



# United States Department of the Interior



**Fish and Wildlife Service**  
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In Reply Refer to:  
AESO/SE

March 11, 2009

Mr. C.H. Huckelberry  
Pima County Administrator  
130 West Congress Street  
10<sup>th</sup> Floor  
Tucson, Arizona 85701-1317

Dear Mr. Huckelberry:

Thank you for the opportunity to provide comments on Draft V of the Pima County Multi-Species Conservation Plan (MSCP), which you transmitted to the Pima County Board of Supervisors on December 24, 2008. We commend Pima County for your on-going efforts to conserve vulnerable species and their habitats during the development of the MSCP, including the acquisition of lands through the 1997 and 2004 Bonds and through the implementation of Conservation Land System Guidelines. Below are our comments and recommendations; we discussed these comments with your staff in a meeting on February 25, 2009, and we provided editorial comments in a marked-up version that was hand delivered to your staff.

Section 10(a)(2)(A) of the Endangered Species Act provides the requirements of a habitat conservation plan for the issuance of an incidental take permit under section 10(a)(1)(B):

- (i) The impact which will likely result from such taking;
  - (ii) What steps the applicant will take to minimize and mitigate such impacts and the funding that will be available to implement such steps
  - (iii) What alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and
  - (iv) Such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.
1. Executive Summary – This is a large document. An executive summary would allow the reader to know up front important information such as the permit area, the permit duration, covered species, covered activities, and overall mitigation and monitoring strategy.
  2. Alternatives – The MSCP and the EIS are stand-alone documents. A description of the alternatives considered should also be included in the MSCP document. In addition, the alternatives considered related to “take” within the MSCP may differ from the alternatives defined under the National Environmental Policy Act.

3. Permit Area – Changes to the permit area will require an amendment to the ITP. Where changes to the permit area are discussed in the MSCP, a reference to the section on how the permit would be amended should be included (p. 7, 117). If planned developments on State Trust lands are to be included in the permit, they need to be described and identified in the MSCP.
4. Proposed covered activities. To fully analyze the effects of the permit on covered species, we need a comprehensive list of proposed covered activities – which you have provided. If new activities are proposed in the future, or activities are proposed in new areas and the effects of those activities were not analyzed prior to permit issuance, a permit amendment may be necessary. For example, activities on State Trust lands that are not currently addressed would likely require a permit amendment. The activities covered in the bottom two paragraphs of page 17 (infrastructure developed by the County outside the permit area) would actually be in the permit area if they are covered. To cover them up front, we would need to know the locations. If the locations are not known at this time, but would be covered later, they would have to be added to the permit through an amendment process. In Section 2.6.5, the terms of the discretionary land use permits should be included if the County is getting permit coverage for those activities (could be included as an appendix). In addition, citations should be included for the statements indicating that grazing minimizes the spread of invasive species and water protection as a benefit from livestock grazing. The activities of land management and population augmentation should be specifically mentioned in Section 2.6.6. For Section 2.6.7, it needs to be made clear that we are including Safe Harbor-type language here. Baseline calculations are not required for HCPs. In Section 2.7, growth projections include State Trust Lands. If these are to be covered in the permit, they need to be specifically identified and quantified. We recommend additional discussion with County staff regarding section 7 consultations within the permit area for covered activities and how, or if, they will be covered (p. 102). A programmatic consultation with the Corps regarding section 404 CWA permits may be needed if streamlining the regulatory process is an objective of the MSCP.
5. Effects of the Pima County MSCP on covered species. Table 2.7 provides the percent of habitat affected for each covered species inside and outside of the planning area, and Appendix E provides species-specific conservation measures that are being considered by Pima County. We also need the acreage of habitat that will be affected and conserved for each species for our analysis of effects. These values should include effects to both Primary Conservation Areas and to modeled habitat, both inside and outside of the Conservation Land System (CLS). Take can also occur outside of the PCA's (p. 10) and CLS (p.116). We also need to discuss the need for coverage of lethal take of individual covered species. If all take is habitat-based, and lethal take of a covered species is documented, you may be vulnerable under section 9 of the Act. There could be lethal take as a result of the covered activities for a number of covered species. Discussion should describe the new model used to project development and the assumptions. Also, how the numbers produced under this new model compare to the old model. Maps showing locations of the CIP projects would be helpful. Is Table 2.7 based on impacts to the CLS? PCA's? modeled habitat?
6. Mitigation Mechanisms and Program Implementation.
  - a. An explanation of why the mitigation ratio for Important Riparian Areas is 4:1 instead of 19:1, which would be consistent with the CLS guidelines, is needed (p. 11, 36). A discussion of the 4.7:1 ratio for mitigating outside the CLS is also needed (p. 36). Are all the impacts in Table 3.1 within the CLS?

