plan biological reserve system. This system combines existing reserves like national forests, wilderness areas, and wildlife refuges with private and state trust lands with high biological values to define the reserve of about 2.9 million acres. This reserve is therefore smaller than the maximum PDR program because it deletes lands that are disturbed or that have little biological value. Ranch lands comprise some 73 percent of this alternative total. The following table details the scope of this strategy, and Figure 2 illustrates the distribution of these parcels.

Table II-9.2 PDR Lands & Biological Reserve: Current Private Ranch, Farm, and Rural Lands

	<u>Ranch Use</u>	<u>Farm Use</u>	<u>Non-Ag.Use</u> [40+ ac]
Unincorporated Pima County	173,744 ac (1596 parcels)	2,395 ac (46 parcels)	63,295 ac (679 parcels)

TOTAL ACRES: 239,434
TOTAL PARCELS: 2,321

Proposed PDR Program: Option 1
Private Parcels 40 acres +,
Ranch and Ag Lands in
Unincorp. Eastern Pima County

- Private Ranch Land
(1696 parcels - 192,051 acres; FCV \$30,709,969)
- Agricultural Land
(237 parcels - 12,786 acres; FCV \$34,594,112)
- Private Land 40 acres +
(848 parcels - 110,636 acres; FCV \$28,402,124)

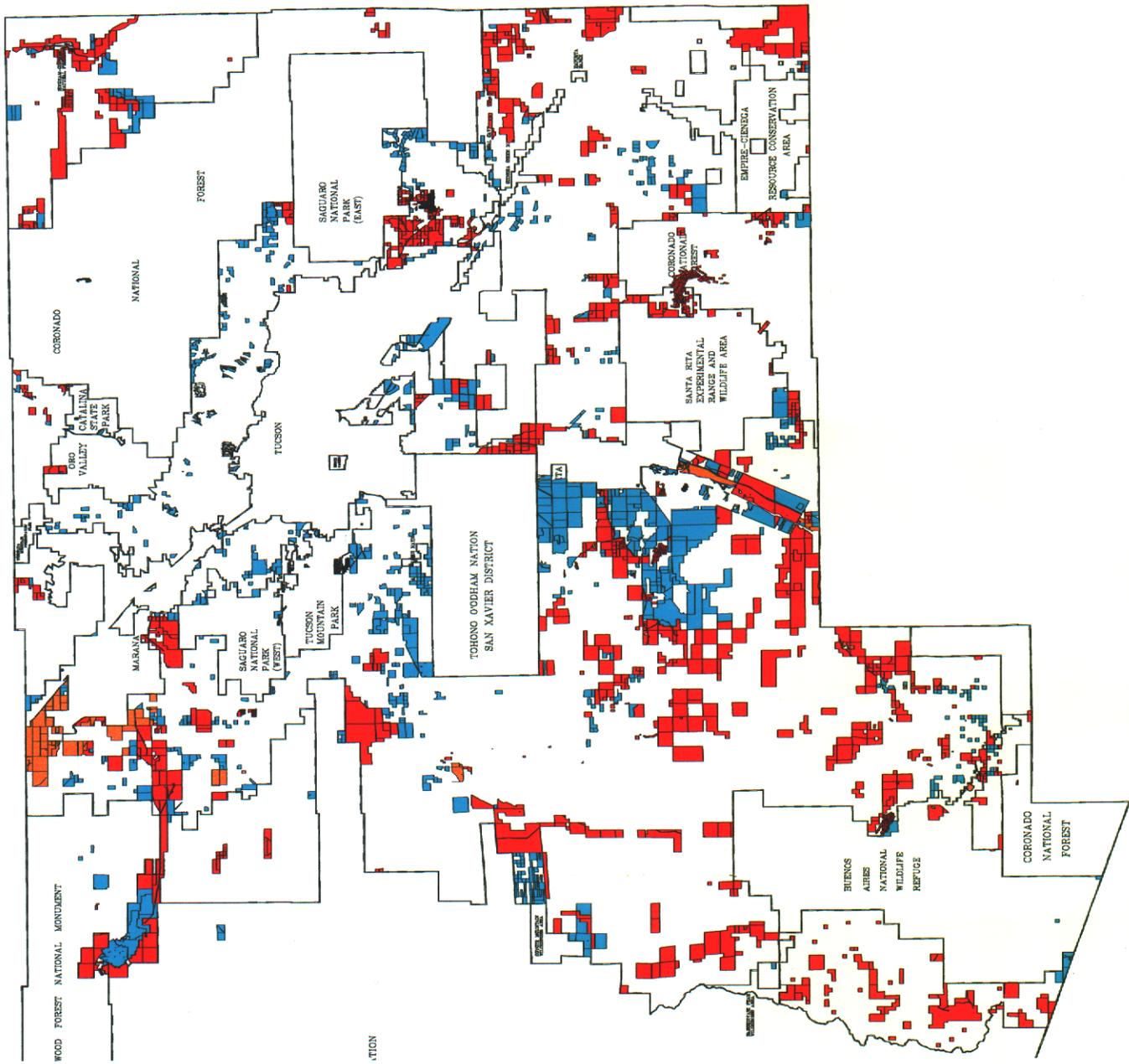
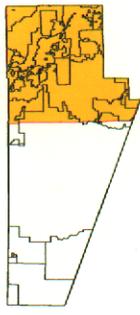


Figure 1

Pima County Index Map



Index Map Scale 1:100,000

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Scale 1:150,000

Proposed PDR Program: Option 2
**Private Parcels 40 acres +,
 Ranch and Ag Lands within
 Preliminary Biological Reserve**

- Private Ranch Land inside Preliminary Biological Reserve (1,596 parcels=173,744 acres; FCV \$94,107,166)
- Agricultural Land inside Preliminary Biological Reserve (46 parcels=2,935 acres; FCV \$4,856,656)
- Private Land 40 acres+ inside Preliminary Biological Reserve (679 parcels=63,295 acres; FCV \$144,732,629)

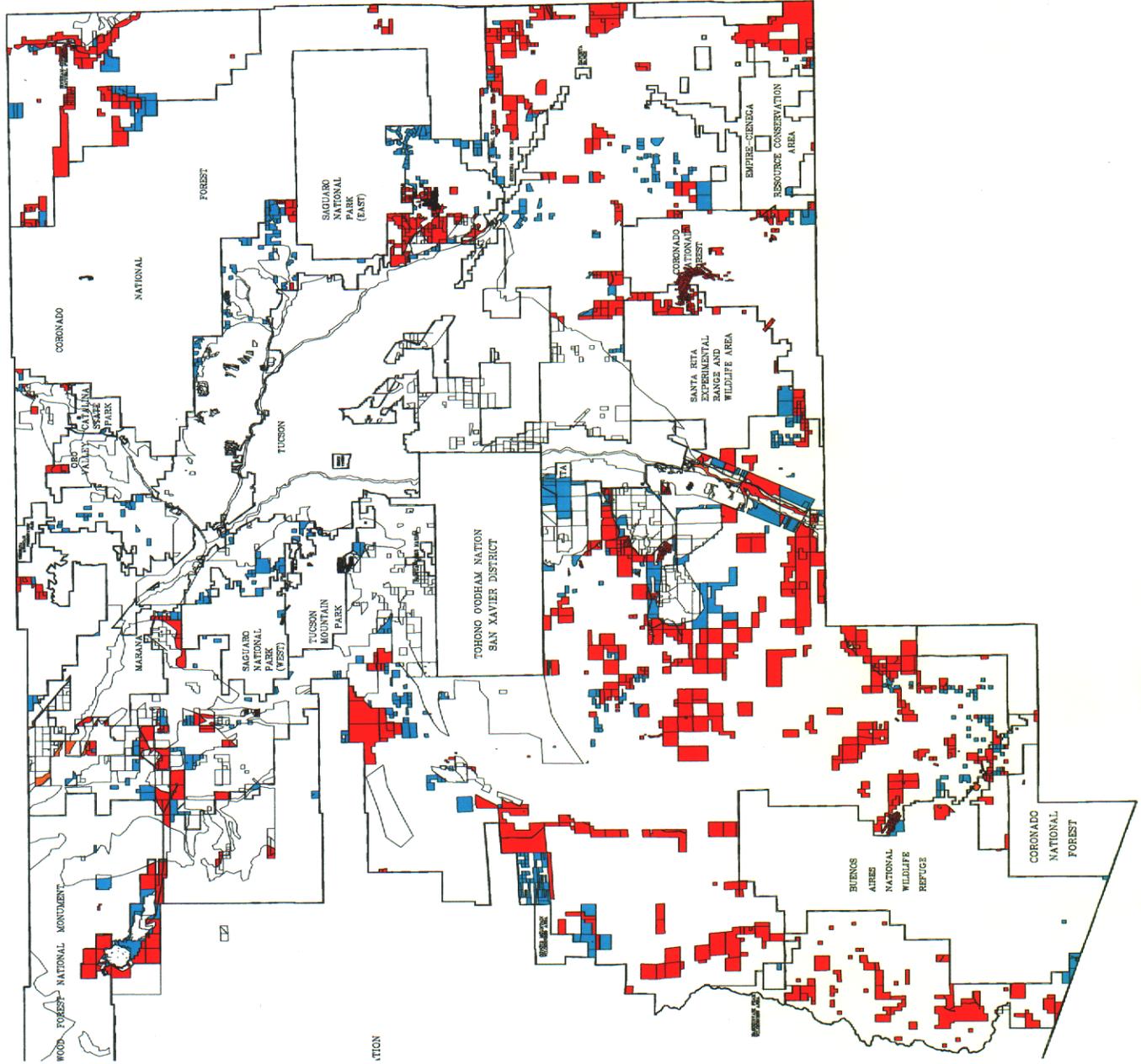
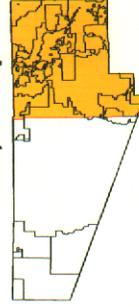


Figure 2

Pima County Index Map



Inset Map Scale 1:1,000,000

Scale 1: 150,000

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Proposed PDR Program: Option 3
Private Parcels 40 acres +,
Ranch and Ag Lands outside
25 Mile Urban Radius

- Private Ranch Land
(663 parcels—136,168 acres; FCV \$13,669,260)
- Agricultural Land
(68 parcels—7,601 acres; FCV \$5,079,187)
- Private Land 40 acres +
(306 parcels—42,976 acres; FCV \$33,261,968)