- b. Section 3.2. Please provide the entity that will hold the conservation easements on mitigation lands secured through the application of CLS development policy and other County environmental regulations. The numbers of mitigation acres in this section do not match Table 3.1.
- c. 3.2.2.1. As stated in our June 28, 2006 letter that provided comments on Draft III of the MSCP, we do not concur that lands leased by Pima County from Arizona State Land Department for grazing are appropriate to include as mitigation lands under the MSCP. These grazing leases are short-term (10 years), and lands included in the MSCP are expected to be conserved in perpetuity to be commensurate with the impacts of development. These lands do, however provide benefits to Pima County's goals under the Sonoran Desert Conservation Plan, including that of ranch conservation. We recommend additional discussion with County staff related to assigning partial credit, assigning lease lands as mitigation for non-permanent impacts, reduction of the mitigation ratio outside of the CLS, and relating mitigation to species' impacts (within PCA's) outside of the CLS.
- d. 3.2.4.4 Who will hold the conservation easements and manage the lands set aside as part of the development process? In addition, what funding will be used to accomplish these tasks? An estimate of the acreage of these lands that will be applied to mitigation requirements would be helpful (p. 38). Pima County is ultimately responsible for maintaining the habitat values on these lands if they are used for mitigation. There is a cost associated with management and monitoring of these lands. Additional discussion is recommended on how these areas will be established and maintained. For example, will standards for establishment and maintenance of the set-asides be established through zoning ordinances? What role do ordinances such as the Native Plant Protection Ordinance, Hillside Ordinance, etc. play in this process?
- e. 3.6.1 A discussion should be included regarding standards for determining if acquired lands have lost their ecological value and the process for releasing or selling them and conserving new lands of equal or greater value.
- f. 3.2.4.1 We can not rely on the public reporting of zoning violations on mitigation lands. This section needs to be strengthened, as well as section 4.3.1 with regard to how zoning violations will be detected and enforced.
- g. Most of this discussion is very general. The specifics of Appendix E should be included directly or by reference. Appendix E should be titled as mitigation conservation measures for the MSCP, not just measures being considered. State somewhere in the text or the appendix that these are the conservation measures that the County intends to implement.
- h. Please provide a table of acres conserved to date for each of the covered species.

## 7. Unforeseen Circumstances

- a. Some of the changed circumstances in Table 6.1 are already occurring and should be addressed up front in the HCP. Change the wording to indicate that these are "new" impacts rather than existing ones.

b. Not all the listed unforeseen circumstances are really unforeseen. Some are more appropriately categorized under changed circumstances.

c. A number of places in this document it refers to “the County or permittee” (p. 97, 98). The County is the permittee.

## 8. Land Management

a. Coordination with the other HCPs in the Tucson area should be included in this section, especially with regard to the effluent conservation pool (p. 56).

b. Numbering on page 63 is incorrect.

c. 4.2.2 Upon what is the 40% average utilization level based?

d. 4.3.2 The new park rules should be included as an appendix.

## 9. Data Management

a. We recommend making data available to the other local jurisdictions with HCPs to to improve consistency and effectiveness across boundaries.

b. Would PAG work as an entity for the central data repository? That may facilitate sharing data among municipalities and partners.

## 10. Funding mechanisms and commitments

a. Please describe the funding that will be used to manage and enforce the conservation easements on lands conserved through setting aside on-site mitigation lands. A more timely and direct approach is needed beyond what is described in Section 5.6.

b. Please include a table or other format which shows the cost of implementing the MSCP and the source of funding to meet each of those costs. Our Solicitor wants to see exactly how much funding is committed from what sources.

c. Federal funds cannot be used for mitigation (p. 110, 114, 115, 121).

## 11. Reporting and Public Participation

a. 8.1.1.1 The take of covered species needs to be calculated both inside and outside of the CLS. Also, the document states that “...if the State Trust releases land to development, such development will not be included in the annual take report.” Activities on such State Trust Lands, including development, would also not be covered by the permit unless they are identified and analyzed prior to permit issuance. Otherwise, a permit amendment would be necessary.

b. 8.3.2. The Fish and Wildlife Service has a grant program under section 6 of the ESA, which provides funding for acquisition of lands that are complementary to a habitat

conservation plan. This funding cannot be used as mitigation for the habitat conservation plan. We also have grants available through our Partners for Wildlife that could be used for restoration projects. We do not have any funding mechanisms for monitoring and management.

12. Glossary

- a. You need a definition for "Priority Conservation Area" (p. 131).

13. Appendix E.

We recommend some additional discussion with County staff and the species experts to fine tune and finalize the measures in Appendix E. Specifically, we recommend updating and/or revising the measures for PPC, burrowing owl, pygmy-owl, and the bats. We also recommend investigating grassland conservation measures that could benefit desert box turtles and Swainson's hawks.

Please contact us at your convenience if you have any questions or would like to schedule additional discussion related to our comments at (520) 670-6144.

Sincerely,



Steven L. Spangle  
Field Supervisor

cc: Field Supervisor, Fish and Wildlife Service, Phoenix, AZ  
Regional Supervisor, Arizona Game and Fish Department, Tucson, AZ  
Chief, Habitat Branch, Arizona Game and Fish, Phoenix, AZ