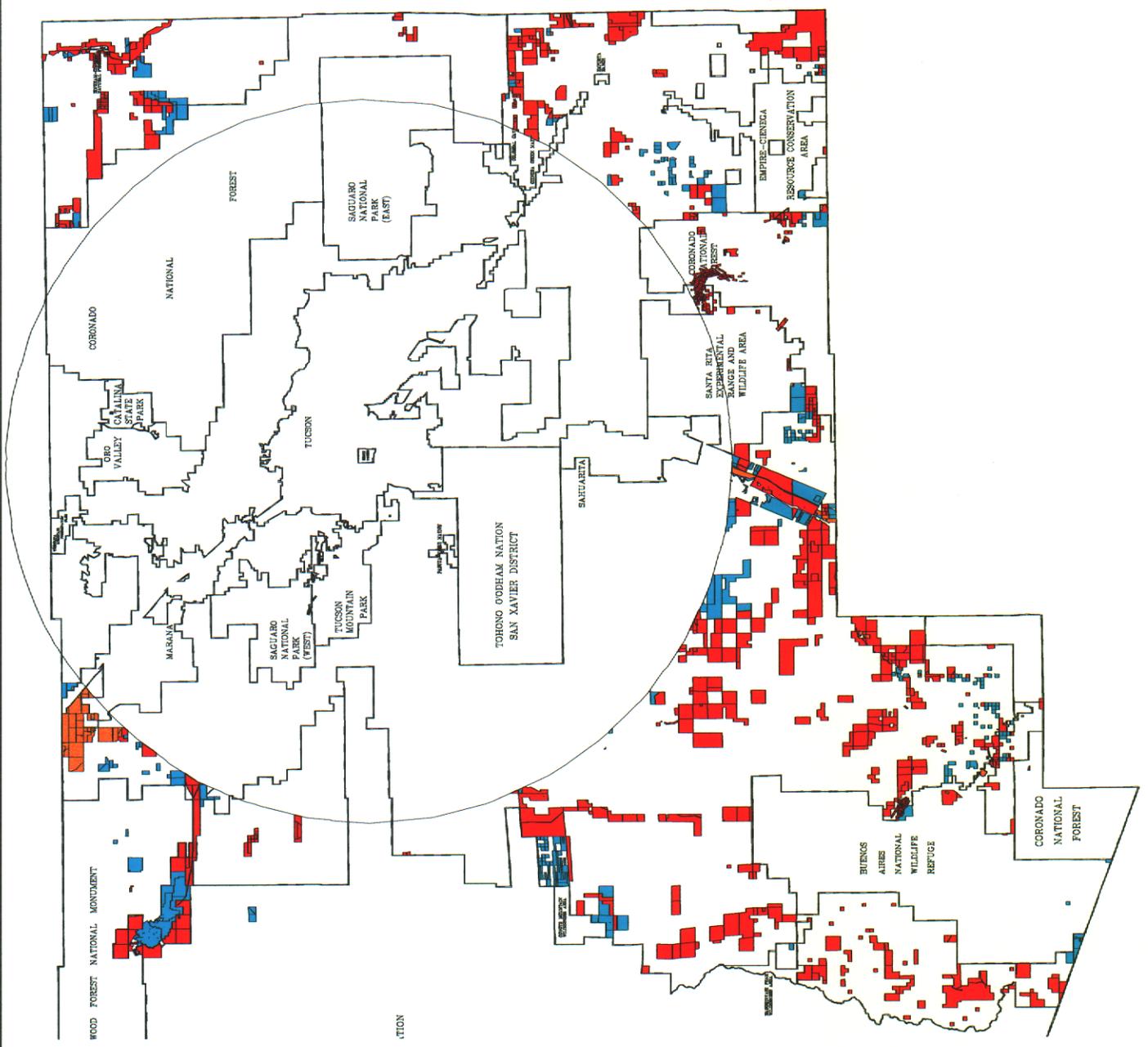
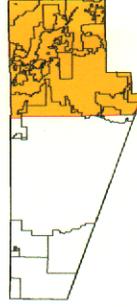


Figure 3

Pima County Index Map



In this Map Scale 1:100,000



Scale 1: 100,000

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II.9.3 PDR Lands Program Defined by Lands Outside the 25 Mile Urban Radius

As discussed earlier, lands outside the 25 mile radius of the Tucson urban core retain the highest integrity of unfragmented open space, have lower development pressure and high conservation potential, and would be likely to provide the greatest conservation value for the lowest cost. Because the size of the area inside the urban area is nearly identical to the area outside the urban core and because it disregards the biological reserve lands inside the 25 mile radius, this alternative is the smallest of the PDR land strategies. It is also the most artificial strategy, although the lands included are also largely included in the biological reserve as biologically sensitive lands. Similar to Alternative 2, ranch lands comprise some 73 percent of this alternative total. The following table details the scope of this strategy, and Figure 3 illustrates the distribution of these parcels.

Table II-9.3 PDR Lands Outside the 25 Mile Urban Core: Current Private Ranch, Farm, and Rural Lands

	<u>Ranch Use</u>	<u>Farm Use</u>	<u>Non-Ag.Use</u> [40+ ac]
Unincorporated Pima County	136,168 ac (863 parcels)	7,601 ac (68 parcels)	42,975 ac (306 parcels)
	TOTAL ACRES: 186,744		
	TOTAL PARCELS: 1,237		

While these alternatives are presented for the purpose of discussion, the decision about how to formulate a biologically effective and cost effective approach to implementing a County PDR program is one to consider carefully. It is this balance of biological benefit and cost that will drive the decision. These three alternatives are presented to further that discussion.

II-10. Potential Funding Sources

There is no question that sustainable, predictable, and long-term funding sources need to be created for PDR programs to succeed. Where PDR programs have been implemented throughout the United States, a variety of funding mechanisms have been used to generate a reliable source of funding. Most existing programs use a creative mix of direct appropriations, development impact fees, sales tax, open space bonds, hunting and fishing license fees, cigarette tax, and to a lesser extent donations of easements, cash or bargain sales.

Some examples of successful programs are cited in a recent joint publication from the Western Governors' Association, Trust for Public Land, and National Cattlemen's Beef Association, "*Purchase of Development Rights: Conserving Lands, Preserving Western Livelihoods.*" Programs in neighboring states include:

New Mexico: Local programs include a Santa Fe County 2000 bond election in the amount of \$8 million for open space, and Bernalillo County passed a \$7 million open space bond.

California: State wide, California created the *Farmland Conservancy Program* with annual appropriations and an additional \$25 million was recently approved for grants over the next

few years to preserve agricultural land, which creates approximately \$6.5 million in funding each year. At the local level, Marin County has protected 27,000 acres since 1980, and the City of Davis passed a 30 year open space protection tax, which is estimated to produce some \$17.5 million. Marin, San Joaquin, and Solano counties have special taxation districts where property owners and home buyers pay an extra tax to pay off bonds for PDR funding.

Colorado: *Great Outdoors Colorado* is a state trust fund established in 1992 that receives lottery funds of about \$35-40 million each year, which has been used for matching grants to set aside some 156,000 acres of open space. Locally, Routt County established a PDR program in 1996 using a property tax increase, and the Colorado Cattlemen's Agricultural Land Trust was created to provide a conservation land trust for Colorado ranchers who participate in these programs. And in Gunnison County, a local PDR program was created and approved by voters using Gunnison County towns' share of sales tax revenues. Boulder County recently passed a sales tax and bond issue estimated to raise \$119 million over the next eight years for open space acquisition and for purchase of development rights.

II-10.1. Development Rights Retirement Fund & Other State Funding Sources

Thus far in Arizona, state programs with funding for open space acquisition include various programs of the *Arizona Heritage Fund*, which receive a portion of Arizona Lottery proceeds each year, and the *Arizona Preserve Initiative* and *Growing Smarter Grant* program which allocates \$220 million over 11 years from the General Fund for acquisition or lease of State Trust Lands within or near urban areas.

As noted above in earlier sections, the legislature approved a statewide *Arizona Development Rights Retirement Fund*, but has not yet allocated funding, and the recently introduced SB1389 creates the *Arizona Agricultural Heritage Fund* with funding also proposed to be allocated from the State General Fund to be used for granting purposes.

Elsewhere in Arizona, the Town of Queen Creek will implement the first local government PDR program in the state, using development impact fees projected to be \$11 million per year for the next 10 years from every new home built in the town.

II-10.2 Pima County Funding Sources

Funding mechanisms suggested in the September 2000 Draft Preliminary Sonoran Desert Conservation Plan include the following:

General Obligation Bonds: In Pima County, voters continue to approve bond programs for open space acquisition and protection at high approval rates. Most recently in 1997, some \$36,330,000 was approved for 35 specific bond projects. Assuming these projects can be completed in a 5-7 year period, similar funding levels sought in future bond elections could yield some \$5-7 million per year for future open space acquisition and protection through a County PDR program.

Mitigation Payments for Rezoned Critical Habitat: For rezonings of property in areas identified for conservation by the Sonoran Desert Conservation Plan, an appropriate mitigation payment could be required as a special condition of rezoning. The payments would be designated to purchase alternative property containing high resource and habitat value to offset the loss of habitat caused by rezoning of the property in question.

Major Development Endowment Funds: For any major residential or commercial development over 320 acres, the development economic activity could be assessed a surcharge as a specific percentage of the economic activity or sales, with these funds being used to set aside larger portions of the developed property or surrounding property ... or to enhance the natural resources associated with the developing property.

With these County funding mechanisms in place and with the potential for future State matching funds from the Arizona Development Rights Retirement Fund and the Arizona Agricultural Heritage Fund, it may be possible to leverage local funding with state funds and federal funds from the Farmland Protection Fund and others, and attract donations to create a Pima County PDR program and a Development Rights Acquisition Fund to ensure the long-term sustainability and success of the program.

As a consequence of the foregoing discussion of the possibility of a County PDR program, it would appear that it is not only appropriate but it is feasible given the conservation goals of the Sonoran Desert Conservation Plan, apparent public support for open space protection, and statewide initiatives and possible supplemental funding sources for this kind of program.

There is also growing support from rural property owners in Pima County to create a County PDR program. At a recent PDR workshop sponsored by the Pima County Ranch Conservation Team in January 2001 to introduce the concept to the Steering Committee and potential participants, nearly 500 notices were sent to rural property owners and others and more than 75 people attended. This all-day workshop included presentations by speakers (some ranchers) from Arizona, New Mexico, and Colorado who have direct experience with the success of their local PDR programs. Nearly 50 people stayed for the afternoon session, and many property owners gave vocal support to the creation of a County PDR program. Items of discussion emphasized by the speakers and audience focused on the advantages to the property owner and the community, what priorities are considered important for land to be eligible for PDR program, and what problems and solutions were encountered.

Some of the advantages to the property owner:

- ▶ The property owner saves the integrity of the ranch or open space.
- ▶ The property owner and family continue to live on the land.
- ▶ Once development rights are sold, estate taxes are more manageable.
- ▶ Funds are available to the property owner for investment.
- ▶ Once development rights are removed, it is in the property owner's interest to improve the productive values of the land.
- ▶ Lands under easement can increase in value because of the guaranteed certainty of open space.
- ▶ Heritage and ecological tourism can help diversify rural land uses.

Some of the priorities considered for PDR land:

- ▶ Landscape level conservation goals (not isolated parcels surrounded by subdivisions).
- ▶ Focus on areas where entire valleys can be protected.
- ▶ Lands that stabilize natural habitat, open space, and ranching environments.
- ▶ Collaborative efforts among contiguous property owners to protect their land.
- ▶ Streams and riparian system areas.

Some of the problems and (solutions):

- ▶ - Too many management prescriptions will prevent property owner from participating.
(*More property owners will participate if the owner is allowed to manage the land.*)
- ▶ - Rigid easement that does not address site specific issues or owner's needs.
(*Instead allow flexibility so that each property owner's needs can be addressed.*)
- ▶ - Loss of public/state grazing leases to commercial sale or residential development, or isolation of conservation parcel that becomes surrounded by subdivision.
(*For ranchers dependent on grazing leases, include an "escape clause" that sells back or otherwise nullifies the easement if public land leases are denied or sold.*)
(*Same solution for conservation parcels that become isolated.*)
- ▶ - Additional restrictions/prescriptions that can come with federal or state PDR funding.
(*Research what these prescriptions will be to determine if they are acceptable.*)

III. Recommendations for a Pima County PDR Program

1. Adopt ordinances to fully authorize the establishment of a Pima County PDR program, including the creation of a Pima County Development Rights Acquisition Fund.
2. Identify and establish the means to sustainably fund the Pima County Development Rights Acquisition Fund.
3. Establish a PDR Lands Advisory Committee to create a fair and objective system for prioritizing undeveloped private lands for the PDR program.
4. Establish a PDR function in the Pima County Ranch Division to administer the program.
5. Establish a procedure by which interested private property owners and Pima County are to conduct the transaction, including application, review, and the valuation and appraisal of development rights for purchase and/or donation.
6. Establish partnerships with land trusts, which might co-hold conservation easements.
7. Establish development restrictions that are to be placed on the land on a case-by-case basis to accommodate land owner needs.
8. Establish flexible conservation and stewardship goals with guidance from NRCS.
9. Establish monitoring and enforcement procedures.

10. Establish criteria for perpetual easements or detail the duration of acquired interests.
11. Establish the criteria by which an easement might be terminated or development rights repurchased.
12. Determine the roles of the Board of Supervisors, County Administration, County staff, the PDR Advisory Committee, and Land Trust in the program.

Note: The following sections on a DRAFT Pima County Purchase of Development Rights Program and DRAFT outline of an ordinance for the creation of a Development Rights Program are included as preliminary drafts for the purposes of discussion with various stakeholders, including rural property owners.

IV. Proposed DRAFT Pima County Purchase of Development Rights Program

Section 1. Purpose and Authorization

The following program guidelines describe the policies and procedures that will be used to implement the Pima County Purchase of Development Rights (PDR) Program, as authorized by Pima County Ordinance No. _____.

The purpose of the PDR Program is to preserve open space, including natural and scenic areas, areas with sensitive habitat and environmental values, areas of important cultural values, and productive agricultural lands, through the purchase of development rights from voluntary applicants. Through a County PDR program, private property owners receive compensation for the development rights of their land and for providing open space protection, while continuing to occupy and make economic use of their land. Only the development rights are extinguished; the fee title to these lands remains in private ownership.

Section 2. Definitions

For the purposes of the Program, the following terms are defined as follows:

- (1) "Administration" – The Pima County Administrator and related staff.
- (2) "Advisory Committee" – A "PDR Lands Advisory Committee," representative of stakeholder interests, established by the Pima County Board of Supervisors shall function to make recommendations to the County Board regarding criteria for selection, to review applications and appraisals, to recommend parcels to the County Board for purchase of development rights and conservation easements, and to provide input to the County Board and Administration on all program activities.
- (3) "Agricultural Land" – Land which is substantially undeveloped and whose use is devoted to the production of food, fiber, or livestock, as well as equestrian uses and activities, and alternative products or diversified agricultural uses of the land.
- (4) "Agricultural Rights" – An interest in and the right to use and possess land for the purposes and activities related to the production of food, fiber, or livestock, as well as equestrian uses and activities, and alternative products or diversified agricultural uses of the land.
- (5) "Board of Supervisors" – The Pima County Board of Supervisors.
- (6) "Conservation Easement" – A nonpossessory interest of a holder in real property imposing limitations or affirmative obligations for conservation purposes or to preserve the historical, architectural, archaeological, or cultural aspects of real property. Conservation purposes means any of the following activities which yield a significant public benefit: (a) preserving land areas for outdoor recreation by, or education of, the general public. (b) protecting a relatively natural habitat of fish, wildlife, or plants or similar ecosystem. (c) preserving open space, including farmland and forest land, if the preservation is either: (i) for the scenic enjoyment of the general public. (ii) pursuant to a clearly delineated federal, state or local governmental conservation policy. (ARS §33-271)
- (7) "Conservation Lands" – Those lands considered eligible for the Purchase of Development Rights Program authorized by the Pima County Purchase of Development Rights Ordinance.

- (8) "Conservation/Stewardship Plans" – Land management plans developed and implemented by the property owner that protect and enhance the natural, cultural, and productive values of the land under conservation easement.
- (9) "Development Restrictions" – Terms of the conservation easement to be negotiated with each property owner. Generally, prohibitions on development or the alteration of the existing conditions or use of the land that includes subdivision, residential, commercial development, and industrial development, and mining.
- (10) "Development Rights" – An interest in and the right to use and subdivide land for any and all residential, commercial and industrial purposes and activities, which are not inherent to agricultural use and open space.
- (11) "Development Rights Easement" – The recorded instrument by which the property owner relinquishes in perpetuity the rights to develop the land, except as may be expressly reserved in the instrument, and which contains a covenant running with the land not to develop, except as this right is expressly reserved in the instrument.
- (12) "Land Trust" – A private, nonprofit land conservation organization, that is qualified under Section 501(c)(3) of the Internal Revenue Code, to hold conservation easements and monitor the land under easement.
- (13) "Open Space" – Land that is essentially unmodified natural habitat or used for agriculture that is undivided and permanently protected from future development.
- (14) "Parcel" – All property under a single ownership that is included in the PDR application.
- (15) "Permitted Use" – Any use contained within a development rights easement essential to the operation of a farm or ranch or the retention of natural open space.
- (16) "Property Owner" – The party or parties having fee simple interest in the land.
- (17) "Purchase of Development Rights" – Acquisition of the development rights in perpetuity from a parcel of land from a willing property owner through payment equal to the difference between the fair market value of the land if sold for development and the open space value or productive value of the land for agricultural use.
- (18) "Repurchase of Development Rights" – Development rights may be repurchased by the property owner if a change in condition occurs on or surrounding the property that negates the conservation or preservation purposes of the easement or denies the property owner economic use of the land, for example if public grazing leases that the property owner uses to maintain the ranching operation are denied or sold for development.

Section 3. Scope and Coverage of the Program

As a consequence of multiple years of technical studies and public input on the various conservation elements of the Sonoran Desert Conservation Plan, lands sensitive for both natural and cultural values have been identified that are located throughout Pima County, especially in its unincorporated areas. These elements include critical and sensitive natural habitat, biological and ecological corridor conservation, mountain preserves, riparian areas, historical and cultural resources, and ranch conservation. The results of these technical studies, as well as extensive mapping and analysis of high value natural and cultural resource areas, have been compiled in numerous technical reports and in series of maps that define these conservation elements. Private lands located in these areas of high resource value in unincorporated Pima County are considered "conservation lands" which are generally eligible for the Pima County PDR program.

Section 4. Roles and Responsibilities

The administration of the PDR program involves the Pima County Board of Supervisors, Pima County Administration, the PDR Lands Advisory Committee, and County Staff. The administrative responsibilities of each of these groups is defined as follows:

Pima County Board of Supervisors - The Pima County Board of Supervisors is the policy-making body for the County. The County Board establishes the PDR program through ordinance and has oversight and approval authority for the program. Responsibilities include:

- Oversight of PDR program administration.
- Approval of PDR program procedures.
- Appointment of PDR Lands Advisory Committee members.
- Establish the Development Rights Acquisition Fund and annual funding levels.
- Approval of appraisals or valuations.
- Approval of financing mechanisms.
- Approval of land trusts to co-hold and monitor easements.
- Acceptance of grants or donations.
- Approval of development rights purchases and easements.

Pima County Administration – The Pima County Administrator carries out the policies and goals established by the Board of Supervisors, provides information and technical assistance to the Board, and has oversight of County non-elected official departments, operations, and programs. Provides management, coordination and communication on all legislative issues and intergovernmental needs, and administers the County's tax statement billing function. In this capacity, the County Administrator ensures that policies and programs such as the PDR program established by the Board of Supervisors are implemented and are consistent with other plans and policies such as the Sonoran Desert Conservation Plan, the Comprehensive Land Use Plan, and the Capital Improvement Plan. Responsibilities include:

- Oversight of the administration of the PDR program.
- Oversight of the integration of the PDR program with other County plans.
- Oversight of the financing mechanisms approved by the Board of Supervisors.
- Oversight of the Development Rights Acquisition Fund.
- Review of land trusts to hold and monitor easements.
- Review of grants or donations.
- Review of recommendations for development rights purchases and easements for approval by the Board of Supervisors.

PDR Lands Advisory Committee – A seven (7) member Advisory Committee, representing different stakeholders, will be appointed by the Board of Supervisors. The Advisory Committee will function as an advisory body by making recommendations, with assistance of County staff and review by County Administration, to the Board of Supervisors for development rights purchases and easements. Responsibilities include:

- Make recommendations to the Board of Supervisors regarding selection criteria.
- Review applications that meet eligibility for Conservation Lands.
- Evaluate and visit sites, as appropriate, to confirm eligibility.
- Evaluate applications based on appraisals, available funding, and potential for donation, bargain sale, or matching funds.

- Recommend parcels to the Board of Supervisors for purchase of development rights and recording of conservation easements.
- Provide citizen input to the Board of Supervisors and County Administration on all program activities, as requested.

Advisory Committee members shall be Pima County residents and be appointed from the following groups:

- ranching and agricultural interests (2)
- rural property owners from unincorporated Pima County (1)
- conservation organizations or land trusts (1)
- citizens at large who have knowledge or experience with conservation goals (2)
- real estate professionals (1)

Each member may represent one or more of the above interest groups. The Advisory Committee may also include non-voting technical advisory members from agencies involved in land and water protection activities such as the Natural Resources Conservation Service, the Ranch, Science, and Cultural Resources technical advisory teams for the Sonoran Desert Conservation Plan, and other professional interests.

Advisory Committee members will serve staggered two-year terms. The initial members shall be appointed to either one or two year terms, which can be renewed twice, for a total of three possible consecutive terms. Members will not be compensated for their services.

Advisory Committee members shall disclose any potential conflict of interest and abstain from any discussion or voting on the selection of conservation lands in which the member has any interest.

PDR Program Staff – County staff will administer the PDR program on a daily basis under general direction from County Administration. Staff will provide support to applicants, the PDR Lands Advisory Committee, and the Board of Supervisors. The capabilities of staff could include: program administration, planning and resource management, as well as knowledge of land conservation programs and financing, and knowledge of agriculture, ecology, and cultural resources. In addition to PDR program staff, assistance will be necessary from the County Attorney’s Office, Assessor’s Office, Real Property Division, Planning Department, Recorder’s Office, and other assistance from the technical advisory teams for the Sonoran Desert Conservation Plan. Responsibilities include:

- Prepare and distribute materials to promote the PDR program.
- Administration and financial management of the PDR program.
- Outreach to potential applicants.
- Meet with and advise applicants.
- Initial review of applications for eligibility per criteria.
- Complete environmental risk assessment.
- Prepare reports on evaluations for review by the Advisory Committee.
- Determine easement terms and land owner needs (e.g. building sites, future uses, conservation goals, donation, bargain sale, payment terms, etc.).

- Determine easement value from appraisals of full market value of property, value of agricultural use, and value of development rights.
- Provide support to the Advisory Committee in review of applications and recommendations for PDR program.
- Ensure approved easements are recorded
- Ensure Planning Department has records that identify parcels on which development rights have been sold and extinguished.

Section 5. Eligibility Criteria and Priorities

The following criteria, which are consistent with existing and proposed state statutes for open space conservation, shall be considered in determining which Pima County PDR applications meet baseline conservation objectives.

Initial Eligibility Criteria to be considered by County staff:

- A voluntary application for a perpetual conservation easement is submitted by the property owner.
- The parcel is located within unincorporated Pima County where there is greater potential for permanent landscape level protection.
- The property is located within an area suitable for conservation based on its natural, cultural, open space, recreation, education, or agricultural values.
- The parcel must have development rights remaining under current zoning. Parcels that have been subdivided and developed to the maximum density allowed under current zoning are not eligible.

Eligibility Criteria to be considered by County staff and the Advisory Committee:

- Habitat for native wild species, including habitat for important, rare, or sensitive species, including threatened and endangered species.
- Open space containing important archaeological, historical, architectural, or traditional cultural sites or values.
- Landscape and watershed integrity to conserve water and natural resources.
- The parcel is threatened by development pressure and fragmentation.
- Proximity to other large tracts of protected open space to facilitate landscape level conservation.
- Open space application of 40 acres or more, which could include multiple applications for contiguous or nearby parcels from single or multiple owners.
- Potential for sustainable and long-term agricultural productivity both within and beyond the boundaries of the proposed easement.
- Willingness of applicant to adopt and implement a "conservation/stewardship plan" in cooperation with Natural Resources Conservation Service (NRCS).
- Potential for leveraging local monies allocated to the PDR program with additional public or private monies, or through donation or bargain sale.
- Comprehensive Plan designation for continued rural land use.
- Site visit and assessment of natural, cultural, and agricultural values.

Section 6. Application, Review, and Selection Process

1. Application:

Applications from property owners or their representatives will be accepted by Pima County and reviewed in the order received throughout the calendar year. Applications indicate an interest in participating in the PDR program and do not represent a binding commitment or offer to sell a conservation easement.

2. Initial Review by County staff:

County staff will initially screen applications for eligibility and evaluate parcels using the criteria outlined in Section 5 resulting in a list of "Candidate Parcels." County staff will solicit comments on all candidate parcels from appropriate county departments and others, and prepare a report on this initial review and evaluation of applications on a quarterly basis for further consideration by the PDR Advisory Committee.

3. Site Visits and Evaluation of Candidate Parcels by the Advisory Committee:

County staff will coordinate site visits by the PDR Advisory Committee for all candidate parcels. Based on the site visits, criteria evaluations, and County staff report, the Advisory Committee will rank the parcels, resulting in a list of "Recommended Parcels" that will be submitted on a quarterly basis to County Administration and the Board of Supervisors.

4. Review of Recommended Parcels by the Pima County Board of Supervisors:

The list of recommended parcels and supporting materials from the Advisory Committee and County staff will be reviewed and approved by the Board of Supervisors to proceed to further evaluate the parcel, determine property owner needs and issues, and conduct appraisals and conservation easement valuations.

5. Review of Recommended Parcels by the Pima County Real Property Division:

Once the recommended parcels list has been approved by the Board of Supervisors, the Real Property Division will further research all parcels on the list to determine whether there are any potential problems, such as unpaid taxes, boundary survey problems, existing easements, pollution concerns, abandoned wells, or title problems. Any major problems will be identified to County Administration and the Board of Supervisors prior to making an offer to purchase development rights.

6. Conservation Easement Valuations and Negotiation:

Conservation easement valuations will require parcel-specific appraisals. A County Real Property agent will determine property owner needs, arrange appraisals, and negotiate price and conservation easement terms with the property owners. At this time, property-owners may make donations, offer to sell at a lower price than the conservation easement value to achieve a "bargain sale," or choose to sell at full easement value.

7. Board Approval of Recommended Purchases:

Based on review of the recommended parcels, conservation easement values, bargain sales, donations, availability of additional funding, and other factors, the PDR Advisory Committee will prepare a prioritized list of "Recommended Purchases" and their costs for review by County Administration and the Board of Supervisors. The Board, at a public hearing, may accept the list of "Recommended Purchases" or modify the list. The Board will approve the purchase of development rights and conservation easements based on available funding. Those not funded will be placed on a waiting list.

8. Offers to Purchase:

Following approval by the Board of Supervisors, offers to purchase development rights will be made to the property owner. Based on negotiations with the property owner, an offer may be tailored to the property owner needs, and specify sale terms, any contingencies or conditions, and other terms of the conservation easement. A period of time will be established within which property owners may accept or reject offers to purchase. If an offer is rejected, funds will be reallocated to the next approved parcel on the waiting list.

9. Closing and Payment:

Settlement will occur following the property owner's acceptance of the County's offer to purchase a conservation easement restricting development, and is contingent upon due diligence, environmental assessment, title search, mortgagee's consent to the conservation easement, and any other issue that may be needed to provide clear title. Payment terms may be lump sum, by installments, or by other arrangements satisfactory to both parties.

10. Recording and Monitoring:

Acquisition of a conservation easement by Pima County will be recorded in the County Recorder's Office. Monitoring of the easement will be done by Pima County and in partnership with any land trusts that may also serve to hold conservation easements.

Section 7. Valuation and Payment

As noted above, determination of the cost of purchasing development rights easements will be conducted through a parcel-specific appraisal. Under the appraisal method, a certified appraiser knowledgeable in conservation easement valuations will be chosen by the County to establish the value of the development rights. The appraiser first evaluates the fair market value of the unrestricted property before development rights are sold, then the appraiser establishes the restricted value of the property based upon the agricultural or conservation activities that could occur on the property. Other terms, such as reserved building sites could affect the value. In general, the difference between the unrestricted value of the parcel and the restricted value is the value of the development rights. Property owners may obtain their own appraisal at their own expense from a qualified appraiser for the purposes of comparison and negotiation, or for the purpose of calculating tax benefits to the property owner.

Payments to property owners for purchase of development rights may be made in one lump sum or through installment payments. The use of installment payments may allow the PDR Program to accept more parcels, thereby protecting more parcels sooner. Installment payments could be for 5,10,15, or more years, and may enable property owners to defer capital gains taxes.

Section 8. Conservation Easement Provisions and Development Restrictions

General Provisions:

The restrictions placed on parcels on which development rights are sold are in the form of a conservation easement. A conservation easement is a written agreement that separates the right to develop the parcel from the fee title of the parcel. The terms of the conservation easement will be negotiated separately with each property owner, and will be based on the resources demonstrated in the application and on the property owner's needs. The terms of the easements may vary from parcel to parcel. At a minimum, residential development and non-agricultural commercial and industrial development will be prohibited on land covered by the easement. Both the property owner and Pima County identify the restrictions on use that are necessary in order to protect the property. Examples of additional easement terms that may be negotiated by the property owner and the County, include, but are not limited to:

- Preparation of a conservation/stewardship plan in cooperation with NRCS – Natural Resources Conservation Service to protect natural values.
- Protecting and monitoring archaeological and historical sites.
- Habitat enhancements or species recovery sites.
- Fire to restore grassland habitat.
- Allowing additional farm buildings in the vicinity of existing facilities.
- Retention and siting of a limited number of new residential building sites.
- Allowing heritage/eco-tourism activities, scientific research, or other access.

Prohibited Uses:

The following land uses shall be prohibited on lands under a conservation easement:

(1) Additional residential development is not permitted within the designated conservation easement area except for any existing residences, if present. The applicant must designate any areas, if any, to be set aside for future minimal residential development at the time of the application. The area must be subdivided from the eased property prior to closing. All other development rights shall be extinguished under the terms of the easement.

(2) New non-agricultural commercial or industrial development is not permitted within the designated easement area.

(3) Modifications to the land under easement that significantly alter or damage the natural or cultural values being protected, such as mass-grading, are not permitted.

Permitted Uses:

Lands under a restricted development rights conservation easement may continue to be used for the following purposes, except as otherwise noted under the specific terms of the conservation easement and as restricted by local zoning or other requirements.

- (1) Ongoing and customary agricultural and ranch uses necessary to exercise the property owner's agricultural rights, as specified in the terms of the easement.
- (2) Land conservation and management activities, as specified in the terms of the easement.
- (3) The property owner's and family's residences and other existing residences customarily used by the ranching or farming operation.
- (4) Replacement, expansion, or remodeling of existing buildings within a designated area in the immediate vicinity of the house site or farm or ranch headquarters.
- (5) Customary agricultural buildings shall be permitted, as specified in the terms of the easement.
- (6) Other activities that may occur on the property shall be defined by the terms of the conservation easement. In general, such activities may be permitted to the extent that they do not lessen or degrade the resource values the conservation easement is intended to protect.
- (7) A conservation/stewardship plan, prepared in cooperation with the Natural Resources Conservation Service (NRCS), shall be required for all agricultural land under easement.

Section 9. Monitoring and Enforcement

The conservation easements purchased through the Pima County PDR program will be held by Pima County and may be co-held by any land conservation organization or land trust qualified as a non-profit organization under Section 501(c)3 under the Internal Revenue Service Code. At the time the easement is purchased, a baseline report will be compiled to document the condition of the property, to inventory any existing buildings and facilities, and to detail the natural and cultural values of the parcel.

Monitoring of the parcel and easement terms will be completed by either County staff or through contract with the conservation organization that co-holds the easement. A yearly inspection of each parcel, to be scheduled with the property owner, will be conducted and documented to ensure that the terms of the easement are being honored. If the property has been sold, County staff will work with the new property owner to ensure continuity of the easement provisions. The property owner will not be held liable for damage that occurs from natural catastrophes such as wildfires, floods, or earthquakes. However, if violations occur, enforcement of the terms of the easement must be taken. This can range from meeting with the land owner to remedy the situation to court-enforced solutions.

Section 10. Duration of Acquired Interests & Repurchase of Development Rights

Development rights purchased by Pima County shall be extinguished, and a perpetual conservation easement prohibiting development shall be recorded for the parcel. This conservation easement relinquishes in perpetuity the rights to develop the land and contains a covenant running with the land not to develop, except as expressly reserved in the easement.

Development rights for a particular parcel may be repurchased by the property owner if a change in condition occurs on or surrounding the property that negates the conservation or preservation purposes of the easement or denies the property owner economic use of the land. One example is the reclassification for commercial use or sale for development of public or State Trust lands grazing leases that the property owner uses to maintain the ranching operation. A second example might be the situation where a rural property owner sells development rights and places a conservation easement on his or her property only to have adjacent property owners subdivide and develop their lands leaving only an "island" of protected open space. In these examples where either the sustainability of the ranch is threatened and the isolation of the protected parcels no longer serves conservation goals, Pima County may consider terminating the perpetual easement and selling the development rights back to the property owner if so requested. The price of repurchase will be again determined by appraisal and negotiated with the property owner.

Section 11. Funding for the Development Rights Acquisition Fund

While this section will be determined by future action of the Board of Supervisors in establishing a Development Rights Acquisition Fund, funding mechanisms suggested in the September 2000 Draft Preliminary Sonoran Desert Conservation Plan include the following:

General Obligation Bonds: In Pima County, voters continue to approve bond programs for open space acquisition and protection at high approval rates. Most recently in 1997, some \$36,330,000 was approved for 35 specific bond projects. Assuming these projects can be completed in a 5-7 year period, similar funding levels sought in future bond elections could yield some \$5-7 million per year for future open space acquisition and protection through a County PDR program.

Mitigation Payments for Rezoned Critical Habitat: For rezonings of property in areas identified for conservation by the Sonoran Desert Conservation Plan, an appropriate mitigation payment could be required as a special condition of rezoning. The payments would be designated to purchase alternative property containing high resource and habitat value to offset the loss of habitat caused by rezoning of the property in question.

Major Development Endowment Funds: For any major development over 320 acres, the development economic activity could be assessed a surcharge as a specific percentage of the economic activity or sales, with these funds being used to set aside larger portions of the developed property or surrounding property ... or to enhance the natural resources associated with the developing property.

With these County funding mechanisms in place and with the potential for future State matching funds from the Arizona Development Rights Retirement Fund and the Arizona Agricultural Heritage Fund, it may be possible to leverage local funding with state funds and federal funds from the Farmland Protection Fund and others, and attract donations to create a Pima County PDR program and a Development Rights Acquisition Fund to ensure the long-term sustainability and success of the program.

Section 12. Annual Report and Conservation Goals Assessment

County staff managing the Pima County PDR Program and the PDR Advisory Committee will prepare an annual report, for submittal to County Administration and the Board of Supervisors. This report will detail the number and locations of voluntary applications, program actions, successful easements, the status of waiting list parcels, supplemental funding, monitoring activities, and program costs from the previous year. The report will also provide an assessment of how well conservation goals are being attained and projections of actions anticipated in the coming year based on waiting list parcels, new applications, and available funding.

Staff and the Advisory Committee may make recommendations for conservation lands goals, program improvements, and funding levels as part of this report for consideration by County Administration and the Board of Supervisors. Other staff and Advisory Committee reports submitted to County Administration and the Board of Supervisors during the previous year will provide supporting documentation for the annual report.

V. Ordinance for Pima County Purchase of Development Rights Program

(Note: For the purposes of discussion, only a draft outline for a Pima County PDR ordinance is included at this point in program development. It is anticipated that public participation will serve to refine its components before drafting.)

1. Findings and Statement of Purpose
2. Definitions
 1. Advisory Committee
 2. Agricultural rights
 3. Conservation easement
 4. Conservation lands
 5. Conservation/Stewardship Plans
 6. County Board
 7. Development Restrictions
 8. Development Rights
 9. Land Trust
 10. Parcel
 11. Property Owner
 12. Purchase of Development Rights
 13. Repurchase of Development Rights
3. Authorization
4. Purchase of Development Rights Advisory Committee
5. Purchase of Development Rights Program Administration
6. Application, Review, and Public Hearing Process
7. Criteria for Decision to Purchase Development Rights
8. Conservation Easement Provisions & Development Restrictions
9. Duration of Acquired Interests & Repurchase of Development Rights
10. Development Rights Acquisition Fund
 1. Voluntary conveyances
 2. Development rights purchases
 3. Land purchases
 4. Donations
 5. Related acquisition costs
 6. Monitoring and enforcement costs
 7. Supplemental funds
11. Conflict of Interest
12. Amendment or Repeal
13. Severability

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